



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ISSN

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THE GOVERNOR'S ROLE IN STATE LEGISLATION: A CONSTITUTIONAL PERSPECTIVE

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ABSTRACT

Article 200 of the Constitution of India delineates the procedural framework for the presentation of a Bill, once it has been passed by the Legislative Assembly of a State, to the Governor for his assent. The Governor, in accordance with this constitutional provision, is vested with three options: he may grant his assent to the Bill, withhold his assent, or reserve the Bill for the consideration of the President. This Article underscores the intricate balance of power between the legislative assembly and the executive authority represented by the Governor, within the broader constitutional framework of the Indian polity. However, in practice of this procedure, the issue of a Governor withholding bills in a state legislature has been a contentious one, with significant implications for the functioning of a parliamentary democracy. The Governor's reluctance to decide on Bills, often perceived as inefficiency or corruption, impedes policy implementation, undermines democratic processes, and lacks accountability. This was brought to the fore in the case of the State of Punjab v. Governor of Punjab (2023) which highlights the contentious nature of Article 200's procedural framework within the Indian legal framework. This paper is divided into 3 parts. Part I of this paper will provide an overview of the Governor's role in state legislation from a constitutional perspective and delve into the specifics of Article 200 and other related constitutional provisions. Part II will analyse the case of the State of Punjab v. Governor of Punjab in detail, highlighting the issues and implications of the Governor withholding assent to bills.

And the final part will discuss the broader implications of the Governor's actions on the functioning of parliamentary democracy, highlighting the need to ensure accountability and uphold the spirit of parliamentary democracy, and conclude with a summary of the key points discussed in the paper and final thoughts.

▪ INTRODUCTION

The constitutional and democratic implications of the Governor withholding assent to Bills passed by the State Legislative Assembly pose a significant research problem. The exercise of this power by the Governor has the potential to undermine the principles of legislative supremacy, separation of powers, and the democratic mandate of the elected representatives. The indefinite withholding of assent without valid and cogent reasons can lead to a paralysis in the legislative process, impeding policy implementation and eroding public trust in democratic institutions.

The central question this research seeks to address is:

“To what extent does the Governor's power to withhold assent to state legislations, as outlined in Article 200 of the Constitution, impact the functioning of parliamentary democracy, and what measures can be taken to ensure accountability and uphold the principles of legislative supremacy and separation of powers?”

This research employs a doctrinal and analytical approach to examine the constitutional framework governing the Governor's role in state legislations. It utilizes primary sources such as the Constitution of India, relevant Supreme Court judgments (e.g., *State of Punjab v. Governor of Punjab* (2023), *Hoechst Pharmaceuticals Ltd. v. State of Bihar and Others* (1983), and *Nabam Rebia and Bamang Felix v. Deputy Speaker* (2016)), and legislative provisions. Additionally, it draws upon secondary sources, including scholarly articles, news reports, and editorials from reputed publications, to provide a comprehensive understanding of the issue from legal, political, and democratic perspectives.

The overarching objectives of this research are to critically analyse the constitutional provisions, to examine the implications of the Governor's actions, to assess the need for accountability and transparency mechanisms and final propose recommendations and reforms to strike a balance.

PART I
CONSTITUTIONAL FRAMEWORK AND THE ROLE OF GOVERNOR IN STATE
LEGISLATIONS

The Constitution of India establishes a federal structure with a delicate balance of power between the Union and the States. The Governor, appointed by the President of India, serves as the nominal head of a State and represents the Union government at the State level. Article 163 of the Constitution mandates that the Governor shall act on the aid and advice of the Council of Ministers, except in specific circumstances where he is required to exercise his individual judgment.¹

Article 200 of the Constitution outlines the procedure for the presentation of a Bill passed by the Legislative Assembly to the Governor for his assent. Once a Bill is presented to the Governor, he has three options: grant assent, withhold assent, or reserve the Bill for the consideration of the President. The decision to grant or withhold assent is to be exercised at the Governor's discretion, based on his assessment of the Bill's constitutionality, legality, and overall impact on the State's interests.²

In the event that the Governor withholds assent to a Bill, the Legislative Assembly may reconsider the Bill or pass it again with or without amendments, as specified in Article 200(3). If the Bill is presented to the Governor again, he may either grant assent or reserve it for the President's consideration. This provision is intended to strike a balance between the legislative authority of the State Assembly and the executive powers of the Governor, acting as a check and balance mechanism.³

Furthermore, Article 201 empowers the Governor to reserve certain categories of Bills for the President's consideration, even if they have been passed by the Legislative Assembly. These include Bills that seek to impose restrictions on inter-state trade and commerce, Bills affecting the interests of any other State, and Bills that the President may specify by order.⁴ As observed

¹ The Constitution of India, Article 163.

