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India's Quasi-Federal Paradigm: Unveiling the Framework and its Consequences on the Functioning of Article 200 of the Constitution

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INTRODUCTION

Federalism is the core of a democratic system in India. It played the interplay of the balance between the Centre and the states by equating the power at the Centre and diffusing it amongst all its constituent states. The Indian people are essentially unitary; however, the quasi-federal system, combining unitary and federal systems elements, tells India of its complex socio-cultural landscape and history. Uniting disparate linguistic, cultural, and regional identities into a unified political entity after the years of independence was challenging for the Indian Constitution. However, this federation structure presents the challenge of an excess of central power above the states that manifests in several instances. Examples include the continuous tussle between the Delhi government and the Lieutenant Governor and the problems encountered during the present instance of demonetisation. Judgments such as *K.S. Puttaswamy v. Union of India*¹ and *T.M.A. Pai Foundation v. State of Karnataka*² bring out the controversies involved with the concurrent list, which enumerates power relationships from the Centre to the states. A recent landmark judgment is *State of Punjab v. Principal Secretary to the Governor of Punjab*, in which the governor's powers of withholding his assent on statutes enacted by state legislatures have been reinterpreted. Chief Justice D.Y. Chandrachud looked forward to reconsidering the bills under Article 2004 and simultaneously casting aspersions on the idea of full gubernatorial authority. This paper discusses the challenges presented by state governments within the framework of India's quasi-federal structure while illuminating fundamental concerns and loopholes in its constitutional structure.

¹ *K.S. Puttaswamy v. Union of India*, (2018) 1 SCC 809.

² *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

KEYWORDS

Bills, Governor, President, Quasi Federal, Unitary Bias

RESEARCH QUESTIONS

The paper will seek to address some of the critical questions as related to the quasi-federal framework of India as are:

1. To what extent does the conventional construction of Article 200 that treats withholding assent by the Governor as final and a matter of discretion contribute to ambiguity surrounding quasi-federalism in India?
2. What challenges have such inaction by the Governor and delayed decisions on bills posed, and how has this possibly hindered the general operation of the legislative process within a state?
3. How does the practice of the reserving of bills to the President for consideration by Governors, even though technically, it is not mandated by the Constitution, go to complexify or create potential conflicts in the quasi-federal structure?
4. Constitutional references such as Article 213, what part do they play in giving the difficulties within the quasi-federal framework, and how do they provide for the role of the division of power between the central government and the states?

RESEARCH OBJECTIVES

This paper attempts to critically analyse the traditional understanding of Article 200 within the quasi-federal framework of India, focusing more on the discretionary power of the Governor to withhold assent. Besides, the study aims to explore problems raised by gubernatorial inaction on bills and its impact on legislative efficiency at the state level. Other issues discussed include those brought up by Governors' reservations of bills to the consideration of the President and constitutional references such as Article 213.

RESEARCH METHODOLOGY

The research methodology for this paper is rigid, qualitative, and doctrinal, as it involves a combination of legal analysis, several case study approaches, and a review of scholarly literature.

The primary sources for this paper include the Indian Constitution, several landmark judgments, and legal documents related to centre-state relations in India, as mentioned.

The Secondary Sources for this paper include Constitutional law textbooks, mainly M.P Jain, Indian Constitutional Law, Scholarly articles on Indian federalism, books, and commentaries on the Indian Constitution, especially D.D. Basu's several reputed legal journals and publications rely on recent news articles from unbiased sources.

Since India gained independence in 1947 as the largest democracy in the world, it was saddled with the need to formulate a rather convoluted federal system within their constitution. The quasi-federal paradigm that characterizes Indian federalism reveals an impeccable balancing act between a strong central government and the sovereignty of the member states. However, as the country changes, hidden weaknesses in this federal system have shown themselves. These gaps include questions about financial federalism, state-to-state disparities, the function of essential players like governors, and the difficulties in realising cooperative federalism.

THE TRADITIONAL VIEW

There needs to be more historical clarity about Article 200³ and its first provision. Traditional views, including those of constitutional scholars such as D.D. Basu held that the *Governor's power to withhold assent is final and discretionary, assuming that once withheld, the bill is dead*⁴. This sets the groundwork for the CJI's innovative interpretation. The CJI's creative interpretation of Article 200, which transforms our understanding of it, *effectively limits the Governor's options by linking the withholding of assent to the bill's referral for reconsideration*. If the Governor decides to withhold assent, the bill must be promptly returned to the Assembly for reconsideration, leaving no other option but to grant assent eventually. This interpretation protects legislative and constitutional rights from potential abuse by unelected Governors. The interpretation is provided in the *State of Punjab vs Principal Secretary*⁵ case (henceforth known as the Punjab case), which will be interpreted as we move on.

³ INDIA CONST. art. 200

⁴ Basu, Durga Das, et al. Introduction to the Constitution of India. Vol. 163. Gurgaon: LexisNexis, 2015

⁵ *State of Punjab v. Governor of Punjab*, (2024) 1 SCC 384.

