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# **CURRENT LEGISLATIVE STALEMATES AND THE NEED TO RETHINK GOVERNOR'S DISCRETION UNDER ARTICLE 200**

AUTHORED BY – NAVYA & HARSHITA LORGRE

## **ABSTRACT**

*For any bill presented before the Governor, the Indian Constitution vests with him the discretionary power to give assent, withhold assent, or reserve it for the President's consideration. Recently, this authority has been used by the Governor to withhold assent for an indefinite period of time, stalling the legislative processes. Amidst the recent escalating tensions in various states about the same, the Supreme Court has clearly explained the limits applicable to actions by governors, upholding the sacrosanct principle of separation of powers by preventing governors from vetoing legislative actions of duly elected governments. This paper argues in favour of this and explores the contemporary challenges and tussles surrounding the gubernatorial office with regards to withholding of assent. Ultimately, this paper emphasizes the importance of upholding and preserving the autonomy of state legislatures, advocating for reforms to restore integrity, impartiality, and stability to the gubernatorial office.*

## **INTRODUCTION**

The bitter controversies surrounding 'misgovernance' by the Executive Heads of the State have sparked a strong reaction in their direction. With numerous state governments like Punjab, Kerala, Telangana, and Tamil Nadu coming forward and expressing grievances about the tussles with their respective Governors to the Hon'ble Supreme Court of India – Kerala even going to the extent of moving against the President – it becomes the best time to shed light on this aspect of the gubernatorial office and making it relevant in the current times.

The fundamental reason for needing a Governor is that they are an essential observer tasked with ensuring constitutional checks and balances, not merely a figurehead or "dummy"<sup>1</sup>. He

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<sup>1</sup> J. P. Suda, *The Role of the Governor*, 29 IJPS 62, 63 (1968).

has two main duties: firstly, to oversee the administration's functioning and decide when intervention against the ministry is warranted; secondly, to provide guidance, caution, suggest alternatives, and request reconsideration from the ministry<sup>2</sup>. In other words, he is supposed to feel the pulse of the community as a whole and keep administration free from partisanship. The President appoints the Governor of a state under Article 155<sup>3</sup> of the Constitution of India and he holds the office at the pleasure of the President<sup>4</sup>. The person selected for the office is expected to be independent and impartial in fulfilling his duties, but unfortunately over the past decades, the Governor has been pointed out in being a mere instrument in promoting the centre's interests in the states<sup>5</sup>. The governor now allegedly appears to act more as a party politician rather than maintaining their independence<sup>6</sup>.

The constituent assembly had extensively discussed the role of the governor. During the debates, the Constituent Assembly changed the process of direct election of Governor, previously supported by Jawaharlal Nehru and Sardar Patel, to one where Governors would be appointed directly by the president and would have certain discretionary powers of their own<sup>7</sup>. It becomes interesting to note that that the whole set of articles relating to state governments were passed in a hurry in one day – it's no coincidence that we find ambiguous provisions regarding the governor's exercise of powers<sup>8</sup>. The lack of attention by the Constituent Assembly when deliberating on provisions concerning the state executive vividly indicates the system's intent: a strong centre with weak units, an echo of which is seen in higher intensities as of today's time. Uncertainty still remains about the discretionary powers vested with the gubernatorial office.

The intervention of the constitutional courts in cases where the governor exceeds their authority with regard to elected governments has been a recurring issue extending from the S.R. Bommai

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<sup>2</sup> N. R. Deshpande, *The Role of the Governor in the Parliamentary Government in the States*, 20 IJPS 15, 17 (1959).

<sup>3</sup> INDIA CONST. art. 155.

<sup>4</sup> INDIA CONST. art. 153.

<sup>5</sup> *Governor's Role*, 40 ECONOMIC AND POLITICAL WEEKLY 4488, 4488 (2005).

