Judicial Review of Governor’s Response to State Bills

> **Mains (GS II)** - Indian Constitution, Functions and responsibilities of the Union and the States, Parliament and State legislatures—structure, functioning

Why in news?

Recently Supreme Court delivered judgement on the State Of Tamilnadu Vs The Governor case which redefines the constitutional parameters of Governor's power in assenting the bill.

What is the background of the State of Tamilnadu Vs Governor case?

- **State university bills** – Between 2020 and 2023, the Tamil Nadu Assembly passed 10 Bills, related to state university governance.
- Other bills related to public appointments and early prisoner release were also sent to governor for assent.
- **Governor’s inaction –** Governor did not give assent to the Bills — some were delayed for years and others were returned only after public and judicial pressure.
- This led to a constitutional deadlock between the elected government and the Governor.
- **The Case** - In 2023, TN government filed a writ petition in the Supreme Court, accusing the Governor of inaction and misuse of power.
- **SC Judgement** – On March 12, 2024, the Supreme Court ruled in favour of the state, stating that Governors cannot delay assent indefinitely, and upheld the legislative supremacy of the Assembly.

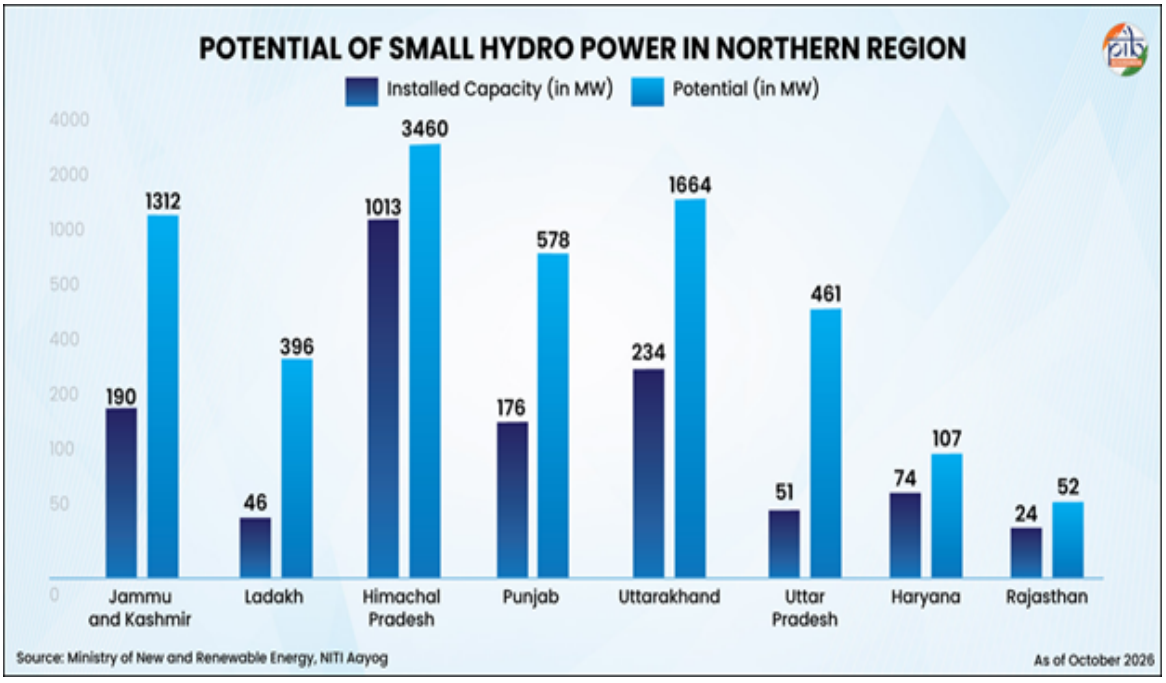
What are the constitutional powers of Governor on a state bill?

- **Assent of Governor** - As per Article 200, every state bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent.
- **Assent to the Bill** - The Governor can give their assent, making the bill a law.
- **Withhold Assent** - The Governor can withhold their assent, effectively rejecting the bill.
- **Return the Bill** - The Governor can return the bill, as soon as possible, to the state legislature with a message suggesting reconsideration of specific provisions or the entire bill.
- The House shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.

