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Fixing of Time Limits for Assent to Bills by the Judiciary: A Study on the Constitutional Silence and its Redressal

Akilan S[a]

[a]School of Law, CHRIST (Deemed to be University), Bengaluru, India

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The constitutional role of the Governor has generated controversy, particularly with regard to assent to Bills of the State Legislative Assembly as laid under Articles 200 and 201 of the Constitution of India. The article critically examines the Supreme Court's jurisprudence in State of Tamil Nadu v Governor of Tamil Nadu and Anr. and In re: Assent, Withholding or Reservation of Bills by the Governor and President through a realist perspective and using resources such as the Constituent Assembly Debates and the Sarkaria Commission reports in support of the contention that it was intended by the Constitution makers the Governor's discretionary powers must be crippled. While the Court in its advisory opinion rejecting the fixing of time limits on the constitutional office of the Governor to provide assent to Bills on formalistic and textual grounds, the article argues that India's federalism, that is part of the basic structure of the Constitution, can be protected only by the recognition of its legal system to be that of the common law system, and significantly, the application of the doctrine of constitutional silences. The article takes off with previous Supreme Court verdicts, such as Bhanumati and Ors. v State of U.P., to establish that the judiciary can indeed read meanings into the Constitution, that is consistent with the common law tradition and establishes an alternative remedy for the preservation of State autonomy.

Keywords: *assent, bills, common law, constitutional silence, governor, time limits.*

INTRODUCTION

The Supreme Court of India has deliberated twice on the issue of whether the phrase "as soon as possible" under Articles 200 and 201 of the Constitution of India can be construed to

mean fixing time limits for the Governor to give assent to Bills passed by the Legislative Assembly of States. The Governor is appointed by the President (Article 155) and holds office during the pleasure of the President (Article 156).[1] At the same time, Article 163 states that in the exercise of his powers, the Governor shall take the aid and advice of the Council of Ministers, subject to certain cases where he may exercise his discretion.[2] These conflicting provisions reflect what S.C. Dash has to say about the constitutional position: 'A split personality is at times an encumbrance, and a Governor is expected to display such a personality. He can play the role of Dr Jekyll with the Union government and Mr Hyde with the State Council of Ministers, and it would be difficult for either party to bring him to the book.'[3]

The Governor has acted as a representative of the Centre in several instances since 1967,[4] and the constitutional challenge is still left unanswered as a new round of controversies began in the State of Tamil Nadu where its Governor used his powers under Article 200 to withhold assent to Bills, returning them to the Assembly for reconsideration, and reserving them for the consideration of the President, and quite liberally, 'pocket vetoed' them, about twelve Bills passed by the Tamil Nadu Assembly, as there is no time limit prescribed under the said provision.[5] This led to the State petitioning against the Governor, and a two-judge Bench, after hearing the arguments of both sides, prescribed a time limit of three months for a Governor to assent to, withhold and return, or reserve a Bill, and one month for assent if a Bill is repassed by the state legislature after reconsideration. Time limits have also been fixed when a Bill has to be reserved for the consideration of the President.[6] However, a presidential reference against this decision was answered by the Supreme Court, which found the reasoning of the Division Bench in State of Tamil Nadu v Governor of Tamil Nadu and Anr. to be erroneous.[7] While there were fourteen questions answered in the advisory opinion, this article confines itself to the fixing of time limits by the judiciary.

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[1] Constitution of India 1950, arts 155 and 156
[2] The Constitution of India 1950, art 163
[3] Rajni Goyal, 'THE GOVERNOR: CONSTITUTIONAL POSITION AND POLITICAL REALITY' (1992) 53(4) The Indian Journal of Political Science <https://www.jstor.org/stable/41855632> accessed 20 December 2025
[4] *Ibid*
[5] D Suresh Kumar, 'Five big controversial actions of Tamil Nadu Governor R.N. Ravi' *The Hindu* (08 April 2025) <https://www.thehindu.com/news/national/tamil-nadu/five-big-controversial-actions-of-tamil-nadu-governor-rn-ravi/article69426378.ece> accessed 20 December 2025
[6] *State of Tamil Nadu v Governor of Tamil Nadu and Anr* (2025) SCC OnLine SC 770
[7] *In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India* (2025) SCC OnLine SC 2501