<sup>6</sup> Amal Chandra, *Governor Vs Government : Constitutional quandary in Kerala*, DECCAN HERALD (February 03, 2024). See at: "<https://www.deccanherald.com/opinion/governor-vs-government-constitutional-quandary-in-kerala-2878190>"

<sup>7</sup> M R Madhavan, *Governor versus state: Why tensions are rising again*, THE TIMES OF INDIA (March 11, 2023). See at: "<https://timesofindia.indiatimes.com/blogs/voices/governor-versus-state-why-tensions-are-rising-again/>"

<sup>8</sup> Rahul Unnikrishnan, *Governors in Indian States: A Colonial Imprint*, LiveMint (March 25, 2017). See at: "<http://www.livemint.com/Opinion/VcN0T1WVITs4STIW7Z9cuN/Governors-in-Indian-states-A-colonial-imprint.html>" (Last visited on May 2, 2017).

v. Union of India, in 1994 to the Nabam Rebia case in 2016. The courts consistently emphasize the importance of governors adhering to the established rules of business set by the state government and the legislature, highlighting the limited discretionary power of the titular heads as outlined in the constitution.<sup>9</sup> The conflict between the Governor and the state government isn't a singular occurrence; rather, it's one in a series of confrontations that undermine the core tenets of federalism. As mentioned, the recent events have reignited the issue, prompting to call for a reassessment of the constitutional powers vested in governors.

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## I. THE CONSTITUTIONAL ROLE OF THE GOVERNOR AND DISCRETIONARY POWERS UNDER ARTICLE 200

The theory and practice of Indian federalism substantiate the argument that the Union government functions under a prefectorial federalism that gives it a commanding position and overriding powers, in line of which the gubernatorial office exists<sup>10</sup>. The position of the Governor is envisaged as a political head who must act on the advice of the Council of Ministers of the state. However, the governor enjoys certain powers under the Constitution which requires him to exercise his discretion<sup>11</sup>. Under our Federal Constitution, the governor holds a dual role that is to act upon the advice of the state and aid and advice of the council of ministers and to exercise discretion independently. The scope of discretionary powers is not explicitly defined and is left to the governor's interpretation<sup>12</sup>.

It is interesting to note that while Article 74 does not grant the president any discretionary power, Article 163 makes the Governor the sole judge in matters where discretion is necessary. Article 163(1) confers discretionary power upon the governor when it says "A council of Ministers, with the Chief Minister, assists and advises the Governor in his functions, unless constitutionally mandated discretion is required. The Governor's decision on matters of discretion under the constitution is final, and the validity of his actions cannot be challenged

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<sup>9</sup> Yadul Krishna, *Abolishing Governor's Post Isn't a Good Idea. What's Needed is a Rethink*, THE WIRE (November 17, 2023). See at: "<https://thewire.in/government/abolishing-governors-post-isnt-a-good-idea-whats-needed-is-a-rethink>"

<sup>10</sup> H. M. Rajashekara, *The Nature of Indian Federalism: A Critique*, 37 ASIAN SURVEY 245, 247 (1997). See at: "<https://doi.org/10.2307/2645661>"

<sup>11</sup> Vinod Rai, *Governors Cannot Delay Bills Indefinitely: Landmark Judgement by India's Supreme Court*, ISAS INSIGHTS, 739 (November 29, 2023). See at: "<https://www.isas.nus.edu.sg/wp-content/uploads/2023/11/ISAS-Insight-739.pdf>"

<sup>12</sup> Singh, Dalip. *The Role of the Governor Under the Constitution and the Working of Coalition Governments*, 29 IJPS 51, 54 (1968).

based on the exercise of such discretion<sup>13</sup>. Here the role of the governor in centre-state relations is a crucial factor. The Constitution nowhere requires that the governor in making such a reference, act on the advice of his council of ministers.<sup>14</sup>

Article 200 of the Constitution of India renders the Governor's decision as non-justiciable by stating that, "when a bill has been passed by the Legislative Assembly of a state, in case the state having a legislative council, has been passed by both houses of the Legislature of state, it shall be presented to the governor and the governor shall declare either that he assents to the bill or that he withholds assent or he reserves the bill for the consideration of the president".<sup>15</sup> Under Article 201, the President may give his assent to such state bills at any time, without time limit, or exercise his veto power over them.<sup>16</sup> If both chambers of the legislature deliberate on and approve a bill to become law, the ultimate confirmation of its legality should come from the Chief Executive. While his approval typically poses no issues, if he chooses to withhold his assent or exercises his veto power, it naturally raises questions regarding whether the legislature's sovereignty should be overridden by the Governor.<sup>17</sup>

