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Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in



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PRESIDENTIAL VETO OVER LEGISLATION

Author - Hardik Gupta, NMIMS

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ABSTRACT

The paper deals with the analysis of one of the discretionary powers of the President of India who is the nominal head of the government and the highest constitutional body in India. The power of vetoing over a bill passed by the legislature is dealt in this paper. Along with the discussion of this discretionary power, various types of veto powers are also studied in this paper and are compared to the veto powers with the Heads of different states. The comparison done gives a deeper and contextual understanding of the subject and is thus done in paper.

The Presidential veto is not only available in matters of union legislature but are also available in the matters of state legislature if a particular bill has been kept for consideration of the President by Governor of that state and thus, an analysis of this power is also done in this paper along with the politics that is played behind it.

INTRODUCTION

The President of India being the constitutional head, the head of the union executive and also the supreme commander of the armed forces in India, seems to have all the powers which a sovereign head must have in his hand but what is the use of such a power if you need a green signal for their usage every time from the ministers who are lower in hierarchy than you?

Article 74 of the constitution of India vests the duty on the council of ministers headed by Prime Minister to aid and advice the President to

perform his executive functions being the head of the executive and act in accordance to the aid and advice given by the former. It is also judicially established that the President is only a constitutional head and not the real executive who can act only on the advice of the council of ministers thus, making him to be on a standby mode waiting for the green signal from the real executive to act. In other words, the power of the President is the powers of his ministers and thus he has very limited discretionary powers. One such limited discretionary power is the Veto power of the President.

The President of India is empowered with the implied veto power according to Article III of the Constitution which states that a bill passed by the union legislature needs the President's assent for becoming a law, without which the bill cannot have a legal effect. This veto power includes the power to withhold his assent on the bill or sending back the bill for reconsideration to the legislature. When we move back in the history, we see that the British Crown too had such powers including the power to reject a bill but the power has been curtailed since 1700 as a consequence of ministerial responsibilities. In context of the Indian President the veto powers available are of three types Absolute, Pocket and Suspensive veto power. The absolute veto power is power to which various conditions are applied without which it cannot be used, the suspensive veto power is suspended as soon as it is used i.e., when the President sends back a bill back to the legislature for reconsideration, he loses his power to reject it if it comes again after passing from both the houses and this time it becomes obligatory for him to give his assent to the bill. The only think which a President can do in case he does not want a bill to become an act is to use his pocket veto by sitting on the bill by neither assenting nor rejecting the bill.

The veto power thus gives the President an upper hand over the legislature as to give him some control over the legislative action and keep a check on the legislature and prevent

undesirable and unconstitutional legislations (besides the provision for judicial review by court). In the Indian parliamentary system, we see this happening rarely as the President so elected is usually a candidate supported by the ruling party as they have the mandate of the lower house and confidence of alliances which makes unusual for a President from same background to reject a bill introduced by government of his own party but still is a power of which importance has been shown by former Presidents in various contexts which will be discussed in the latter parts of the paper.

❖ VETO POWER OF THE PRESIDENT OF INDIA

The President of India has 3 types of veto powers available to him in the matters of union legislature:

I. Absolute veto power:

The absolute veto power as the name subject is a declaration of the President that he will withhold his assent on the bill passed by the legislature, when the President uses this veto power the bill never sees the day light as a valid law or act and thus dies. This bill never opposes a government bill except in case when the government is shaky and the President is of the view that the government may lose the confidence of the house at any time and thus with holds the bill and on the advice of the new cabinet can either assent to it or reject it.

The absolute veto cannot be in case of every bill, it can be used in only two conditions:

1. Private member's bill: When a bill is introduced by a private member and has somehow managed to pass from both the houses, in such a case the President can either assent or reject the bill using his absolute veto power. So far in the independent Indian history the President has never used absolute veto power in case of a private members bill.