The fixing of time limits by the judiciary on assent to Bills by a Governor is pertinent to a federal state like India. The rationale behind making the Governor a nominated rather than an elected position is illustrative of this regard. The Constituent Assembly stated that it would amount to a surrender of democracy if a Governor were elected as it would lead to a collision with the Council of Ministers if disputes arose between them and the Governor can always intervene in the governance of a provision by seeking legitimacy from his election, essentially affirming the constitutional recognition of an elected representative' powers to make laws for their State.[8] Yet, the phrase 'as soon as possible' seems not to be reflective of the federal spirit the Constituent Assembly is trying to uphold. Accordingly, the Sarkaria Commission in Chapter V of its report researched the legislative intent of Articles 200 and 201 to hold that the Constituent Assembly removed the discretionary powers of the Governor in granting assent to Bills and recommended time limits for the same.

Despite this, a major question of law persists: can the judiciary fix the time limit instead of the legislature and if so, would it derogate the doctrine of separation of powers?

LITERATURE REVIEW AND RESEARCH METHODOLOGY

The writer has made an a priori analysis of the judicial reasoning behind State of Tamil Nadu v Governor of Tamil Nadu and Anr. and In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India. While considering the arguments of the advocates who appeared in the said cases. i.e., on the one hand, usage of precedents such as Keisham Meghachandra in support of fixing time limits on a constitutional office, and on the other, the use of the Purushothaman Nambudiri case to hold that the absence of time limits does not empower the judicial system to read phrases into laws, the writer has attempted to provide an alternate remedy.

In interpreting the judgment and discovering alternative means to establish time limits on the Governor's functions, books such as Charting the Divide between Common and Civil Law by Thomas Lundmark were relevant. The said book expounded the principles of the common law system, legal rules, judicial precedents, and how the judiciary makes laws without misunderstanding the common law system and the operation of the doctrine of

[8] M P Jain, *INDIAN CONSTITUTIONAL LAW* (8th edn, LexiNexis 2018)

separation of powers. Jeffrey A. Pojanowski's work, Reading Statutes in the Common Law Tradition, published in the Virginia Law Review, contributed to the same.

One of the main journal articles that was pertinent to the analysis was The Loudness of Constitutional Silences by advocate Kritika that appeared in the GNLU Law Review. The said article was particularly comprehensive in its take on the constitutional silences, how they can be addressed and remedied, whether there were precedents in reading new meanings into constitutional provisions, and so on. Further aided by the Supreme Court's ruling, Bhanumati and Ors. v State of U.P., the doctrine of constitutional silence was interpreted more. In addition to these, other resources were utilised by this writer to fill the gaps based on such a priori research.

THE RATIONALE OF THE PRESIDENTIAL REFERENCE AND THE COMPLEXITIES ASSOCIATED WITH TIME LIMITS

The apex court considered the arguments of the petitioner in Re: Assent, Withholding and Reservation of Bills by the Governor and President to hold that it does not stand to reason that an interpretation of the phrase 'as soon as possible' is to fix time limits on assent to Bills. While rejecting the reliance on Chapter V of the Sarkaria Commission's report on Governor's assent to Bills and holding that fixing time limits on the Speaker to address disqualification petitions under the Tenth Schedule in the Keisham Meghachandra case[9] is not akin to fixing time limits on gubernatorial functions, the Court said there was no intention on the part of the Constituent Assembly to have time limits for providing assent to Bills evident from Dr B.R. Ambedkar's amendment to remove the time limit of 'six weeks' from Draft Article 91.[10]

Further, the respondents relied on Purushothaman Nambudiri v State of Kerala, from which the Court deduced that there was a distinction between the Constitution placing time limits in certain provisions as opposed to what is the written rule in Articles 200 and 201, and that the prescription of time limits is therefore erroneous.