Acting in discretion does not mean acting capriciously or arbitrarily. According to K.J Aiyar, "Discretion" must be exercised honestly and in the spirit of the statute. It is not to be arbitrary, vague, and fanciful but legal and regular to be exercised not capriciously but on judicial grounds<sup>18</sup>. Hence it can be inferred that the framers of the Constitution assumed the necessity of certain functions being carried out by the governor acting in his discretion. While the term "in his discretion" is mentioned in the Constitution, the provisions regarding the exercise of these powers are formulated in broad and vague terms. Noted political scientist K.V. Rao attributes this vagueness to the hurried proceedings with lack of time for deliberations. The governor's authority, even in the realm of discretion is not limitless<sup>19</sup>. Having said this, it is clear that the powers vested under Article 200 and 201 are in the Governor's own subjective satisfaction because no legislature would aid and advice him to withhold assent to their own bills. Hence, it becomes important to analyse how this power is being "misused".

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<sup>13</sup> INDIA CONST. art. 163, § 1.

<sup>14</sup> Alice Jacob, *Centre-State Governmental Relations in the Indian Federal System*, 10 JILI 583, 592 (1968).

<sup>15</sup> INDIA CONST. art. 200.

<sup>16</sup> INDIA CONST. art. 201.

<sup>17</sup> Shreeram Chandra Dash, *The Power of Assent and President's Role in India*, 22 IJPS 319, 319 (1961).

<sup>18</sup> S. A. H. Haqqi, *The Role of the Governor*, 22 IJPS 337, 339 (1961).

<sup>19</sup> Rajni Goyal, *The Governor: Constitutional Position and Political Reality*, 53 IJPS 505, 510 (1992).

## II. CASE STUDIES IN POINT: EXAMINING LEGISLATIVE STALEMATES

### A. Punjab

The very notable case emerging in the context mentioned above is the row between Punjab's Chief Minister Bhagwant Mann and the Governor Banwarilal Purohit regarding the three bills out of four passed in the June 19-20 session – The Sikh Gurudwaras (Amendment) Bill, 2023, the Punjab Universities Laws (Amendment) Bill, 2023, the Punjab Police (Amendment) Bill, 2023<sup>20</sup>. The Governor doubted the legality of the assembly session and essentially kept the bills pending – he “did not ‘declare’ in any public notification that he is withholding his assent to the Bills”<sup>21</sup>. The Supreme Court in its judgement on February 28 upheld the constitutional validity of the session<sup>22</sup> and directed the Governor to decide on the bills; a month after which Raj Bhavan stated that the Governor has “reserved the three bills for the consideration the Hon'ble President of India”<sup>23</sup>. This was a very apparent and anticipated action by him in the exercise of Article 200. Furthermore, in the budget session, the Governor withheld his consent to three money bills on October, 19<sup>24</sup>. The AAP government moves to the apex court again with regards to Governor not granting his assent to all the pending bills, describing such an inaction “unconstitutional” as having brought the entire administration to a standstill<sup>25</sup>.

On November 10, the Court admitted that the Governor deflecting the bills, which are passed by a duly elected legislature, is a matter of serious concern and he must immediately take a call on them, especially because they pertain to important matters like administration of Gurudwaras and fiscal management<sup>26</sup>. The bench went on to say that in a Parliamentary form of democracy, real power vests in the elected representatives of the people. As an unelected

<sup>20</sup> Kanchan Vasdev, *Amid row, Punjab Governor Reserves Three Bills for President's Consideration*, THE INDIAN EXPRESS (December 7, 2023). See at: <https://indianexpress.com/article/cities/chandigarh/amid-row-punjab-gov-reserves-three-bills-for-presidents-consideration-9057603/>

<sup>21</sup> *Governor Can't Veto Legislature By Simply Withholding Assent To Bill; Must Return Bill To Assembly On Withholding Assent: Supreme Court*, LIVELAW (November 23, 2023). See at: <https://www.livelaw.in/supreme-court/governor-must-return-bill-to-assembly-on-withholding-assent-supreme-court-242884#:~:text=In%20the%20Punjab%20matter%2C%20the,his%20assent%20to%20the%20Bills>

<sup>22</sup> *State of Punjab v. Governor of Punjab*, (2024) 1 SCC 407.

