

**Item 7 of the Agenda
Secretaries' Conference, 2011, Jaipur**

[By: Mohammad Ashraf Mir,
Secretary Legislative Council,
Jammu & Kashmir.]

Whether State Legislature can withdraw a Bill which has been reserved by the Governor for the consideration of the President.

Views of the delegates have been sought on two issues namely whether the State Legislature can withdraw a Bill which has been passed by the Legislature and reserved by the Governor for the consideration of the President and if not, whether such a power should be vested in the State Legislature/State Government. Also, should such a power be incorporated in the Constitution or within the Rules of Procedure and Conduct of Business of the State Legislature?

The first question that arises here is: can the State Legislature withdraw a Bill after it is presented to Governor or reserved by him for consideration of President?

Apart from article 200 of the Constitution which empowers the Governor of a State to reserve any Bill passed by the Legislature for consideration of the President, there are other provisions in the Constitution like articles 31A, 31C, 254 (2), 288, 304(b) and 360 which make it mandatory for the State laws to be reserved for the consideration of the President and receipt of his assent before such laws could become effective.

Once a Bill is passed by the State Legislature and presented to the Governor for his assent or reserved by the Governor for consideration of the President, the role and function of the Legislature in regard to the passage of that Bill is over. Thereafter, the Bill becomes subject to the

provisions of article 200 and article 201 of the Constitution. In terms of article 200, the Governor has the option either to assent the Bill or withhold his assent therefrom or reserve the Bill for consideration of the President. Governor can also return a Bill, other than a Money Bill, to the Legislature for re-consideration. Once the Bill is reserved by him for consideration of the President, the President has the option of either assenting the Bill or withholding his assent therefrom. The Supreme Court of India has made it crystal clear in case P.Nambudiri Vs State of Kerala - AIR -1962-SC-694 that there is nothing in the Constitution to direct that the assent of the Governor or the President must be given during the life term of the Assembly which passed the Bill and, therefore, the dissolution of the Legislative Assembly does not prevent the exercise of powers of the Governor or President under articles 200 and 201 with respect to Bills presented for assent or reserved for the consideration prior to the dissolution. The Apex Court also clarified that Constitution does not impose any time limit within which the Governor or the President should make a declaration for giving or refusing the assent and that there is no means to compel him to make a declaration if he simply keeps a bill pending before him indefinitely.

In effect, the Union executive, through the President or the Governor, enjoys a veto Power over the State Legislation. There is no provision in the Constitution which enables or empowers a State Legislature to withdraw a Bill once it has been passed and presented to the Governor for his assent or reserved for the consideration of the President. Therefore, a State Legislature can not withdraw a Bill after it has been passed and reserved for the consideration of the President.

Given the fact that a State Legislature does not have the power of withdrawing a Bill after it is presented to the Governor, the next question that arises is : should the State Legislatures be empowered to withdraw a Bill and if so, should such a power be incorporated in the Constitution or within the Rules of Procedure and Conduct of Business of the State Legislature?

The Rules of Procedure and Conduct of Business of a Legislature regulate the procedure and conduct of its business in the House. These rules cannot be invoked, or taken help of, for exercise of any action or power outside the House. Therefore, these rules do not and cannot provide for any remedy with respect to withdrawal of a Bill after its being passed by the Legislature and presentation to the Governor for his assent or reservation of the Bill for the consideration of the President. Even the Rules of Procedure and Conduct of Business in the House permit withdrawal of a Bill during any stage of its pendency in the House. A Bill is said to be pending in the House only when a Bill is introduced in the House and not disposed of, when a Bill is transmitted to the Upper House in case of bicameral Legislature and returned by that House with amendments or recommendations and laid on the Table of the Lower House, when a Bill originating in Upper House and transmitted to the Lower House and is laid on the Table and when a Bill is returned by the Governor or the President to the House with a message. These Rules do not provide for withdrawal of a Bill after it is passed and presented to the Governor.

Power to withdraw a Bill after having been passed by the State Legislature and presented to the State Governor for his assent or reserved for the consideration of the President can only be provided for, and

incorporated, in the Constitution. However, such a measure, even if provided, would not serve any purpose in view of the veto power enjoyed by the Governors and the President in withholding the assent to the Bills for indefinite period and hence is not desirable. The demands for empowering the State Legislature to withdraw a Bill grow thicker whenever the discretion under articles 200 and 201 is arbitrarily exercised by withholding the assent to the Bills or keeping them pending for indefinite period of time without disclosing the grounds therefor. Even if a provision for permitting withdrawal of Bills is incorporated in the Constitution, the arbitrary use of discretion under articles 200 and 201 would deny the Bills, passed by the State Legislature on reconsideration after such withdrawal, the luxury of becoming a law.

Being the provisions of the Constitution as they are, there is no doubt that withholding of assent or keeping the Bills pending for indefinite period by the Governor or the President causes un-necessary and avoidable strains and irritation in Centre-State relations. Therefore, a serious thought is required to be given for devising ways and means to prevent arbitrary use of discretion under articles 200 and 201. In order to protect and strengthen the federal structure of the Constitution, these two provisions could be amended so as to provide enough safeguards against arbitrary use of discretion, like :-

- i. restricting the discretion of Governor under article 200 to seek Presidential intervention only in specific circumstances such as those which are in clear violation of fundamental rights or patent un-constitutionality .

- ii. a time limit be fixed within which the Governor and the President should make a declaration for giving or refusing the assent to the Bills.
- iii. in case the Governor or the President proposes to withhold his assent to a Bill, it should be made mandatory for him to seek the views of the State Government with respect to the grounds on which the assent is proposed to be withheld and consideration of the State Government's views before taking a final decision thereon.

For the sake of the record, it is pointed out here that articles 200 and 201 do not apply to the State of Jammu and Kashmir. Under the corresponding provisions of the Constitutions of Jammu and Kashmir, the State Governor does not have the option of reserving the Bills for consideration of the President. Also articles 31C and 360 are not applicable to the State while article 31A, as applicable to the State, does not require reservation of the State law for consideration of the President. However, certain provisions of the Constitution as applicable to the State make it mandatory for the State laws to become effective to receive the assent of the President after having been reserved for his consideration. Four Bills passed by the State Legislature and having been reserved for the assent of the President are at present pending for his assent and one of such Bills seeking amendment of the provisions of the State Constitution relating to the composition of the Legislative council is pending since 1998.
