



EDITORIAL ANALYSIS

Time: 10 min

Date: 20-11-2023

The role of the Governor in legislature

Syllabus: GS2/Judiciary, Government Policies & Interventions

In News

- The Supreme Court has recently expressed displeasure on delays for action on Bills presented for assent to Governors of Tamil Nadu, Telangana, Punjab and Kerala.

Governor's power with respect to the Bills

- **Article 200** of the Constitution lays down that when a Bill, passed by a State Legislature, is presented to the Governor for their assent, they have four alternatives —
 - may give assent to the Bill;
 - may withhold assent to the Bill, that is, reject the Bill in which case the Bill fails to become law;
 - may return the Bill (if it is not a Money Bill) for reconsideration of the State Legislature; or
 - may reserve the Bill for the consideration of the President.
- **Matter of 'discretion':**
 - As held by the Supreme Court in various cases including the **Shamsher Singh case (1974)**, the Governor does not exercise their discretionary powers while withholding assent or returning a Bill to the State Legislature.
 - They are required to act as per the advice of the Council of Ministers.
- **The case of 'withholding assent':**
 - The situation of 'withholding assent' may arise in case of a Private Members' Bill (any Member of State Legislature other than a Minister) 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'.
 - However, this is an unlikely scenario as:
 - The council of ministers who enjoy a majority in the Legislative Assembly would not allow the passage of such a Bill.

- Also, if the incumbent government whose Bill has been passed by the legislature falls or resigns before it is assented to by the Governor, the new council may advise the Governor to ‘withhold assent’.
- **Article 163** of the Constitution says the Governor will normally be aided and advised by the **Council of Ministers** except in those **functions which require his discretion**.

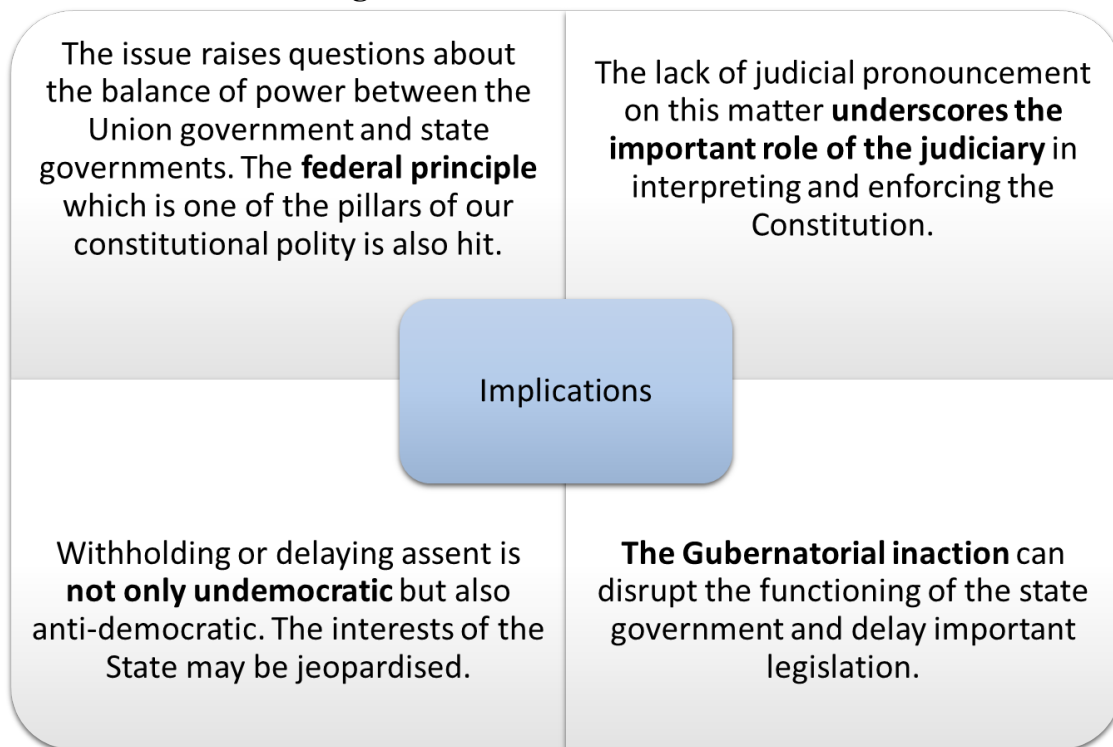
When can Governor exercise the ‘discretion’?

- The Governor must reserve certain Bills, like those which reduce the powers of the High Court, for the consideration of the President.
- They may also reserve Bills on concurrent list that are repugnant to a Union law based on ministerial advice.
- It is **only under rare circumstances** that the Governor may exercise their discretion, where they feel that the provisions of the Bill will contravene the provisions of the Constitution and therefore, should be reserved for the consideration of the President.
- It must however be noted that the **Constitution does not lay down any time limit** within which the Governor is required to make a decision.

Issues & Challenges

- **Overruling ministerial advice:**
 - The return of any Bill to the State Legislature for reconsideration is also 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.
 - However, the Governor shall assent to such a Bill if it is passed again by the State Legislature.
- **Court’s priority for returning a Bill:**
 - The Supreme Court has reminded Governors that the Constitution expects that a **decision to return a Bill to the State Assembly** for reconsideration should be made “as soon as possible”
 - The Court has drawn attention to the phrase found in the first provision to **Article 200**, seeking to convey a sense of immediacy in the matter of returning a Bill.
 - **“The expression ‘as soon as possible’** contains significant constitutional content and must be borne in mind by constitutional authorities,” the Court observed.
- **No constitutional provisions in case of disagreement:**
 - There are no provisions laid down in the Constitution for the manner in which the Governor and the state must engage publicly when there is a difference of opinion.
- **What does this imply?**

- This effectively means it would be constitutionally impermissible for Governors to withhold assent to Bills indefinitely without communicating their decision to the House.



Various Committee recommendations:

- **The Sarkaria Commission (1987)**
 - The Commission has submitted that it is only the reservation of Bills for consideration of the President, that too under rare cases of unconstitutionality, that can be implied as a discretionary power of the Governor.
 - Save in such exceptional cases, the Governor must discharge his functions under Article 200 as per the advice of ministers.
 - It further recommended that the President should dispose of such Bills within a maximum period of six months.
 - In the event of the President 'withholding assent', the reasons should be communicated to the State Government wherever possible.
- **The Punchhi Commission (2010):**
 - The Commission had recommended that the Governor should take a decision with respect to a Bill presented for their assent within a period of six months.
 - However, these recommendations have not been implemented till date.

Way ahead

- The framers of the Constitution would never have imagined that Governors would sit on Bills indefinitely without exercising any of the options given in Article 200.
 - This is a new development that needs new solutions within the framework of the Constitution.
- So, it falls to the **Supreme Court to fix a reasonable time frame** for Governors to take a decision on a Bill passed by the Assembly in the larger interest of federalism in the country.

Daily Mains Question

[Q] Examine the role of the Governor with respect to the Bills passed by the State legislature. What are the implications of Governors withholding Bills indefinitely? Suggest the way out.