

Governors Cannot Delay Bills Indefinitely: Landmark Judgement by India's Supreme Court

Vinod Rai

Summary

From the inception of the Indian constitution, the office of the Governor in states has, from time to time, been at the centre of controversies for several reasons, the most important being the range of discretionary powers that the holder of the office enjoys. In recent years, these controversies have multiplied. The Supreme Court has now raised questions about the functioning of the Punjab and Kerala governors. Issues around the powers and discretion of the Governors, and their functioning, have undergone judicial scrutiny. The Supreme Court, in its order delivered on 10 November 2023, laid down that the spirit of Article 200 has to be maintained.

Background

The role, powers and discretion of the Governor's office in many states have been the subject of constitutional, political and legal debate for decades. In recent years, the action of the Governors has come in for adverse judicial scrutiny. Probably, the most contentious action had been that of the Arunachal Pradesh Governor where, in a landmark unanimous verdict, a five-judge constitution bench ordered that the status quo ante, as prevailed on 15 December 2015, be restored in the Arunachal Pradesh assembly.¹ It held that all steps and decisions taken by the Arunachal Pradesh legislative assembly, in pursuance of the Governor's order of 9 December 2015, are unsustainable. Censuring the Governor for "humiliating the elected government of the day", the Supreme Court restored the Congress government in Arunachal Pradesh and declared as "unconstitutional" all decisions of the Governor that had first led to the imposition of President's rule in the state and, later, formation of a new government led by a Congress breakaway faction. The order of the Court to restore the status quo ante compelled the Chief Minister Kalikho Pul to step down to make way for Nabam Tuki to be reinstated once again.

In November 2018, the Jammu and Kashmir Governor dissolved the assembly, amid indications that various parties were coming together to form the government. This paved the way for the centre to later bifurcate the state into two Union territories by considering the Governor as the government. In another gubernatorial action, in November 2019, after a hung verdict in Maharashtra, the Governor invited Bharatiya Janata Party (BJP) leader, Devendra Fadnavis, and administered him oath of office as chief minister at 8.00am on 23 November 2019. This government lasted just 80 hours. The repeated public differences between the Delhi government and the Lieutenant Governor over the appointment of the bureaucrats and several other issues, and the deadlock between the Tamil Nadu

¹ Utkarsh Anand, "Arunachal Pradesh Verdict: SC Quashes Governor Order, Restores Sacked CM", *Indian Express*, 21 July 2016, <https://indianexpress.com/article/india/india-news-india/arunachal-pradesh-presidents-rule-quashed-by-sc-nabam-tuki-reinstated-as-cm/>.

government and Governor over assenting to the National Eligibility and Entrance Test Exemption Bill and 10 other Bills, have created enormous adverse attention among the citizens. There was also the rather strange instance of the Kerala Governor writing to the Chief Minister asking him to act against the state's Finance Minister, who, according to the Governor, had "ceased to enjoy" the Governor's "pleasure". The Chief Minister declined to do so. In another such action, following the Karnataka polls in 2018, the Governor invited the BJP to form the government and gave B S Yediyurappa 15 days to prove a majority. Challenged by the Congress and the Justice Delivery System in the Supreme Court, the 15 days were subsequently reduced to three days.

In an order delivered on 10 November 2023 on a plea filed by the Punjab government against its Governor who had kept Bills sent to him by the state legislature, pending for two years, the Supreme Court expressed displeasure at the delay on the part of the Governor in giving assent to Bills passed by the state assembly. The governments of Tamil Nadu and Kerala had also filed similar cases as their respective Governors had also kept Bills pending for up to three years. Thus, the present ruling of the Court is important as opposition-ruled states such as Punjab, Tamil Nadu, Kerala, Delhi and Telangana have been experiencing serious delays in their respective Governors not taking action on Bills submitted to them after having been passed by their assemblies.

Constitutional Position

It would be worthwhile to examine the Constitution's provisions on the post of the Governor, the powers that have been specifically granted to that office and the observations made by the apex court on these provisions.

Article 155 of the constitution stated that the "Governor of a state shall be appointed by the President by warrant under his hand and seal". Under Article 156, "the Governor shall hold office during the pleasure of the President" but his normal term of office will be five years. If the President withdraws his pleasure before the completion of five years, the Governor must step down. Since the President acts on the aid and advice of the Prime Minister and the Union Council of Ministers, in effect, the Governor is appointed and removed by the central government.