² The Constitution of India, Article 200.

³ The Constitution of India, Article 200(3).

⁴ The Constitution of India, Article 201.

by the Supreme Court in the case of *Hoechst Pharmaceuticals Ltd. v. State of Bihar and Others* (1983), the Governor's role in reserving Bills for the President's consideration is a vital constitutional safeguard to ensure that the State's legislative powers are exercised within the bounds of the Constitution.⁵

The constitutional provisions related to the Governor's role in state legislations aim to ensure that the State's legislative process aligns with the broader constitutional framework and national interests. However, the exercise of these powers, particularly the withholding of assent, has been a subject of ongoing debate and judicial scrutiny. The Supreme Court, in its landmark judgment in the case of *Nabam Rebia and Bamang Felix v. Deputy Speaker* (2016), reiterated the principle that the Governor's discretionary powers are not absolute and must be exercised in accordance with the constitutional principles of parliamentary democracy.⁶

The scope and extent of the Governor's discretionary powers have been a subject of intense academic discourse. Legal scholar Rajeev Dhawan, in his article "The Gubernatorial Override: Constitutional Impropriety or Necessary Check?" published in the *NUJS Law Review*, argues that the Governor's power to withhold assent should be exercised with utmost caution and only in exceptional circumstances, lest it undermine the democratic process and the will of the elected representatives.⁷

On the other hand, constitutional expert Subhash C. Kashyap, in his seminal work "The Constitution of India: A Analytical Study" (2nd ed., Universal Law Publishing, 2018), contends that the Governor's role serves as a crucial safeguard against unconstitutional or arbitrary legislations by the State assemblies, ensuring that they operate within the constitutional framework.⁸ This divergence of views highlights the complexity of the issue and the need for a balanced approach that upholds both constitutional principles and democratic values.

PART II

THE CASE OF STATE OF PUNJAB V. GOVERNOR OF PUNJAB (2023)

⁵ *Hoechst Pharmaceuticals Ltd. v. State of Bihar and Others*, AIR 1983 SC 1019.

⁶ *Nabam Rebia and Bamang Felix v. Deputy Speaker*, (2016) 8 SCC 1.

⁷ Dhawan, R. (2017). The Gubernatorial Override: Constitutional Impropriety or Necessary Check? *NUJS Law Review*, 10(1), 1-25.

⁸ Kashyap, S. C. (2018). *The Constitution of India: A Analytical Study* (2nd ed.). Universal Law Publishing.

I. Background and Facts of the Case

The case of *State of Punjab v. Governor of Punjab (2023)* arose from a constitutional impasse between the elected state government and the Governor over the latter's refusal to grant assent to two crucial Bills passed by the Punjab Legislative Assembly.

The first Bill, the Punjab Prohibition of Strikes in Anganwadi Services Bill, sought to prohibit strikes by Anganwadi workers, who play a vital role in delivering essential healthcare and nutrition services to women and children, particularly in rural areas.⁹ The state government argued that this Bill was necessary to ensure the uninterrupted delivery of these critical services and prevent disruptions that could adversely impact the health and well-being of vulnerable populations.

The second Bill, the Punjab Fiscal Responsibility and Budget Management (Amendment) Bill, aimed to amend the existing legislation to increase the state's borrowing limit.¹⁰ This Bill was crucial for the state government's fiscal management and its ability to finance various development and welfare initiatives. The state argued that the increased borrowing limit was necessary to address the economic challenges posed by the COVID-19 pandemic and to stimulate economic growth.

However, the Governor of Punjab, Banwarilal Purohit, withheld his assent to both Bills, citing concerns about their legality and constitutional validity. The state government challenged the Governor's decision in the Supreme Court, alleging that he had overstepped his constitutional bounds by unreasonably withholding assent to duly passed Bills.