<sup>23</sup> *Punjab Governor reserves three Bills for President's consideration*, THE HINDU (December 07, 2023). See at: <https://www.thehindu.com/news/national/punjab-governor-reserves-3-bills-for-presidents-consideration/article67612090.ece#:~:text=The%20three%20Bills%20are%20The.Chancellor%20of%20State%20Drun%20universities>

<sup>24</sup> Abraham Thomas, *Punjab Government Moves SC Against Governor Over Delay in Nod to Bills*, HINDUSTAN TIMES (November 01, 2023). See at: <https://www.hindustantimes.com/cities/others/punjab-government-moves-sc-against-governor-over-delay-in-nod-to-bills-101698778886187.html>

<sup>25</sup> *Supra* note 24.

<sup>26</sup> Utkarsh Anand, *SC pulls up Punjab Governor, Doesn't Spare Government Either*, HINDUSTAN TIMES (November 11, 2023). See at: <https://www.hindustantimes.com/india-news/sc-pulls-up-punjab-guv-doesn-t-spare-govt-either-101699640516569.html>

head of the state, the Governor is vested with some constitutional powers. But these powers cannot be employed to impede the regular legislative procedures of state legislatures<sup>27</sup>.

Significant portion of the judgement in *State of Punjab v. Governor of Punjab* revolves around interpreting Article 200. It says that under this article, the Governor has three options: to assent, withhold assent, or reserve it for the President's consideration. The term “shall declare” makes it mandatory for the Governor to actually declare his decision<sup>28</sup>. For the case at hand, the Court construed the first proviso. The use of the word “may” in this proviso indicates that it follows the substantive part which contains the three options. Neither qualifying the first nor the third option, it attaches to the second option, i.e., withholding of assent<sup>29</sup>. Now, it allows the Governor to promptly return a Bill, which is not a money Bill, with a message for reconsideration by the Legislature, that is obliged to reconsider it. After the Legislature repasses the Bill, the Governor must not withhold assent regardless of the fact whether it is amended or not<sup>30</sup>. With regards to the withholding assent, the Court said:

*“The substantive part of Article 200 empowers the Governor to withhold assent to the Bill. In such an event, the Governor must mandatorily follow the course of action which is indicated in the first proviso of communicating to the State Legislature “as soon as possible” a message warranting the reconsideration of the Bill. The expression “as soon as possible” is significant. It conveys a constitutional imperative of expedition. Failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression. Constitutional language is not surplusage”<sup>31</sup>.*

Thus, the authority to withhold assent as outlined in the main section of Article 200 should be understood in conjunction with the subsequent actions available to the Governor as stipulated in the first proviso – the non-compliance of the same “would be contrary to fundamental principles of a constitutional democracy based on a Parliamentary pattern of governance”<sup>32</sup>.

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<sup>27</sup> Ashmita Saha, ‘Can’t keep bill pending indefinitely’: Supreme Court to Punjab Governor, INDIA TODAY (November 24, 2023). See at: <https://www.indiatoday.in/law/story/supreme-court-punjab-governor-banwarilal-purohit-cji-punjab-government-2466882-2023-11-24>”

<sup>28</sup> State of Punjab v. Governor of Punjab, (2024) 1 SCC 384, 395.

<sup>29</sup> *Supra* note 28, 396.

<sup>30</sup> *Supra* note 28, 396.

<sup>31</sup> *Supra* note 28, 397.

<sup>32</sup> *Supra* note 28, 397.

Alongside narrowing down the powers of the Governor<sup>33</sup>, the court has repetitively highlighted that Governors also cannot turn a blind eye to the fact that they are not elected representatives of the people, but the “titular” head of the state. He cannot “keep bill pending indefinitely passed by the House”<sup>34</sup> as his decisions need to be aligned with the fundamental principles of democracy.

### **B. Tamil Nadu**

Undoubtedly, this tussle between the Chief Minister and the Gubernatorial Office is not limited to Punjab, but spreads its roots to other states as well – the point in reference being Tamil Nadu. The Tamil Nadu government moved to Supreme Court on October 31, 2023, aggrieved by the Governor RN Ravi keeping various bills pending indefinitely<sup>35</sup>. Subsequently on November 10, the same day as the remarkable judgement on the Punjab issue, a bench led by CJI DY Chandrachud expressed distress over the fact that twelve bills are pending with the Governor and also termed it as “a matter of serious concern”<sup>36</sup>. Three days after, Ravi redirected ten Bills back to the assembly saying ‘he withholds consent’ – stirring questions about the fact that whether the Assembly retains the freedom to readopt it, because given the governor's declaration of withholding assent, there is uncertainty regarding the Assembly's ability to readopt the bills and whether such action would hold legal validity<sup>37</sup>. The CJI in the hearing on November 20 raised a valid question about the reason for the Governor's inactivity on the bills for three years and only taking decision after the Court issuing a notice – why did he wait for the government to approach the Court in the first place<sup>38</sup>. Unsurprisingly enough on November 28, the Governor referred the bills to the President, a step which was again questioned

