The Governor's Options regarding Bills

Why in news?

Giving assent to a bill passed by the legislature is a normal constitutional act performed by the Governor, but of late, they have become a source of confrontation between State governments and the Governors.

What is the position of a Governor in the constitutional setup of India?

- The Governor is an appointee of the President, which means the Union government.
- Article 154(1) of the Constitution vests in the Governor the executive power of the State.
- The Governor is only a constitutional head and the executive power of the State is exercised by the Council of Ministers as the Governor can act only on the aid and advice of the Council of Ministers.
- **Affirmations on the position of Governor**- Dr. Ambedkar explained in the Constituent Assembly that the Governor under the Constitution has no functions which he can discharge by himself.
- The Supreme Court had clearly affirmed the position of Governor in *Shamsher Singh vs State of Punjab* (1974).
- The Sarkaria Commission report stated that as long as the council of ministers enjoys the confidence of the Assembly, its advice in these matters, unless patently unconstitutional, must be deemed as binding on the governor.
- In 2016, a five-judge constitution Bench of the Supreme Court (*Nabam Rebia case*) reaffirmed the above position on the governors' powers in our constitutional setup.

To know more about the tussle between Governor and Chief Minister, click here

What are the options before the Governor with respect to Bills?

- **Article 200** of the Constitution provides for four alternative courses of action for a Governor when a Bill after being passed by the legislature is presented to him for his assent.
    1. The Governor can give his assent straightaway.
    2. The Governor can withhold his assent.
    3. He may also reserve it for the consideration of the President, in which case the assent is given or withheld by the President.
    4. The other option is to return the Bill to the legislature with the request that it may reconsider the Bill or any particular provision of the Bill.
- The Governor can also suggest any new amendment to the Bill.
- However, if the legislature again passes the Bill without accepting any of the amendments suggested by the Governor he is constitutionally bound to give assent to the Bill.

What is the current issue?

- The Governor of Tamil Nadu returned the NEET Bill to the Assembly for reconsideration of the Bill.
- Accordingly, the Assembly held a special session in the first week of February and passed it again and presented it to the Governor for his assent.
- The Governor has not assented to the Bill so far.
- The point that is made by some sources is that since the Constitution has **not fixed any time frame**, the Governor can postpone a decision indefinitely.
- While it is true that Article 200 does not lay down any time frame for the Governor to take action, a constitutional authority cannot circumvent a provision of the Constitution by taking advantage of an omission.
- The context of Article 200 needs to be understood as one of the options has to be exercised by the Governor without delay.

Why is this process undemocratic?

- **Against Article 200**- Article 200 clearly says that when the Assembly reconsiders the Bill on the recommendations of the Governor and presents it to him, he shall not withhold assent.
- If the Governor does not exercise any of the four options he will not be acting in conformity with the Constitution because non-action is not an option contained in Article 200.
- **Non-responsible for the actions-** In our constitutional system, the Governor or the President is not personally responsible for their acts and it is the elected government that is responsible.
- Under Article 361, the President or a Governor is not answerable to any court for anything done in the exercise and performance of their powers and duties.
- **Legislative power**- Giving assent to a Bill passed by the legislature is a part of the legislative process and not of the executive power.
- **Anti-federal nature**- The option of withholding assents is essentially against federalism.
- **Undemocratic**- Withholding of assent is not normally exercised by Governors because it will be an extremely unpopular step and it may neutralise the entire legislative exercise by an elected legislature enjoying the support of the people.

In the UK it is unconstitutional for the monarch to refuse to assent to a Bill passed by Parliament. In Australia, refusal of assent to a Bill by the crown is considered repugnant to the federal system.

References

1. https://www.thehindu.com/todays-paper/tp-opinion/bill-assent-a-delay-and-the-governors-options/article65380012.ece



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