THE VETO POWERS OF THE GOVERNOR

The veto power granted to governors in the Indian Constitution is a significant aspect of the federal structure, intended to act as a check and balance mechanism. However, its implementation and implications have sparked debates and criticism. The veto power vested in the Governor under Article 200 is NOT absolute. While the Governor has the authority to withhold his assent to a bill, this power is subject to certain limitations. The Constitution envisages the Governor as a constitutional authority bound by the principles of democratic governance and constitutionalism. Therefore, the exercise of the veto power must be in accordance with these principles⁶.

- ***The State of Punjab v. Principal Secretary of the Governor of Punjab***

In the case of the *State of Punjab vs. Principal Secretary*, this action of the Governor was challenged by the Legislature as an abuse of power and contrary to democratic governance principles.

The Supreme Court, in its judgment, held that the Governor cannot sit over bills forever and must act within a reasonable time frame. The veto power is not absolute; hence, however strong the need to exercise such veto power may seem, it must be done judiciously. More importantly, it underscored the importance of upholding democratic principles and ensuring

the smooth functioning of the legislative process. The judgment restated the principle that the Governor is not a parallel authority to the Legislature but a constitutional functionary whose acts are subject to judicial review. It has far-reaching ramifications for exercising the power of the veto by Governors across India. The verdict establishes that the Governor cannot act arbitrarily or whimsically while withholding his assent to bills. The Governor must respect constitutional precepts and principles of democratic governance instead. The judgment acted as a check upon the possible misuse of executive powers and reinstated the supremacy of the Constitution.

Also, the judgment is a reminder of the judiciary's role to ensure that constitutional authorities do not get opportunistically out of hand. The Court does this by subjecting the acts of the Governor to judicial review and preventing any decline in the democratic institutions. It

⁶ M.P Jain, Indian Constitutional Law (7th Ed. 2014, Lexis Nexis Butterworth Wadhwa, Nagpur).

reiterates its role as guardian of the Constitution and a protector of citizens' rights.

Article 200 of the Indian Constitution grants veto power to the Governor in the legislative process. Lately, judicial pronouncements, such as the Supreme Court judgment, have clarified the limits of this power. The governor can only exercise control within the contours of constitutional values and democratic majoritarian governance. The decision by the Supreme Court maintains legislative process integrity and ensures the constitutional balance of powers. Underlying this is the necessity to stick to constitutional norms and the rule of law in ensuring influential democratic institution functioning.

CHALLENGES TO THE GOVERNOR'S INACTION

The Punjab case enumerates the Supreme Court's stance, which states that Governors CANNOT delay the bill's decisions. This declaration clarifies the expectation that governors should act quickly on bills rather than prolonging the legislative process⁷. The judicial intervention depicted in the article helps to explain how Article 200 works. The case highlights challenges with the Governors' inaction despite positive developments in Article 200 interpretation. Some Governors have been known to sit on bills for extended periods, nullifying State legislative efforts. The judicial pronouncement is interpreted as responding to such practices, stating that governors cannot unduly delay bill decisions.

State governments continue to face difficulties. Some governors have a custom of not deciding about bills delivered to them for ratification. They have delayed bills for the past two or three years, invalidating the state's legislative efforts. In the Punjab case, the Indian Supreme Court clarified that governors could not postpone the Bills' decision. Consequently, Article 200 has more clarity thanks to the Supreme Court's ruling, and governors must act swiftly to vote on the Bills.

RESERVING BILLS FOR PRESIDENT'S CONSIDERATION

This case then shifts focus to another potential challenge within the quasi-federal structure: the Governor's authority to reserve bills for the President to consider. Governors have reserved bills for the President's consideration, even when the Constitution does not explicitly state so. The paper examines the parts of the constitution that deal with holding bills for the president's review.

⁷ M. Asad Malik, *Changing Dimensions of Federalism in India: An Appraisal*, ILI Law Review Vol. II, Winter Issue (2019).

It talks about cases like the one involving the Governor of Kerala and the second proviso to Article 200, which lists bills that the President must consider by law. The analysis explores the possibility of a governor reserving presidential bills at their discretion, posing constitutional issues with such actions.

- ***Exploiting the Option to Reserve the Bills***

There is still a gap that the governors can exploit to obstruct state governments' efforts to pass laws. A Governor still has the complete power to reserve a bill for the President's consideration. The critical question is what bills a governor can submit to the president for consideration. One type of bill that must be kept for the President's consideration is listed in the second proviso of Article 200. These bills infringe upon the High Court's constitutionally granted authority and jeopardize its established role.

The consideration of the President is the consideration of the Union Government, therefore the officials of the Home Ministry will, in effect, decide the fate of such bills.