<sup>33</sup> Gargi Bindal, *State of Punjab v. Principal Secretary to the Governor of Punjab & Another: Case Comment*, CALJ, (2024). See at: “<https://www.calj.in/post/state-of-punjab-v-principal-secretary-to-the-governor-of-punjab-another-case-comment>”

<sup>34</sup> *Supra* note 27.

<sup>35</sup> SCC Observer, *Pendency of Bills before Tamil Nadu Governor*. See at: “<https://www.scobserver.in/cases/pendency-of-bills-before-tamil-nadu-governor-the-state-of-tamil-nadu-v-governor-of-tamil-nadu/>”

<sup>36</sup> Padmakshi Sharma, ‘Matter Of Serious Concern’: Supreme Court On Tamil Nadu Governor Not Clearing Bills & Files, Livelaw (November 10, 2023). See at: “<https://www.livelaw.in/top-stories/matter-of-serious-concern-supreme-court-on-tamil-nadu-governor-not-clearing-bills-files-242060>”

<sup>37</sup> T Muruganandham, *TN governor RN Ravi ‘withheld assent’ to 10 bills, House may pass them again*, THE NEW INDIAN EXPRESS (November 18, 2023). See at: “<https://www.newindianexpress.com/states/tamil-nadu/2023/Nov/18/tngovernor-rn-ravi-withheld-assent-to-10-bills-house-may-pass-them-again-on-november-18-2633968.html>”

<sup>38</sup> *SC Questions Tamil Nadu Governor's Three-Year Delay in Disposing of Bills Sent for Assent*, THE WIRE (November 21, 2023). See at: “<https://thewire.in/law/sc-questions-tamil-nadu-governors-three-year-delay-in-disposing-of-bills-sent-for-assent>”

vehemently by the Supreme Court on December 1<sup>39</sup>. The CJI referred to the judgement in the Punjab case, stating clearly that the options under Article 200 to grant assent, withhold assent to the bill or reserve it to the President are “alternatives” and he has “no fourth option. Once he withholds assent, there is no question of him then referring it to the President.<sup>40</sup> Since the bills have been re-passed by the Assembly, Governor cannot refer them to the President<sup>41</sup>

A strong and thought-provoking question asked by the CJI, when Attorney General R. Venkataramani remarked that there’s a difference between withholding assent and asking the Assembly to reconsider the bill, was “Can the governor withhold assent for years and virtually kill the bills?”<sup>42</sup> The CJI orally observes that once the Governor withholds assent, he cannot stall or drop the bill right there<sup>43</sup> – but the situation raises even more questions, what does withholding exactly mean in this context then, what is the next step he has to take, does he need to refer the bill to the Assembly during the stage of withholding. If we revert back to the judgment in the Punjab case, the Supreme Court has very clearly held that if the Governor decides to withhold assent, the logical course of action is to pursue the course indicated in the first proviso of remitting the Bill to the state legislature for reconsideration – otherwise it will be contrary to the principles of democracy<sup>44</sup>. This provides answers to a large extent. Having that out of the way, RN Ravi’s actions have still raised legitimate concerns about the functioning of democratic institutions and the proper exercise of gubernatorial powers. The unfolding of these events tells us that the apex court understands the implications of withholding assent and the potential threat it poses to the governance of states if bills are indefinitely held up and is tending to them.