2. Government bill: "When the cabinet resigns before President could give his assent to the bill. The new cabinet may advise the President to

not give his assent to the bill passed by the old cabinet."¹⁹³⁷ This can be used when the President opines that the ministry could fall any time and thus, it is preferable to hold the bill till the new cabinet takes over and on that cabinet's advice absolute veto can be used to reject the bill.

There has been a huge controversy over this power known as the Nehru Prasad tussle over the Hindu family law legislation. Dr. Rajendra Prasad the then President was of the opinion that Indians should be given religious freedom in their personal matters but his this ideology collided with that of Nehru who wanted to safeguard the minority's rights against the Hindu majority and thus wanted to make a code for Hindu personal law which was expressly opposed by Prasad as he wrote that, "he will personally take charge of the hearings in the house related to the issue and directed that he won't sign it even if house passes the bill."¹⁹³⁸

Through which he implied that he would use absolute veto over the legislation, to which Nehru gave a very mature and blunt advice to Prasad "not to over-step the limits of his office" which was supported by Constitutional experts, who, assured him that the country's President is bound to obey the Parliament. Thus, the bill was finally passed in 1955 and became an act thereafter.

So far there have been two stances only where the absolute veto power was used by the President, first in the case of the PEPSU Appropriation Bill, 1954, which was straight out rejected by Dr. Rajendra Prasad, "as it was passed when the President rule had been imposed in the state of PEPSU (Patiala and East Punjab States Union).

The second instance had been in 1991, President R.Venkataraman used it for Salary, Amendments and Pension of Members of Parliament (Amendment) Bill as it was passed

¹⁹³⁷ BYJUS. 2021. *Veto Power - Absolute, Suspensive and Pocket Veto Powers of the President - Indian Polity.*

¹⁹³⁸India Today. 2017. *Disagreement between Rajendra Prasad and Nehru over Hindu code bills.* [online]

one day before the Lok Sabha was dissolved and introduced without seeking prior recommendation from the President of India.¹⁹³⁹

II. Suspensive Veto power:

The suspensive veto power is the power of President given in Article III to send back a bill (except for money and constitutional amendment bill) to the legislature for reconsideration with a message, in such a case the houses are bound to reconsider the bill and if the bill is again passed by a simple majority either with or without amendments, the President is bound to give it assent this time as a matter of obligation and not discretion. The power is similar to that of the power if the French President who only as the suspensive veto power. In case of the USA where the Presidential form of government is used, in such a case to give the President some sought of authority over the congress (legislature) **Qualified Veto** power is used rather than Suspensive Veto power, in the former when the US. President sends back a bill for reconsideration with a message within 10 days of receipt of the bill and congress still in session, in such a case the bill goes first in the house where the bill originally originated where it has to be passed by a majority of 2/3rd membership of the house and then the same is followed in the other house as well, to override the effect of Presidential veto.

This veto power is more powerful than the Indian President's power of veto as it requires a 2/3rd majority of house to agree on a bill again which is not an easy task and thus, makes it difficult for congress to pass it without the consideration of President's proposed amendments.

So far, 38 of 45 Presidents have exercised their veto authority on a total of 2,576 occasions

since 1789, of that number, 1,510 (58.6%) were qualified (regular) vetoes.¹⁹⁴⁰

So far as the Indian conditions are concerned the suspensive veto has been used only once by former President Dr. APJ Abdul Kalam during his office in 2006 on the Prevention of disqualification act, 1959, as it was termed as unconstitutional and unethical as it was made in the favor of MPs with criminal record and thus, to prevent it the President showed that he is not the rubber stamp of the government who would sign the act and thus sent it back for reconsideration but which eventually became an act as it was once again passed by the parliament.

III. Pocket Veto:

The third and the last form of Presidential veto with the Indian President is the pocket veto which in actual terms gives some authority to the President in matters of legislation. The Article III of the COI does not prescribe any specific time limit for the President to give his assent on the legislation and thus is used by President's who do not wish to give the bill passed by the parliament the form of an act. The President may not expressly use this power but when he neither assents nor rejects and even does not send back the bill for reconsideration to the legislature and lets the bill to be kept on his desk w/o taking any act; in such circumstances it is considered that the President has used pocket veto. The pocket veto is not available in the case of constitutional amendment bill.

