

BILL ASSENT, A DELAY AND THE GOVERNOR'S OPTIONS

Relevant for: Indian Polity | Topic: Functions & Responsibilities of the States, the Governor, the Chief Minister and State COM

'The position of a Governor in the constitutional setup in India needs to be clearly understood' | Photo Credit: Arunangsu Roy Chowdhury

The State of Tamil Nadu has been witnessing a [confrontation between the elected government and the State Governor](#) on the question of giving assent to the [National Eligibility cum Entrance Test \(NEET\) Bill](#) (linked to an all India pre-medical entrance test) passed by the State Assembly. Giving assent to a Bill passed by the legislature is a normal constitutional act performed by the Governor. But of late, even such normal acts have become a source of confrontation between State governments and the Governors. The conduct of Governors in certain States follows a definite pattern which causes a great deal of disquiet to elected governments as well as to those who have faith in the constitutional order.

The position of a Governor in the constitutional setup in India needs to be clearly understood in order to grasp the significance of the actions as well as responses of Governors in the politico-administrative contexts emerging from time to time in States. The Governor is an appointee of the President, which means the Union government. Although Article 154(1) of the Constitution vests in the Governor the executive power of the State, he is required to exercise that power in accordance with the Constitution. In other words, the Governor can act only on the aid and advice of the Council of Ministers. Though there is not much deviation from the language used in the Government of India Act of 1935 in the context of the powers of the British-era Governors, it is a settled constitutional position that the Governor is only a constitutional head and the executive power of the State is exercised by the Council of Ministers. In *Shamsher Singh vs State of Punjab* (1974), the Supreme Court had clearly affirmed this position in the following words: "We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executives and other powers under various Articles, shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well known exceptional situations".

Dr. Ambedkar explained the position of the Governor in the Constituent Assembly as follows: "The Governor under the Constitution has no functions which he can discharge by himself: no functions at all." The Sarkaria Commission restates this position in its report, "it is a well-recognized principle that so long as the council of ministers enjoys [the] confidence of the Assembly its advice in these matters, unless patently unconstitutional, must be deemed as binding on the governor". In 2016, a five-judge constitution Bench of the Supreme Court (the *Nabam Rebia* case) reaffirmed the above position on the governors' powers in our constitutional setup.

It may be stated here that this analysis of the Governor's powers is meant to enable readers to have a perspective on the issue of the Governor of Tamil Nadu not deciding on the request for assent to the NEET Bill passed by the Assembly even after the passage of more than two months. What exactly are the options before the Governor in the matter of giving assent to a Bill passed by the Assembly?

Article 200 of the Constitution provides for four alternative courses of action for a Governor when a Bill after being passed by the legislature is presented to him for his assent. Assent of the

Governor or the President is necessary for a Bill to become law. The Governor can give his assent straightaway or withhold his assent. He may also reserve it for the consideration of the President, in which case the assent is given or withheld by the President. The fourth option is to return the Bill to the legislature with the request that it may reconsider the Bill or any particular provision of the Bill. The Governor can also suggest any new amendment to the Bill. When such a message is received from the Governor, the legislature is required to reconsider his recommendations quickly. However, if the legislature again passes the Bill without accepting any of the amendments suggested by the Governor he is constitutionally bound to give assent to the Bill.

The Governor of Tamil Nadu returned the NEET Bill to the Assembly for reconsideration of the Bill. Accordingly, the Assembly held a special session in the first week of February and passed it again and presented it to the Governor for his assent. He has not assented to the Bill so far.

In the meantime, some sources in the Raj Bhavan have reportedly said that the Constitution has not fixed any time line within which to act. This, then, is the crux of the issue. The point that is made by these sources is that since the Constitution has not fixed any time frame, the Governor can postpone a decision indefinitely. Needless to say, it is a very wrong view.

While it is true that Article 200 does not lay down any time frame for the Governor to take action under this Article, it is imperative on the part of the Governor to exercise one of the options contained therein. A constitutional authority cannot circumvent a provision of the Constitution by taking advantage of an omission. The option mentioned in Article 200 is meant to be exercised by the Governor without delay. The context of Article 200 needs to be understood to be able to take the correct decision. After a Bill is passed by the legislature, it is sent to the Governor immediately. Although Article 200 does not say by what time the Governor should take the next step, it clearly and unambiguously states the options for him to exercise. It is obvious that if the Governor does not exercise any of those options he will not be acting in conformity with the Constitution because non-action is not an option contained in Article 200.

But sitting on the Bill after the Assembly has passed it again and sent it to him is impermissible under the Constitution. Article 200 (proviso) clearly says that when the Assembly reconsiders the Bill on the recommendations of the Governor and presents it to him, he shall not withhold assent. The Constitution makers could never have intended that the Governor could sit on a Bill passed by the legislature for as long as he wants and take advantage of the absence of any specific time frame.

In fact, the words used in Article 200 "... it shall be presented to the governor and the governor shall declare...." indicates that the Constitution requires the Governor to act without delay upon the presentation of the Bill. The reason is obvious. The legislature passes a Bill because there is an urgency about it. But if the Governor does not act, the will of the legislature is frustrated. It is not the constitutional policy to frustrate the legislative will as expressed through the Bill. Therefore, in view of the mandatory provision in the proviso to Article 200, it is clear that the Constitution does not permit the Governor to sit on a Bill after the Assembly re-submits it to him after reconsideration.

Giving assent to a Bill passed by the legislature is a part of the legislative process and not of the executive power. But the Constitution has by providing for definite options made it obligatory for the Governor to exercise any of those options without delay. Withholding of assent, though an option, is not normally exercised by Governors because it will be an extremely unpopular step. Besides, withholding assent to a Bill by the Governor, an appointee of the President, neutralises the entire legislative exercise by an elected legislature enjoying the support of the people.

In the opinion of this writer, this option is undemocratic and essentially against federalism. In the United Kingdom it is unconstitutional for the monarch to refuse to assent to a Bill passed by Parliament. Similarly, in Australia, refusal of assent to a Bill by the crown is considered repugnant to the federal system.

In our constitutional system, the Governor or the President is not personally responsible for their acts. It is the elected government that is responsible. Under Article 361, the President or a Governor is not answerable to any court for anything done in the exercise and performance of their powers and duties. But when a Governor does not take any decision on a Bill which is put up for his assent, he is not acting in exercise and performance of the duties cast upon him.

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