A formalistic deduction of the Court runs counter to the federal aspirations of the nation, especially when federalism is a feature of the basic structure doctrine.[11] When the court's

[9] *Keisham Meghachandra Singh v The Honble Speaker Manipur Legislative Assembly & Ors* (2020) SCC Online SC 55
[10] *In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India* (2025) SCC OnLine SC 2501
[11] *S R Bommai and Ors Etc Etc v Union of India and Ors Etc Etc* (1994) 3 SCC 1

reasoning is inimical to State autonomy (state autonomy was also in the minds of the Constitution makers who desired the Governor's powers to be exercised only on the aid and advice of the Council of Ministers of respective States, as testified by the fact that the discretionary powers of the Governor in Draft Articles 175 and 176 were removed), it is imperative to find a way out of the fix against the arbitrariness that could be exercised through the office of the Governor against the aspirations of States, and for that reason, a study of the evolution of the doctrine of constitutional silence in the common law system becomes necessary.

THE COMMON LAW SYSTEM AND THE MAKING OF LAW

Former Chief Justice of India P.N. Bhagwati, years after the Kesavanda Bharati case, delivered a lecture on judicial activism and public interest litigation. While his address was focused on upholding fundamental rights and positive empowerment of rights by the judiciary, Justice Bhagwati praised the judicial activism of the en banc Bench of the Supreme Court in limiting the power of the Parliament under Article 368 of the Constitution to make constitutional amendments.[12] This is starkly relevant in a common law system, which does not function with strict conformity to statutory legislation. Justice Bhagwati quotes Lord Reid: 'There was a time when it was thought almost indecent to suggest that Judges make law—they only declare it. Those with a taste for fairy tales seem to have thought that in some Aladdin's cave there is hidden the Common Law in all its splendour and that on a judge's appointment there descends on him knowledge of the magic words Open Sesame. Bad decisions are made when the judge has muddled the password, and the wrong door opens. But we do not believe in fairy tales anymore.' The Basic Structure doctrine was, hence, a creation of the judiciary.[13]

That is how the common law system works. As Jeffrey Pojanowski points out, the common law's reasoning is discursive. Its artificial reasoning possesses 'local coherence' and 'pragmatic preferences' and not only focuses on legal principles that enable it to see law from the community's shared reason for social problems.[14] The studies of Thomas Lundmark on the common and civil law systems are also illustrative in this regard. The common law

[12] P N Bhagwati, 'Judicial Activism and Public Interest Litigation' (1985) 23 Columbia Journal of Transnational Law 561
[13] *Ibid*
[14] Jeffrey A Pojanowski, 'Reading Statutes in the Common Law Tradition' (2015) 101 Virginia Law Review

system places reliance on making law, in the sense that it is legislative as well as judicial. The latter meaning implies that judges are forced to decide cases and make law due to legal lacunae, in the absence of an applicable legislative rule, despite the existence of the doctrine of separation of powers.[15]

It has to be understood that the fixing of time limits on the Governor's position to assent to Bills has not been sufficiently answered by the formalistic reasoning that the law does not place time limits on the constitutional office when the Constituent Assembly Debates point towards the other way that he is bound by the aid and advice of the Council of Ministers in the exercise of his functions. This is why the legal lacunae had not been filled, and the Division Bench of the Supreme Court had to fix time limits in the April 2025 judgement.

This is not unseen, as the common law system in India has previously read various meanings into the Constitution. Particularly in focus is Article 21, which provides the fundamental right to life and personal liberty except according to procedure established by law.[16] It was Maneka Gandhi v Union of India that it was held that detention of a person must be just, fair and reasonable, and must not be arbitrary. Due process must be protected despite the constitutional rule being 'procedure established by law'.[17] Fali S. Nariman brings out the post-1978 jurisprudence of the Indian legal system with respect to Article 21: the fundamental right also includes the right to speedy trail (Hussainara Khatoon v State of Bihar), the right to be provided a copy of the judgement to a prisoner (M.H. Hoskot v State of Maharashtra), the right of a prisoners to move, mingle and talk with others (Sunil Batra v Delhi Admn.), or the right to livelihood (Olga Tellis v Bombay Municipal Corporation).[18] It is unreasonable to assume that the common law system in India cannot read more meanings into the Constitution to protect its Basic Structure. In this regard, the common law system in India has provided the 'doctrine of constitutional silence', which is relevant in our discussion on the fixing of time limits on the office of the Governor by the judiciary.