The veto power is different from the USA President where there is a time limit set for the President for taking action on a bill, i.e., he has to either assent or send back the bill to congress when in session for reconsideration within 10 days of the receipt and in case where no action is taken for 10 days on the bill and congress is still in session, then the bill becomes an act automatically without the Presidential assent.

¹⁹³⁹ Civildaily.com. 2019. *Veto Powers of the President of India – Comprehensive Notes – Civildaily*. [online]

¹⁹⁴⁰ 2019. *Regular Vetoes and Pocket Vetoes: In Brief*. [online]

But the pocket veto of the President is activated for use in the last few days of congress session where in before the President could take any action on the bill with in the 10-day time limit if the congress adjourns *sine die*, the bill falls and the pocket veto is used by the President thus preventing it to be implemented.

Pocket veto is more or less an implied or uncodified power of the President to act on his own will when he feels that the bill does not deserves to be made a law and is made out of male fide of the parliament in such a conditions he does not wish to send it back for consideration as it will come back again to him and this time it will make it obligatory for him to sign on the legislation and thus he uses this veto to prevent its enactment, which was done by President Zail singh, Singh used a pocket veto to refuse assent to the "Post Office (Amendment) Bill" in 1986 to show his opposition to the bill. The bill was later withdrawn by the V. P. Singh Government in 1990.¹⁹⁴¹

❖ DISALLOWANCE ON STATE LEGISLATION

We saw the 3 types of veto power which the President of India has but the there is also a 4th type of veto power available to him which is available only on State legislations which are reserved for his consideration. The article 200 of the Constitution of India empowers a Governor of state to reserve a bill for President's consideration if he is of such view that the bill needs to be considered by the President and thus sends it to him for his consideration after which the Governor loses his authority and power to assent that particular bill and shifts it to the President.

The article while listing he options available with the Governor on a state legislation presented to him lists this option as a 4th option available to him. This option is a discretionary power of the Governor and he does not require any advice from the cabinet for its usage.

Though it is a discretionary power of the Governor in ordinary circumstances but it is mandatory for him to do so in following scenarios:

"1. Which depart from the powers of the High Court so as to endanger the position of the Court in a manner contrary to that the Constitution has designed for these courts.

Second Proviso to Article 200:

2. Which relate to imposition of taxes on water or electricity in certain cases, and attract the provisions of Clause (2) of Article 288.

3. Which fall within clause (4) (a) (ii) of Article 360, during a Financial Emergency.

(i) To secure immunity from operation of Articles 14 and 19. These are Bills for- (a) acquisition of estates etc. [First Proviso to Article 31A (I)] (b) giving effect to Directive Principles of State Policy (Proviso to Article 31C).

(ii) A Bill relating to a subject enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or an existing law, by securing President's assent in terms of Article 254(2).

(iii) Legislation imposing restrictions on trade and commerce requiring Presidential sanction under the Proviso to Article 304(b) read with Article 255."¹⁹⁴²

When the bill is presented to the President for consideration he can either declare assent to it or withhold it or send it back to the state for reconsideration of the bill (except for money bill) and even if a such bill again comes back again after being passed from the state legislature (which has to be done within 6 months of returning) with or without amendments it will still not bind the President to give his assent which makes it different power from the power in union legislature's matter and thus provides the President an absolute control over the

¹⁹⁴¹Bhattacharjya, S., 2006. *Show Of Dissent*. [online] Web.archive.org.

¹⁹⁴² Verma, J., n.d. *Legislative Powers of the President of India*. [online] Jatinverma.org.

states. This veto can also be understood as the absolute veto power of the President on state legislations.

