

# Governors and Their Constitutional Remit

Posted at: 04/12/2023

## Context:

The Supreme Court has recently ruled that a governor cannot unreasonably delay or refuse to ratify a bill passed by a state legislature, highlighting the fact that doing so compromises the legitimacy of elected officials and the legislative process.

## Introduction:

1. The 27-page judgment in the State of Punjab v Principal Secretary to the Governor of Punjab and Another ruled that the governor, who is chosen by the President, only acts as a symbolic head and cannot indefinitely withhold action on bills.
2. The Supreme Court's decision has clarified that should the governor choose not to sign a bill, they must send the bill back to the legislature, along with a statement outlining their reasons for not accepting it.
3. This ruling becomes even more significant in the context of the recent disputes between governors and elected governments in several states. Telangana, Tamil Nadu, Kerala, and Punjab have all petitioned the Supreme Court to request orders concerning their individual governors.

## Clarification of Article 200 of the Constitution:

1. The main point of contention in this case was that the Punjab governor had detained four bills that were passed by the Punjab legislative assembly in June 2023. The ruling offers a definitive clarification of Article 200 of the Constitution, which deals with "Assent to Bills" in the states.
2. According to Article 200, after a bill has been approved by the legislative assembly, or by both houses in a bicameral legislature, it shall be sent to the governor.
3. There are three choices available to the governor when a bill is presented to them. The governor can declare:
  4. his assent to the bill;
  - his withholding of assent; or
  - his reserving of the bill for the President's consideration.
- The Supreme Court judgment heavily emphasised the words "shall declare" and "as soon as possible" in Article 200 to suggest that the governor cannot indefinitely keep the bills pending without any action whatsoever.

## Two major takeaways from the Judgment:

1. The ruling unambiguously affirms that the governor, as a constitutional but unelected authority, does not have the right to virtually veto the functioning of an elected legislature. The constitutional powers of the governor to grant their assent to the bills passed by the

legislature must operate in such a way that they do not obstruct the “normal course of lawmaking.” According to the Supreme Court, indefinitely withholding assent amounts to a violation of the “fundamental principles of a constitutional democracy based on a Parliamentary pattern of governance.”

2. The judgment also cited *S R Bommai v Union of India* to emphasise that the constitutional powers of the governor cannot disregard the principles of federalism, which forms a part of the basic structure of the Constitution. In the course of India’s legal-political history, one has seen umpteen instances where the position of the governor has been misused for furthering the dominance of the union government over state governments ruled by opposition parties. The many disputes between governors and select state governments in contemporary India also bear witness to this contestation between different political parties.

### **Not only a legal dispute:**

1. Thus, it is not merely a legal dispute between the governor and the union government on the one hand, and certain state governments, on the other. It is also a political dispute between different ruling and opposition parties.
2. In effect, the Supreme Court ruling in this case has pointed towards the dangers posed by such political disputes to the constitutional cause of federalism in India.
3. Although the constitutional concept of a federal polity with a power-balance favouring the union was an institutional arrangement, the majority of federal disputes observed in recent times are not indicative of institutional misalignment but are rather instances of party dominance.

### **Conclusion:**

The position of the governor is subject to what this Supreme Court judgment terms as “the tuning fork of democracy and federalism.” Through this judgment, the Court has sought to reaffirm the dignity and composure required for fulfilling the constitutional obligations expected from governors. More importantly, it carries a strict warning against the partisan misuse of the post of the governor in contemporary India.