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[15] Thomas Lundmark, *CHARTING THE DIVIDE BETWEEN COMMON AND CIVIL LAW* (OUP USA 2012)
[16] Constitution of India 1950, art 21
[17] *Maneka Gandhi v Union of India* (1978) 1 SCC 248
[18] Fali S Nariman, 'Fifty Years of Human Rights Protection in India: The Record of 50 Years of Constitutional Practice' (2000) 12(1) National Law School of India Review <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1155&context=nlsir> accessed 20 December 2025

THE DOCTRINE OF CONSTITUTIONAL SILENCE

The Indian judiciary has interpreted legal lacunae with the doctrine of constitutional silences. Despite being the longest written Constitution in the world with 395 Articles, the Constitution of India still consists of grey areas. The 'loudness' of these constitutional silences has been taken note of by many studies, including Laurence Claus' Enumeration and the Silences of Constitutional Federalism concerning the ambiguities in enumerated powers, which results in an implied rights doctrine, that is, without express constitutional provisions, rights and freedoms can be protected by refusing the government's competence.[19]

This is pertinent to the debate on the Governor's competence to give assent to Bills. The doctrine of constitutional silence has also evolved in Bhanumati and Ors. v State of U.P., which is an interesting precedent to that effect. In this particular case, an amendment to the local self-government laws of Uttar Pradesh that predated the 73rd and 74th constitutional amendments came into question. The said amendment provided for a no-confidence motion among members of zilla parishads and panchayats against the Chairperson. It was argued by the appellants that this led to instability as it dilutes the principle of stability and continuity. The crux of the arguments of the appellants was that Part IX of the Indian Constitution has no mention of a no-confidence motion at the local level. In interpreting Part IX, the Court observed that our constitutional jurisprudence emerged out of the doctrine of silences (including the basic structure doctrine that emanated from the silence of Article 368). The Justices quoted Michael Foley's The Silence of Constitutions that in a Constitution, 'abeyances are valuable, therefore, not despite their obscurity but because of it. They are significant for the attitudes and approaches to the Constitution that they evoke, rather than the content and substance of their structure.'[20] Essentially, the disputed legislation was upheld because the Court read into Part IX the no-confidence motion as an important feature of this democratic republic. The verdict not merely upheld a legislation, but read meanings into Part IX to include no-confidence motions as part of the powers and functions enumerated for panchayats and zilla parishads. Therefore, amidst the arbitrariness occurring against the basic structure of federalism, it becomes necessary for the common law system to

[19] Kritika, 'THE LOUDNESS OF CONSTITUTIONAL SILENCES' (2022) 8(2) The GNLU Law Review <https://gnlu.ac.in//Content/the-gnlu-law-review/pdf/volume-8-issue-2/10_kritika.pdf> accessed 20 December 2025

[20] *Bhanumati Etc Etc v State of Uttar Pradesh through Its Principal Secretary & Ors* (2010) 12 SCC 1

recognise the constitutional silence of Articles 200 and 201 and read meanings into them accordingly.

CONCLUSION

If the Supreme Court in the presidential reference reasoned that Articles 200 and 201 cannot be construed to fix time limits on the Governor and the President to give assent to Bills passed by the State legislature despite the persuasive arguments of the counsel representing the States by depending on previous judgements that have fixed time limits on constitutional positions like that of the Speaker, an alternative remedy is available in the Indian common law system.

The Supreme Court has to recognize the applicability of the doctrine of constitutional silence in this case and thus, interpreting new meanings into the Constitution and fixing time limits for the Governor to give assent to Bills does not derogate from the principles underlying our legal system, which itself recognizes functions that do not fall strictly under any one organ of the government thereby allowing the doctrine of separation of powers to remain unaffected. Especially when federalism is a basic structure of the Constitution, such an act by the judiciary in reading time limits into Articles 200 and 201 is legally sound.