Even the Government of India act, 1935 gave the Crown such a power in which a bill assented by a Governor could be disallowed by the queen, which is the same system followed in Canada where the bill assented by the Governor on provincial legislature are subject to disallowance of the Governor General, who is more or less the agent or representative of the Crown.¹⁹⁴³

Article 201 was made within aim to prevent the state from making any law on the matters of union legislature or making laws which may affect the union's authority or control as is evident from the Sarkaria Commission's observations that, "the scheme of the Constitution and the various Articles, providing for reservation of State legislations for the consideration and assent of the President are intended to sub serve the broad purpose of co-operative federalism in the realm of Union-State legislative relations. They are designed to make our system strong, viable, effective and responsive to the challenges of a changing social order."¹⁹⁴⁴

But we know that it has the capacity to be misused, as the Governor is not more than an agent of the union executive in the state who is appointed by the President on the advice of the council and acts as a bridge between the state and center, thus it is possible in such a unitary form that the Governor may keep bills for consideration of President which do not favor the union or collide with union's ideology and thus, restricts the independence of the state legislature to some level as they need to take care of this issue too while drafting a legislation.

So far there have been many times in the history where the Governor had kept certain bills for consideration of the President some of

them being the Kerala Education Bill, 1957; Kerala Agrarian Bill, 1957; Madhya Pradesh Panchayat Bill, 1961; etc.

❖ CONCLUSION

The President the supreme commander and head of the union executive is also a part of the legislature in which he plays the role of assenting or rejecting the bill. The bill become act or law only after they are signed by the President and thus the constitution provides him with the authority of assenting, rejecting or sending back the bill to the parliament which is also known as the veto power of the President which is an essential and discretionary power in his hands. Though this power is very rarely seen to be used when the President and the government belong to the same background in which the President is not more than a rubber stamp of the government. The bigger and wider scope of veto power is seen when the President has a different ideology than that of the government and thus in such cases, we see the veto power being used by the President which has been seen in the past many times. The veto power of the President of Indian can be said to be a mixture of veto powers Presidents of France, Canada and Crown of Britain. The absolute power of the President is seen very less in the matters of union legislation but is maximum in case of state legislations in which he enjoys the true meaning of veto power.

In other words, it can be concluded that the President if he wants to stop a bill to become law, he should use pocket veto as the other 2 categories are at risk of either being overturn or bound by cabinet advice, which is not seen in the case of US President's power where a bigger strength of majority is required to overturn the Presidential Veto.

REFERENCES:

BOOKS:

1. Shukla, V., 2021. *V.N. Shukla's Constitution of India*.

¹⁹⁴³ Shukla, V., 2021. *V.N. Shukla's Constitution of India*.

¹⁹⁴⁴ Verma, J., n.d. *Legislative Powers of the President of India*. [online] Jatinderverma.org.

2. BASU, D., 2021. *Introduction to the Constitution of India*.

ARTICLES:

1. 2019. Regular Vetoes and Pocket Vetoes: In Brief. [online] Available at: <<https://crsreports.congress.gov/product/pdf/RS/RS22188>>.
2. Bhattacharjya, S., 2006. Show Of Dissent. [online] Web.archive.org. Available at: <<https://web.archive.org/web/20130326055411/http://archives.digitaltoday.in/Indiatoday/20060612/nation5.html>>.
3. BYJUS. 2021. Veto Power - Absolute, Suspensive and Pocket Veto Powers of the President - Indian Polity. [online] Available at: <<https://byjus.com/free-ias-prep/veto-power>>.
4. Civildaily.com. 2019. Veto Powers of the President of India - Comprehensive Notes - Civildaily. [online] Available at: <<https://www.civildaily.com/veto-powers-of-the-President-of-India-comprehensive-notes/>>.
5. India Today. 2017. Disagreement between Rajendra Prasad and Nehru over Hindu code bills. [online] Available at: <<https://www.indiatoday.in/fyi/story/rajendra-prasad-jawaharlal-nehru-disagreement-hindu-bill-codes-uniform-civil-code-1023473-2017-07-10>>.
6. Verma, J., n.d. Legislative Powers of the President of India. [online] Jatinverma.org. Available at: <https://www.jatinverma.org/uploads/downloads/Legislative_Power_of_President.pdf>.