

PENDING BILLS, THE ISSUE OF GUBERNATORIAL INACTION

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'It falls to the Supreme Court to fix a reasonable timeframe for Governors to take a decision on a Bill passed by the Assembly in the larger interest of federalism in the country' | Photo Credit: AP

The Tamil Nadu Governor was again in the news recently when the Tamil Nadu Assembly passed a resolution urging the President of India, among other things, to fix a timeline for assent to be given to Bills passed by the Assembly. The immediate provocation for the resolution was the Governor's public statement, on April 6, where he implied that if the Bill passed by the legislature transgresses constitutional limits, then it is the Governor's responsibility not to give assent. Several Bills passed by the Assembly have been pending as the Governor has not made any decision.

Passing a resolution by the Assembly, requesting the President of India to issue directions to the Governor to ensure that he functions in accordance with the Constitution is a new constitutional development. Article 355 of the Constitution says that it shall be the duty of the Union to ensure that the government of every State is carried on in accordance with the provisions of this Constitution. The general meaning and purpose of the Article was explained by B.R. Ambedkar in the Constituent Assembly: to provide justification for the "invasion of the provincial field" which the Union government may have to do. But the Constitution is a dynamic document whose concepts and doctrines have been interpreted and reinterpreted and also expanded by courts from time to time to meet the changing needs of society.

Although this Article was meant to provide justification for central intervention in the States, its scope and range needs to be widened. The Constitution requires the Governor to act when a Bill is passed by the Assembly and present it to him as per the options given in Article 200. If he does not act in accordance with the Constitution and sits on the Bills indefinitely, he is creating a situation where governance of the state cannot be carried on in accordance with constitutional provisions. In such a situation, the government of the State has a constitutional duty to invoke Article 355 and inform the President about it, and request her to give suitable instructions to the Governor to ensure that the government is carried on in accordance with the Constitution. In that view of the matter, a resolution by the Assembly should be considered legitimate action.

Article 200 provides options to the Governor when a Bill is presented to him after being passed by the legislature. These options are: to give assent; to withhold assent; to send it back to the

Assembly to reconsider it; or to send the Bill to the President for his consideration. In case the Assembly reconsiders the Bill as per the request of the Governor under the third option, he has to give assent even if the Assembly passes it again without accepting any of the suggestions of the Governor. It is only logical to think that when the Constitution gives certain options to the Governor he is required to exercise one of them. Since sitting on a Bill passed by the Assembly is not an option given by the Constitution, the Governor, by doing so, is only acting against constitutional direction. A judicial pronouncement on this matter is needed to eliminate the confusion.

As regards the option of withholding assent, a plain reading of Article 200 suggests that, theoretically, the Governor can do so. But the question is whether the Governor should withhold assent to a Bill passed by the legislature. To answer this question, we may usefully turn our attention to the practice followed in the United Kingdom, whose model of government was adopted by our Constitution. D.D. Basu, in his commentaries on the Constitution, says: "the position of the Governor in this respect is that of the sovereign in England. In theory the sovereign can refuse to give his assent but this right has not been exercised since the reign of Queen Anne. The veto could now only be exercised on ministerial advice and no government would veto Bills for which it was responsible. Refusal of royal assent on the ground that the monarch strongly disapproved of a Bill or that it was intensely controversial would be unconstitutional."

So, the question of crucial importance is whether under Article 200, the Governor can withhold his assent to a Bill in exercise of his discretionary powers. Or, whether he can do so only on the advice of the Council of Ministers. Under Article 154 of the Constitution, the Governor can exercise his executive powers only on the advice of the Council of Ministers. So, there is a view that the Governor can withhold assent to a Bill only on ministerial advice. But some experts ask as to why the Council of Ministers should advise the Governor to withhold assent after the Bill has been passed by the Assembly. If the government did not want to proceed with the Bill, it could withdraw it at any stage of consideration by the Assembly. Similarly, if the government wanted to repeal it after it becomes an Act, it could have it repealed by the House.

Of course, the government can advise the Governor to withhold assent if it has second thoughts on the Bill after it has been passed — this seems to be the position in the U.K. where the sovereign refuses assent only on ministerial advice. However, it seems that under the Indian Constitution, the exercise of the power vested in the Governor to withhold assent may not be confined to one situation, namely, where the Council of Ministers advise the Governor to do so.

But the larger question is why a Governor should be allowed to withhold assent when the Bill is passed by the Assembly. A Bill is brought before the Assembly when there is some urgency about a legislation. It may be a part of the policy of the elected government which is responsible to the people. When such a Bill is passed, what authority does a Governor who is an appointee of the Union government have to reject it? Under the constitutional scheme, the Governor is only a constitutional head and has no real powers. Then, how can such a Governor veto a legislative measure brought by the government and passed by the Assembly? Withholding assent means the death of that Bill. Thus, the Governor can with one stroke of the pen completely negate the will of the legislature, and thereby negate the will of the people. The Constitution cannot be assumed to be permitting the Governor to do that. Only the judiciary can set it right by way of a clear enunciation of the law.

Finally, it is necessary to look at the question of justiciability of the whole issue of assent by the Governor. D.D. Basu, quoting judgments of the Supreme Court, says that it is not justiciable. One of the judgments is *Purushothaman Namboothiri vs State of Kerala* (1962). The issue that was decided in this case was that a Bill which is pending with the Governor does not lapse on

the dissolution of the Assembly. But this judgment does not deal with the justiciability of the process of assent. Similarly, *Hoechst Pharmaceuticals Ltd. And ... vs State Of Bihar And Others* (1983) deals with the power of the Governor to reserve a Bill for the consideration of the President. The Court had held that a Governor reserves a Bill for the consideration of the President in exercise of his discretion. The Court cannot go into the question of whether it was necessary for the Governor to reserve the Bill for the consideration of the President; thus, this case too does not deal with the justiciability of assent. The issue that is agitating State governments is the non-decision/indecision on the part of the Governor on a Bill passed by the Assembly. So, on the question whether the government can challenge the inaction of the Governor in a court of law, the answer seems to be in the affirmative.

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 which 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.

P.D.T. Achary is former Secretary General of the Lok Sabha

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