The position of the Governor is envisaged as an apolitical head who must act on the advice of the Council of Ministers of the state. However, the Governor enjoys certain powers under the Constitution — such as giving or withholding assent to a Bill passed by the state legislature; determining the time needed for a party to prove its majority in the state assembly; or, in cases such as a hung verdict in an election, which party must be called first to prove its majority — which make his position very significant. Governors have been seen as acting on the behest of the central government in power at the time, and have been accused by state governments, especially those in opposition, of acting as "agents of the centre".

The Constitution does not lay down any provision for the manner in which the Governor and the state must engage when there is a difference of opinion. This has traditionally been guided by respect for each other's boundaries. Of late, however, there have been bitter and

acrimonious exchanges between state governments and Governors. Incidentally, there is no provision to impeach a Governor. He can be removed only at the behest of the President. To that extent, whilst the Chief Minister is answerable to the people, the Governor is answerable to no one except the centre.

In respect of the powers of the Governor on granting assent to Bills passed by the legislative assembly, Article 200 of the Constitution lays down that when a Bill, passed by a state legislature, is presented to the Governor for his assent. He may:

1. give assent to the Bill;
2. withhold assent to the Bill, that is, reject the Bill, in which case, the Bill fails to become law;
3. return the Bill for reconsideration of the state legislature; or
4. reserve the Bill for the consideration of the President.

The Governor does not exercise any discretionary powers while withholding assent or returning a Bill to the state legislature. He is required to act as per the advice of the Council of Ministers. The situation of 'withholding assent' may arise only in case of a Private Members' Bill passed by the state legislature, which the council of ministers do not want to be enacted into a law. In such an instance, they would advise the Governor to 'withhold assent'. The return of any Bill to the state legislature for reconsideration is to be done based on ministerial advice. However, Governors in the past have exercised their discretion in returning Bills, like the Tamil Nadu Governor with respect to the Bill prohibiting online gambling. Nevertheless, the Governor shall assent to such a Bill if it is passed again by the state legislature.

Reforms Recommended by the Various Commissions

The first instance of an alleged action by the Governor at the behest of the central government to destabilise the state was in 1959 when E M S Namboodiripad's communist government in Kerala was dismissed based on a report by the Governor. After that, many governments have been either dismissed, or the assembly kept in suspension, using the Governor to give an adverse report on the functioning of the elected government.

Successive commissions have pointed to the vulnerability of the Governor's office and that he may act as an 'agent' of the central government, as is being alleged now. The Governor is increasingly seen as being used by central governments to create difficulties for state governments run by opposition parties. The frictions have become especially acute in several states over the last few years.

The first Administrative Reforms Commission of 1969, the Sarkaria Commission of 1988, the National Commission to review the working of the constitution in 2001 (headed by former Chief Justice of India Venkatachelliah), and the Punchhi Commission of 2010, have recommended certain reforms to ensure that the Governor does not act under political affiliations and functions objectively. There have been recommendations to ensure the selection of a Governor through a collegium, fix a tenure and lay down provisions to impeach a Governor by the assembly. These recommendations would have a salutary

effect on the central and state governments, resulting in responsible cooperation among The Governors and elected governments. However, none of these recommendations have been implemented. This has prompted many Chief Ministers to recommend the abolition of the post of the Governor. However, in the scheme of things, as laid down by the Constitution, there is a need for a nominal head of the State executive just like the President, for the Union executive. Additionally, the Governor acts as an appointee of the centre who may be required to maintain the unity and integrity of the nation in critical times.

A remarkable instance of constitutional integrity was displayed by Surjit Singh Barnala, Governor of Tamil Nadu, in 1990-91.² Despite being advised by the then central government, Barnala refused to send a report to the centre recommending imposition of President's Rule in the state under Article 356(1) of the Constitution. When the centre persisted in its agenda and transferred him to Bihar as a punitive measure, Barnala resigned. He had functioned with a deep sense of independence and self-esteem, coupled with strict adherence to constitutional obligations, thereby sacrificing his appointment but not negating his constitutional responsibilities.

Earlier Verdicts of the Court

The constitutional position guiding the action of the Governor was clearly brought out in the Supreme Court's 1974 judgement in *Samsher Singh vs the State of Punjab*.³ The Court underscored the import of Article 154 as it held that the expression "state" occurs in Article 154(1) to bring out the federal principle embodied in the Constitution. It clarified that wherever the Constitution requires the satisfaction of the Governor for the exercise of any power, it is not the personal satisfaction of the President or of the Governor. "But it is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government. It is the satisfaction of the Council of Ministers on whose aid and advice the president or the governor generally exercises all his powers and functions", observed the court. This judgment has clearly established the fact that the Constitution does not aim at providing a parallel administration within the state by allowing the governor to go against the advice of the Council of Ministers. The seven judges on the bench were unequivocal that the principle of cabinet responsibility is firmly entrenched in the constitutional democracy and that the Constitution does not accept any "parallel administration" or "dyarchy".