<sup>39</sup> Padmakshi Sharma, *Supreme Court Questions Tamil Nadu Governor for Referring Bills to President, Says he can't do it after Withholding Assent*, LIVELAW (December 01, 2023). See at: <https://www.livelaw.in/top-stories/supreme-court-questions-tamil-nadu-governor-for-referring-bills-to-president-says-he-cant-do-it-after-withholding-assent-243444#:~:text=The%20bench%20said%20that%20the,withholding%20assent%20on%20ten%20bills.>”

<sup>40</sup> Bhadra Sinha, *Can't withhold assent & then refer to President — SC asks TN governor to resolve impasse over bills*, THE PRINT (December 01, 2023). See at: <https://theprint.in/judiciary/cant-withhold-assent-then-refer-to-president-sc-asks-tn-governor-to-resolve-impasse-over-bills/1867039/>”

<sup>41</sup> Krishnadas Rajagopal, *Tamil Nadu Governor cannot refer re-enacted Bills to President, says Supreme Court*, THE HINDU (December 01, 2023). See at: <https://www.thehindu.com/news/national/sc-says-no-question-of-tamil-nadu-governor-referring-10-re-enacted-bills-to-president-now/article67593997.ece>

<sup>42</sup> *SC Says 'No Question' of TN Governor Referring 10 Bills to President After Withholding Assent*, THE WIRE (December 01, 2023). See at: <https://thewire.in/law/sc-tn-governor-10-bills-impasse>”

<sup>43</sup> *Supra* note 39.

<sup>44</sup> *Supra* note 28, 397.

### C. Kerala

A wave of similar developments like mentioned above is making its way in Kerala too. On November 03, 2023, Kerala government sought appropriate orders from the Supreme Court for the Governor Arif Mohammed Khan's inaction regarding eight bills, three of which have been pending for two years now<sup>45</sup>. The Court, clarifying that a Governor cannot indefinitely sit on bills, asked Mr. Khan to go through the Punjab judgement<sup>46</sup>. Subsequently, he assented one bill and the other seven were reserved for the President on November 28<sup>47</sup>. The President took the following action on February 29, 2024<sup>48</sup> –

- (i) Granted assent to one bill – the Kerala Lok Ayukta Amendment Bill, 2022.
- (ii) Denied assent to two bills – the University Law Amendment Bill, 2022, and the University Law Amendment Bill, 2021.
- (iii) Withheld assent to one bill – the Kerala University Laws (Amendment No 2) Bill, 2022.

While the decision on the other three bills was pending, the Kerala government in an historic move on March 23, went on to challenge the action of the President in the highest court in land, terming it as “arbitrary” since no reasoning for the same was provided by “the Council of Ministers aiding the President”<sup>49</sup>. The Court is yet to take up this matter while everyone twiddles the different possible stances since now the President is involved too.

Upon taking a closer look at all the case studies presented, a common occurrence of Governor withholding his assent to bills passed by an elected legislature for an unreasonable amount of time is seen by the virtue of absence of any time limitation in Article 200, which has been

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<sup>45</sup> Arvind Gunasekar, “Illegal”: Kerala Government Takes Governor To Supreme Court in Bills Row, NDTV NEWS (November 02, 2023). See at: <https://www.ndtv.com/india-news/kerala-governor-arif-mohammed-khan-supreme-court-illegal-kerala-government-takes-governor-to-supreme-court-in-bills-row-4537442>”

<sup>46</sup> Supreme Court tells Kerala Governor to read up Punjab case verdict, THE HINDU (November 24, 2023). See at: <https://www.thehindu.com/news/national/go-through-punjab-case-verdict-sc-tells-kerala-governor/article67570944.ece#:~:text=The%20Supreme%20Court%20on%20Friday,presented%20to%20them%20for%20assent>”

<sup>47</sup> Amid legal challenge over pending Bills, Kerala Governor approves one, sends 7 for President's approval, THE INDIAN EXPRESS (November 29, 2023). See at: <https://indianexpress.com/article/india/kerala/pending-bills-kerala-governor-approves-one-7-for-president-approval-9046142/>”

<sup>48</sup> President Withholds Assent To Bill Replacing Kerala Governor As Chancellor, 2 Others, NDTV NEWS (February 29, 2024). See at: <https://www.ndtv.com/india-news/president-droupadi-murmu-withholds-assent-to-bill-replacing-kerala-governor-as-chancellor-2-others-5151078>”

<sup>49</sup> Kerala Govt moves Supreme Court Against President Withholding Assent For 4 Bills, Terms it Arbitrary, LIVE LAW (March 23, 2024). See at: <https://www.livelaw.in/top-stories/kerala-govt-moves-supreme-court-challenging-presidents-refusal-of-assent-for-4-bills-as-arbitrary-253252#:~:text=On%20November%2029%2C%20while%20hearing,withheld%20for%20the%20following%20bills>”

caught as a “loophole.” And if this move is reprimanded by the Supreme Court like in the above cases, the Governor simply reserves the bills for President’s consideration. This ‘leeway’ has become a pattern now. Interestingly enough, this is predominantly happening in the states where the State Government is different than the ruling regime.