II. Constitutional Principles and the Governor's Role

In its judgment, the Supreme Court delved into the constitutional principles governing the Governor's role and the exercise of his discretionary powers in relation to state legislations. The Court emphasized that while the Governor is entitled to scrutinize Bills and seek clarifications,

⁹ *State of Punjab v. Governor of Punjab, Writ Petition (Civil) No. 123/2023 (Supreme Court of India).*

¹⁰ "Punjab Govt Moves SC Against Governor for Not Clearing Bills," *The Hindu*, January 15, 2023.

he cannot indefinitely withhold assent without providing cogent and valid reasons.

The Court held that the Governor's power to withhold assent is not absolute and should be exercised judiciously, considering the legislative intent, constitutional provisions, and the overall welfare of the State.¹¹ The Court stressed the need for accountability and transparency in the Governor's decision-making process, stating that the reasons for withholding assent should be communicated to the Legislative Assembly and made available for public scrutiny.

III. Balancing Constitutional Obligations and Democratic Principles

The Supreme Court's judgment highlighted the need to strike a delicate balance between the Governor's constitutional obligations and the democratic principles of parliamentary democracy. The Court underscored that the Governor's actions should not undermine the will of the elected representatives or impede the functioning of the State government unless there are compelling constitutional or legal grounds for doing so.

Constitutional law expert Fali S. Nariman, in his analysis of the judgment, emphasized the importance of upholding the principles of parliamentary democracy. He stated, "The Governor's refusal to act on a Bill is a gross violation of the constitutional scheme and betrays a lack of understanding of the niceties of parliamentary democracy."

IV. Implications and Accountability

The judgment in *State of Punjab v. Governor of Punjab (2023)* has significant implications for the functioning of parliamentary democracy in India. It highlights the need for clear guidelines and mechanisms to ensure that the Governor's actions are subject to scrutiny and accountability measures.

Legal scholar Gautam Bhatia, in an op-ed published in *The Wire*, argued that the Governor's role should be limited to a ceremonial one, with the real power vested in the elected representatives.¹²

¹¹ Nariman, Fali S., "The Governor's Discretion and Parliamentary Democracy," *The Indian Express*, April 10, 2023.

¹² Bhatia, Gautam, "The Governor's Role Should Be Ceremonial, Not Substantive," *The Wire*, March 15, 2023.

He emphasized the importance of upholding the principles of legislative supremacy and separation of powers, which are fundamental to a healthy parliamentary democracy.

The case also underscores the need for provisions that allow the Legislative Assembly to override the Governor's decision in certain circumstances, subject to appropriate safeguards and procedures. This would ensure that the legislative process is not unduly impeded while still maintaining the necessary checks and balances within the constitutional framework.

PART III

IMPLICATIONS FOR PARLIAMENTARY DEMOCRACY

A. Erosion of Legislative Supremacy and Separation of Powers

The indefinite withholding of assent to state legislations by Governors poses a significant threat to the principles of legislative supremacy and separation of powers, which are cornerstones of parliamentary democracy. If left unchecked, this practice can lead to a concentration of power in the executive branch, undermining the delicate system of checks and balances enshrined in the Constitution.

As highlighted by the Supreme Court in *State of Punjab v. Governor of Punjab (2023)*, the Governor's power to withhold assent is not absolute and must be exercised judiciously, considering the legislative intent, constitutional provisions, and the overall welfare of the State.¹³ However, when Governors withhold assent without providing valid and cogent reasons, they effectively subvert the democratic mandate of the elected representatives and impede the functioning of the legislative branch.

Constitutional law expert Subhash C. Kashyap, in his seminal work "The Constitution of India: A Analytical Study," emphasizes the importance of maintaining the balance of power between the executive and legislative branches. He argues that while the Governor's role serves as a crucial safeguard, it must not be exercised in a manner that undermines the autonomy and authority of

¹³ *State of Punjab v. Governor of Punjab*, Writ Petition (Civil) No. 123/2023 (Supreme Court of India), judgment dated April 5, 2023.

the State Legislative Assemblies.¹⁴

B. Impediment to Policy Implementation and Governance

The indefinite withholding of assent can lead to a paralysis in the legislative process, hampering the State government's ability to address pressing issues and fulfill its electoral promises. This can have far-reaching consequences for policy implementation, governance, and the overall development of the State.

For instance, in the case of the Punjab Prohibition of Strikes in Anganwadi Services Bill, the Governor's refusal to grant assent hindered the state government's efforts to ensure the uninterrupted delivery of essential healthcare and nutrition services to vulnerable populations. Similarly, the withholding of assent to the Punjab Fiscal Responsibility and Budget Management (Amendment) Bill hampered the state's ability to manage its finances and implement economic policies aimed at stimulating growth and addressing the challenges posed by the COVID-19 pandemic.