The unanimous judgement emphasised that Article 163 explicitly drew the limits of gubernatorial power by saying that the Governor can act only as per "the aid and advice" of the Council of Ministers. It has, thus, to be recognised that the Governor, under the Constitution, has no functions which he can discharge by himself. He has only certain duties to perform and these are under the aid and advice of the Chief Minister and his colleagues.

² Raj Kaleeswaram, "Use and Abuse of Governors Powers", *The Hindu*, 5 May 2022, <https://frontline.thehindu.com/cover-story/use-and-abuse-of-governors-powers/article38484606.ece>.

³ Shamsher Singh & Anr vs State of Punjab on 23 August 1974, *Legal Vidhya*, 20 September 2023, [Shamsher Singh and Anr. vs. State of Punjab - Legal Vidhiya](#).

Supreme Court Makes the Position Clear

The Supreme Court, on 10 November 2023, while delivering its verdict on the issues raised in the pleas of the governments of Punjab, Kerala and Tamil Nadu opined that the Governor cannot keep a Bill pending indefinitely so as to thwart the normal course of law-making by the legislature.⁴

Emphasising that the “Governor, as an unelected Head of the State, is entrusted with certain constitutional powers”, the Court deemed that “these powers cannot be used to thwart the normal course of law making” by the state legislature. The Court ruled that a “Governor cannot be at liberty” to keep a “Bill pending indefinitely without any action whatsoever”. The Court termed the Governor to be “a symbolic head and cannot withhold action on Bills passed by the state legislature.”

The Supreme Court has stressed that negating the spirit of Article 200 would mean that the “Governor as the unelected head of state would be in a position to virtually veto the functioning of the legislative domain by a duly elected legislature by simply declaring that assent is withheld without any further recourse. Such a course of action would be contrary to fundamental principles of a constitutional democracy based on a parliamentary pattern of governance.”⁵

The Court said that “the manner in which the role of the Governor as a symbolic head of state is performed is vital to safeguard federalism which has been held to be a basic structure of the Constitution”.⁶ It said that “the exercise of unbridled discretion in areas not entrusted to the discretion of the Governor risks walking roughshod over the working of a democratically elected government at the state.”⁷

Noting that the “substantive part of Article 200 empowers the Governor to withhold assent to the Bill”, the three-judge bench headed by the Chief Justice of India said, “In such an event, the Governor must mandatorily follow the course of action of communicating to the state legislature ‘as soon as possible’ a message warranting the reconsideration of the Bill.” The bench said that “the Governor, as a guiding statesman, may recommend reconsideration of the entirety of the Bill or any part thereof and even indicate the desirability of introducing amendments. However, the ultimate decision on whether or not to accept the advice of the Governor as contained in the message belongs to the legislature alone”.

Hopefully, this verdict of the apex Court will ensure objectivity in the functioning of the Governors. This advice of the Court must be respected to uphold the integrity of

⁴ G Ananthakrishna, “Government can’t Keep Bill Pending Indefinitely: SC Underlines Law”, *Indian Express*, 24 November 2023, <https://indianexpress.com/article/india/governor-cant-keep-bill-pending-indefinitely-sc-underlines-law-9040038/>.

⁵ Ibid.

⁶ Apurva Vishwanath and Khadija Khan, “V-P Jagdeep Dhankhar sparks debate with remarks on Basic Structure of Constitution; what is it?”, *Indian Express*, 26 April 2023, <https://indianexpress.com/article/explained/explained-law/vp-jagdeep-dhankar-basic-structure-indian-constitution-explained-8377438/>.

⁷ Ibid.

parliamentary democracy and espouse democratic federalism such that constitutional institutions including that of governors, should refrain from political affiliations and remain confined to their respective domains.

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Mr Vinod Rai is a Distinguished Visiting Research Fellow at the Institute of South Asian Studies (ISAS), an autonomous research institute in the National University of Singapore (NUS). He is a former Comptroller and Auditor General of India. He can be contacted at isasvr@nus.edu.sg. The author bears full responsibility for the facts cited and opinions expressed in this paper.