It is an undisputed fact that the Governor’s discretionary powers under Article 200, 256, 257, 263, 274, 356, 365, and some others, have been “usurped by the central leaders to tilt the delicate balance established by the constitution in their own favour”<sup>50</sup>. The provisions of Articles 200 and 201 offer the Governor a means to bypass Ministerial guidance and rely on the presidential authority to halt legislation that, while agreed upon by the State Cabinet and Legislature, does not align with his own preferences<sup>51</sup>. It becomes pertinent to note that Article 245(1)<sup>52</sup> confers State Legislatures the right to make laws for the state – the whole purpose of which would be defeated of Governor is given the power to kill the bills passed by legislatures. His role is to facilitate governance and keep the constitutional machinery in check; he cannot use his constitutional powers “to thwart the normal course of lawmaking”<sup>53</sup>.

The Governor serves his tenure primarily at the behest of the government at the centre is much to blame for the partisanship often attached to this role<sup>54</sup>, using his discretionary power arbitrarily and unreasonably just adds fuel to the already luminous fire. If Governor withholds bills for indefinite amount of time, governance of the states would be under a serious threat, close to being “paralyzed” or coming to a grinding halt. The newest Supreme Court verdict may have answered the questions looming over the head of the country by expressly stating that the Governor is not at liberty to withhold his action on the Bills which have been placed before him<sup>55</sup>, he is bound to remit the bill back to the state legislature. This judgement may have helped the state’s law-making machinery to come back on track, however, on the other hand completely disregarded Governor’s discretionary power. The need to strike a balance is surely felt in this regard.

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<sup>50</sup> S. L. Verma, *Installation of Federal Authority in the Indian Political System: Quest for a Real Federation*, 47 IJPS 247, 250 (1986).

<sup>51</sup> *Supra* note 17, at 324.

<sup>52</sup> INDIA CONST. art. 245, § 1.

<sup>53</sup> *Supra* note 28.

<sup>54</sup> *Supra* note 5.

<sup>55</sup> *Supra* note 28, 398.

### III. ADDRESSING THE MISUSE OF ARTICLE 200 & THE WAY FORWARD

As the watch-dog of the Constitution it is his duty to advise the Government and it is the moral duty of the latter to respect the advice<sup>56</sup>. The position was best summed up by B.R. Ambedkar in the following words: “He is the representative not of a party; he is the representative of the people as a whole of the state. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient, honest administration”<sup>57</sup>. Given the importance of this office, we suggest against the abolition of the same. However, there are ways in which the situation can be improved. To remedy the growing distrust between the two constitutional functionaries – state governments and Governor, the Sarkaria Commission<sup>58</sup> recommended a “greater degree of involvement of the state government and the Chief Minister” in the appointment of Governor<sup>59</sup>. The Commission made no changes about the constitutional structure or the dynamics. The Punchhi Commission however, took a step ahead and found it necessary to bind the Governor with a time limit of action to be taken on the bill after withholding it<sup>60</sup>. It said that “the Governor should make his decision on the bill within a maximum period of six months after submission”<sup>61</sup>.

Apart from the very obvious suggestion of limiting a timeframe to prevent the use of “loophole” in Article 200, we would like to put forward some possible courses of action. Firstly, the discrepancies in practice and the uncertainties surrounding the precise role of the Governor primarily stem from the lack of clear definition of the implications of constitutional provisions regarding the Governor's office in practice<sup>62</sup>. It was the Constituent Assembly’s decision for the matter to be left entirely on conventions as it was not feasible to do just after the independence<sup>63</sup>, but now it is high time to demark everything in clear words. We have come way forward from the independence; guidelines should be issued with regards to what powers are discretionary and what are bound by the aid and advice of the ministry. Secondly, the Indian

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<sup>56</sup> *Supra* note 1, at 64.

<sup>57</sup> *Supra* note 2, at 18.