- ***Governor's Discretion for Sending the Bills for President's Consideration***

The Constitution does not refer to any category of Bills apart from those mentioned above, which can be sent to the President for his assent. Therefore, taking a surface view, the Governor can use his discretion to send any Bill to the President. That is precisely what the Governor of Kerala, Arif Mohammed Khan, did recently. He only acted on eight bills with him for over two years. When the Supreme Court took up the Kerala government's petition challenging the Governor's inaction, he consented to one Bill. He sent the seven Bills to the President for his consideration⁸. The Court, it is learned, will examine this issue — namely, what Bills can be reserved for the consideration of the President. The Tamil Nadu Governor sent ten bills for reconsideration by the Assembly after many complaints from the state government. After reconsideration, the Assembly sent the bills to the Governor without accepting any amendments. But in a strange act, the Governor sent all those Bills to the President for his consideration, which was patently against the Constitution. As mentioned earlier, Article 200 (First Proviso) only requires the

⁸ Venkatesan, V. (2023) Can a governor withhold assent without reasons? Frontline. Available at: <https://frontline.thehindu.com/columns/tamil-nadu-governor-rn-ravi-withhold-assent-to-bills-by-assembly-constitutional-controversy/article67547402.ece> (Accessed: 10 April 2024).

governor to assent to the bills. Therefore, whether a governor can hold bills for the President's consideration at his discretion is significant in the current political environment. On this, the Constitution says nothing. It mentions twice that bills may be reserved for the President's consideration. Article 213 addresses the governor's authority to enact ordinances. According to this clause, the Governor may only issue an ordinance under specific circumstances upon the President's approval. According to the aforementioned Article's clause (b), the Governor may only enact an ordinance with the President's approval when the President would have thought it necessary to reserve a bill with identical contents to the ordinance. The words "deemed it necessary" indicate the Governor's judgement regarding the constitutional scheme of the power of legislative division. In other words, he must not act whimsical.

CONSTITUTIONAL REFERENCES

- **Article 213**

Examining indirect references in the Constitution, the case looks at Article 213, which deals with the ordinance-making power of Governors⁹. It explores the circumstances under which the Governor can promulgate an ordinance only with instructions from the President, drawing parallels to the issue of reserving bills. The case states a conclusion emphasising the restrictions on a governor's ability to withhold bills. It makes the case that a governor cannot submit bills to the president for ratification that are solely about state issues. Furthermore, the Governor may have less discretion to send a bill to the President if it does not contain provisions that conflict with federal law and address a concurrent subject. It has been noted that the President and the Governor have no option but to declare whether a law is constitutional; it falls entirely in the judiciary's hands. This emphasizes the concept of holding strong on constitutional values in a multifaceted power play between the central government and the states.

- **Article 254**

The second place where the Constitution makes an indirect reference to the President's assent to a State Bill is in Article 254¹⁰. Under clause (2) of this Article, a state law on an item in the Concurrent List will prevail in that State even when it contains a provision repugnant to the provisions of an existing central law if it has been reserved for the consideration of the

⁹ INDIA CONST. art. 213.

¹⁰ INDIA CONST. art. 254.

President and has received his assent. This would mean that a Bill on a Concurrent subject can be or needs to be sent to the President for assent only if it contains provisions repugnant to an existing central law. However, it does not indicate that every Bill on a concurrent subject should be sent to the President for assent.

The President has no jurisdiction to scrutinize and give permission to a Bill exclusively on a subject in the State List because of the federal scheme of legislative division. Therefore, if the Governor sends a Bill on the State's matter to the President, it would be an abdication of the constitutional duty of a Governor.

Therefore, a governor cannot submit bills only about state law to the president for ratification. Furthermore, bills on related topics cannot be sent to him if they do not include provisions that conflict with the main legislation. The Governor's only recourse if he believes a Bill contains unconstitutional language is to return it to the Assembly for further review. Furthermore, the court decides if a statute is constitutional, and neither the president nor the governor has any authority over it.

CONCLUSION

Sadly, article 200 is yet another testimony to the complexities of India's federal structure. Analysis, though, reveals the subtle equilibrium that central government power enjoys concerning state power, with the governor playing a critical role in the legislation process.

The judgment of the Supreme Court in the case of Punjab has cleared much that had been shrouded in obscurity concerning Article 200 and the veto power of the governor. Such authority of the Governor to decline his assent to bills passed by the Legislature cannot be regarded as absolute and unconditional; instead, this must be exercised judiciously with democratic governance and constitutionalism in mind. Moreover, the judgment highlights judicial checking so that the constitutional powers are made accountable and the rule of law is enforced. Issues such as inordinate delay on part of the Governor in making a decision have been taken care of by the judiciary, thereby making legislative processes prompt and effective. Apart from this, the issue regarding the bills that must be kept for consideration by the president has been discussed, and the restrictions that the Constitution has imposed on the governor's discretion on the matter have been provided. Basically, the analysis of Article 200

and its working within India's quasi-federal paradigm underscores the constantly evolving character of the democratic institutions of the country and the imperative of upholding the constitutional values in governance. Just as India would find its footing in a federal structure, so will the interpretation and implementation of Article 200 be reviewed and refined along with guidelines of justice, equity, and democratic governance.

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