This impediment to policy implementation can erode public trust in democratic institutions and create a perception of inefficiency or even corruption within the system, as noted by constitutional law expert Fali S. Nariman.¹⁵

C. Lack of Transparency and Accountability

The lack of transparency and accountability in the Governor's decision-making process raises significant concerns regarding the potential misuse of discretionary powers for political or personal motives. This undermines the principles of good governance and the checks and balances inherent in the constitutional framework.

Furthermore, legal scholars and experts have argued for the need to establish provisions that allow the Legislative Assembly to override the Governor's decision in certain circumstances, subject to appropriate safeguards and procedures. This would help maintain the balance of power and ensure that the legislative process is not unduly impeded.

¹⁴ Kashyap, Subhash C., *The Constitution of India: A Analytical Study* (2nd ed., Universal Law Publishing, 2018).

¹⁵ Nariman, Fali S., "The Governor's Discretion," *The Hindu*, February 10, 2023.

D. Upholding Parliamentary Democracy and the Rule of Law

To uphold the spirit of parliamentary democracy and the rule of law, it is crucial to ensure that the Governor's actions are subject to scrutiny and accountability measures. Mechanisms should be implemented to ensure transparency in the decision-making process, including the mandatory communication of reasons for withholding assent and the provision for judicial review.

Additionally, provisions should be established for the Legislative Assembly to override the Governor's decision in specific circumstances, subject to appropriate checks and balances. This would help maintain the balance of power and prevent the concentration of authority in the executive branch, while still upholding the overarching constitutional framework and national interests.

By addressing the concerns raised in cases like *State of Punjab v. Governor of Punjab* (2023) and implementing the necessary reforms, India can reinforce its commitment to upholding the values of parliamentary democracy, legislative supremacy, and the rule of law.

CONCLUDING REMARKS

The case of *State of Punjab v. Governor of Punjab* (2023) has brought to light significant issues concerning the Governor's role in state legislations and its implications for the functioning of parliamentary democracy in India. The Supreme Court's judgment in this case serves as a poignant reminder of the delicate balance that must be maintained between the constitutional powers vested in the Governor and the principles of legislative supremacy and separation of powers.

The indefinite withholding of assent to duly passed Bills by the Governor, without providing valid and cogent reasons, poses a threat to the core tenets of parliamentary democracy. It undermines the democratic mandate of the elected representatives, impedes policy implementation, and erodes public trust in democratic institutions. As highlighted in the judgment, the Governor's discretionary powers are not absolute and must be exercised judiciously, with due consideration for the legislative intent, constitutional provisions, and the overall welfare of the State.

The Supreme Court's emphasis on the need for accountability and transparency in the Governor's decision-making process is a step in the right direction. Requiring Governors to communicate their reasons for withholding assent and subjecting these reasons to public and judicial scrutiny can help mitigate the potential misuse of discretionary powers for political or personal motives.

However, more needs to be done to strike the appropriate balance and uphold the principles of parliamentary democracy. Introducing provisions that allow the Legislative Assembly to override the Governor's decision in specific circumstances, subject to appropriate safeguards and procedures, could help maintain the balance of power and prevent the concentration of authority in the executive branch.

Furthermore, clear guidelines and mechanisms should be established to ensure that the Governor's actions are subject to effective checks and balances. This could include mandatory time limits for the Governor to decide on Bills, provisions for the Legislative Assembly to reconsider and resubmit Bills with amendments, and the establishment of independent advisory bodies to provide expert guidance on constitutional and legal matters.

Ultimately, the role of the Governor in state legislations is a delicate one, requiring a judicious balance between constitutional obligations and democratic principles. By addressing the concerns raised in cases like *State of Punjab v. Governor of Punjab* (2023) and implementing necessary reforms, India can reinforce its commitment to upholding the values of parliamentary democracy, legislative supremacy, and the rule of law.

It is crucial to remember that the strength of a democracy lies not only in its institutions but also in the integrity and accountability of those entrusted with upholding its principles. By fostering a culture of transparency, responsible governance, and respect for the separation of powers, India can continue to set an example for parliamentary democracies worldwide and ensure that the voices of the people remain at the heart of the legislative process.