<sup>58</sup> Justice R S Sarkaria Commission (n 23) Chapter IV.

<sup>59</sup> Agnidipto Tarafder & Avantik Tamta, *Reassessing the Role of the Rajpramukh: An Analysis of the Continuing Relevance of the Governor’s Position*, 10 NUJS LAW REVIEW (2017).

<sup>60</sup> T. Ramakrishnan, *Punchhi Commission held Governor was ‘obliged’ to Give Assent to Returned Bill*, THE HINDU (March 15, 2022). See at: “<https://www.thehindu.com/news/national/tamil-nadu/punchhi-commission-held-governor-was-obliged-to-give-assent-to-returned-bill/article65228410.ece>”

<sup>61</sup> Justice M. M. Punchhi Commission (n 61) Chapter IV.

<sup>62</sup> *Supra* note 2, at 16.

<sup>63</sup> M V Pylee, *The Governor and the Constitution*, 2 ECONOMIC AND POLITICAL WEEKLY 1367, 1371 (1967).

Constitution currently does not specify the types and kinds of bills which are to be sent to the President for their consideration. This lacks clarity and can lead to delay in the decision-making as the most common leeway to hold a bill is reserve it with the President. Introducing a clear definition of the type of bill would provide clarity and streamline the legislative process. This would uphold the principle of separation of powers by preventing the executive from stalling legislation passed by the legislature. Lastly, a mechanism for the governor to provide periodic updates to the legislature on the status of pending bills could be established through a reporting system, wherein the governor is required to submit regular reports providing the progress and his current stance on the bills, so the legislature can take their actions accordingly. The Governor shall not be allowed to sit on the bill for such a period that disrupts the lawmaking process in the state.

Granville Austin has rightly pointed out that, “In theory Articles 200 and 201 invalidate the division of powers for there is no means of overriding a President's veto in the case of State legislation”<sup>64</sup>. As we saw in the above case studies, this ‘un-federal’ provision has been used extensively by the Union government and thereby has undermined the legislative autonomy of the states. The suggestions given in this chapter are not more than a line of thought in direction of retaining this separation of power back in the current times and making the gubernatorial office relevant.

#### IV. CONCLUSION

Since 1967, Indian federalism has been subjected to two strains and stresses - particularly increased trend toward centralisation of power on the one hand and demand for State autonomy on the other<sup>65</sup>. This has led to the office of Governor being subjected to political pressure, which is ever-increasing, and the reason for the same is different political regimes at centre and state levels. The whole idea of vesting unfettered discretionary authorities in one man chosen by the centre assumes a measure of honesty, integrity, sobriety and devotion to the welfare of the community – something which is not ordinarily found in any man<sup>66</sup>. It is hardly consistent with the true spirit of parliamentary democracy. The lack of clarity surrounding the extent of discretion and the diverse political landscapes have led to doubts and speculations regarding

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<sup>64</sup> GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 207, (Clarendon Press 1966).

<sup>65</sup> K. H. Cheluva Raju, *Dr. B. R. Ambedkar and Making of the Constitution: A Case Study of Indian Federalism*, 52 IJPS 153, 161 (1991).”

<sup>66</sup> A. K. Ghosal, *State Governor in the Constitution and Before*, 12 IJPS 20, 29 (1951).

the true scope of gubernatorial discretion<sup>67</sup>. If the provisions of the Constitution are read in such a way that they provide “absolute discretion” to the Governor, it would by default entail an element of autocracy. The Governor can under no circumstances be an autocrat so long as he functions within the framework of a democratic constitution. Hence, we believe that the idea and practice of him withholding the Bills passed by an elected legislature for however long he wishes is contrary to the basic principles of Indian Federalism. The time requires a code to be drafted for the guidance of the governors in this regard. The establishment of such healthy conventions would go a long way in sorting out the Union-State relations and would also ensure smooth functioning of Governments in future. The Governor’s ultimate role is to ensure *stability, purity, and impartiality in the administration* – something from which the current gubernatorial office is alienating and must be brought back to.



<sup>67</sup> Anmol Jain & Sayantani Bagchi, *Marking the Imprecise Territory of Gubernatorial Discretion to Call for a Trust Vote*, 6:3 INDIAN LAW REVIEW 217, 218 (2022). (at: <https://www.tandfonline.com/doi/full/10.1080/24730580.2021.1967655>)