- **Reserve the Bill for the President** - The Governor can reserve certain bills for the President's consideration, if the bill if derogate from the powers of the High Court.
- **President on State bill** - Article 201 provides that When a Bill is reserved by a Governor for the consideration of the President, the President shall grant/withhold the assent or direct the governor to return the bill (except money bill).
- When a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of 6 months.
- **No time limit** – No specific timeframe is defined in the constitution for the Governor to act.

What is the Supreme Court judgement?

- **No absolute/pocket veto** – The court held that the constitutional scheme does not make place for the idea of an “absolute veto” or a “pocket veto”.
- Once a state legislature passes a Bill, the Governor’s role under Article 200 of the Constitution is limited to three clear options
    - Granting assent, withholding assent, or reserving the Bill for the President’s consideration.
- **Aid & advice of cabinet** – Governors, as a general rule, had to abide by the aid and advice of the State Cabinet under Article 200 while deciding on Bills.
- **Returning is withholding** – When a Governor returns a Bill, it is considered part of the process of withholding assent.
- Once the legislature re-passes the Bill, with or without amendments, the Governor is constitutionally bound to grant assent.
- **No president reservation of re-enacted bill** - Governor cannot reserve a Bill for the President’s consideration which is resent by the assembly.
- **Timelines for granting assent on bills** - The Court prescribed time limits for governor action on bills.



Governor’s action	Time limit

Withholding assent on the aid and advice of the State Cabinet	Maximum 1 month
Withholding assent contrary to advice of the State Cabinet	Maximum 3 months to return the Bill with a message specifying reasons.
If a Bill is re-passed and re-presented by the legislature	Maximum 1 month (Must give assent)
Reserving a Bill for the President's consideration against the advice of the State Cabinet	3 Months

- **Judicial review** - Any failure by a Governor to comply with the timelines would invite judicial review.
- **Restricted reservation powers** – Bills can only be reserved for Presidential consideration under specific constitutional circumstances.
    - when a proposed law was found "repugnant" or inconsistent with an existing Central law, (or)
    - if a Bill tended to derogate the Constitutional powers of the State High Court.
- **Judicial intervention** – Supreme Court invoked *Article 142 powers* for "complete justice".
- It declared that 10 Bills from the Tamil Nadu Assembly are ***deemed assented to*** given the extraordinary delay by Governor.
- **Governor's Role** - Governor must act in accordance with the "settled conventions of Parliamentary democracy.
- S/He is not a political actor, but a "friend, philosopher and guide" to the state government.
- Governor's decisions must not be coloured by political considerations and must be guided by the sanctity of the constitutional oath.

Article 142

• **Article 142** – It gives the **extraordinary powers** to supreme court beyond ordinary statutory limits to do complete justice.
• **Enforcement of Decrees and Orders –** The Supreme Court can pass any ***decree or order*** to ensure **complete justice** in any case pending before it.
- Such orders/decrees are **enforceable across India**.
- Until Parliament makes a specific law on enforcement, the President can prescribe the method of enforcement.
• It has been used in many landmark cases to **fill legislative gaps** or **overcome procedural barriers**.
• **Examples of Use**
• **Babri Masjid-Ram Janmabhoomi case (2019) –** SC used Article 142 to allot alternate land for the mosque.
• **Bhopal Gas Tragedy case (1991) –** Compensation was finalized using this power.

What are the previous judicial interpretations?

- **Nabam Rebia case (Arunachal Pradesh - 2016)** – Governor cannot withhold assent to a Bill indefinitely but must return it to the Assembly with a message, and this could

include his recommendation for amendments to the Bill.

- **The State of Punjab vs Principal Secretary case (2023)** - The Governor, as an unelected Head of the State, is entrusted with certain constitutional powers.
- However, this power cannot be used to thwart the normal course of law-making by the State Legislatures.
- If they are withholding assent, then the constitutional path is to ***return the Bill to the legislature*** as per first provision of Article 200.

References

1. The Indian express| Tamil Nadu Governor SC Ruling
2. The Indian express| This Supreme Court order on State Bills

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