



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Presidential Assent in India: Unravelling the Constitutional Tapestry of Executive Authority and Legislative Dynamics

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*Received* 28 August 2024; *Accepted* 30 September 2024; *Published* 03 October 2024

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*This article examines the complex connection between executive authority and parliamentary autonomy in India, focussing on the Presidential Assent procedure. The research, guided by Article 111 of the Indian Constitution, looks at the method for presidential bill approval, focussing on the grounds on which the federal government scrutinises state laws. The study examines constitutional provisions, legal precedents, and case law to assess the impact of such scrutiny on state autonomy. It also investigates whether the centre's conditional approvals impair the legislative independence of states or serve as vital protections for maintaining constitutional balance. The paper sheds light on the consequences of presidential veto power and raises the question of whether it is a weapon for influencing state policy or a means of federal monitoring. In addition, the paper charts the historical development of the Presidential Assent procedure, providing insight into its origins and current applicability. In the end, this research contributes to a deeper comprehension of India's federal structure and constitutional dynamics by providing important insights into the interactions between executive authority and the legislative process.*

**Keywords:** *presidential assent, autonomy, veto power, constitutional, autonomy.*

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## INTRODUCTION

This thorough study explores the complex relationship between the President's assent and the legislative procedure established in the Indian Constitution. The paper clarifies the complicated position of the President under India's parliamentary system by closely analysing the constitutional framework of executive authority and the dynamic interaction between the President and the legislature. One of the main pillars of the nation's government is the President's participation in the legislative process, which is demonstrated by his or her signature on laws passed by both chambers of Parliament. The Indian Constitution was drafted and ratified on January 26, 1950, which is when this constitutional practice first emerged. Although the Westminster model influenced the founders, they were wise enough to see that some modifications were required to bring it into line with the particular circumstances of India. It becomes clear that the presidential assent procedure is a tactical tool for maintaining the fragile balance of power between the legislative and executive departments. The assent procedure is the last stage before a bill becomes law, and the President of India plays a crucial role in the last phases of legislation. This power, which is contained inside the framework of the constitution, is an example of the careful balancing that the drafters did to guarantee a fair distribution of power. Essentially, the goal of this research is to disentangle the many facets of the President's asserting power, providing a sophisticated view of both its historical roots and its current importance in maintaining the balance of power within the Indian democratic system.

The final step in the legislative process before a bill becomes law is the President's assent, which makes it a crucial constitutional power. However, India's political history and the problems surrounding the president's assent to legislation have been the focus of much discussion and analysis, exposing the complex power relations ingrained in the country's democratic system. The President of India has the power to ratify laws under Article 111<sup>1</sup> of the Constitution. Once a bill receives approval from both chambers of Parliament, the Rajya Sabha (the Council of States) and the Lok Sabha (the House of the People), this constitutional clause sets in motion a

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<sup>1</sup> Constitution of India 1950, art 111

procedural sequence. The law is subsequently sent to the President for assent after receiving parliamentary approval.

There is a big warning while handling non-monetary bills. Article 111 gives the President the authority to use judgment in these situations. They can decide to add more scrutiny to the legislative process by returning the bill to Parliament with a request for reconsideration. As an alternative, the President may decide to withhold their approval to control how the proposed legislation turns out in the end. The Indian Constitution's authors envisioned a delicate balance between the legislative and executive departments, which is highlighted by this constitutional system. The aforementioned law bestows substantial authority upon the President and establishes a sophisticated framework in which the Head of State assumes a crucial role in moulding the legislative landscape of the nation.

In the past, the President's approval was usually seen as a formality, and he or she would normally follow the Council of Ministers' recommendations. However, occasionally, presidents have used their discretionary powers, which has sparked heated debates and concerns about their place in the legislative process.

The President's power to decline to sign legislation is a major source of disagreement, especially when concerns are raised regarding the law's validity or possible ramifications. Concerns about the President's authority to act without first contacting the Council of Ministers have been raised by this discussion, which has led to a larger discussion about the President's ideal role in the democratic process. Some contend that the President ought to have some degree of independent decision-making authority to serve as a check and balance on the legislative process.

On the other hand, some support a more ceremonial role and emphasise working in tandem with the Council of Ministers. The President's power to return non-money bills for review is another point of contention. This authority adds another level of scrutiny, which might slow down the legislative process and increase hostility between the legislative and executive branches. To ensure the integrity and effectiveness of the democratic system, the primary difficulty is finding a balance between giving the President decision-making ability and protecting against potential misuse or abuse of this power.

Analysing the Indian presidential assent to state bills reveals a federally inspired constitutional framework that clearly defines the roles of the President and Governors. The governor of a state is authorised by Article 200<sup>2</sup> of the Indian Constitution to ratify laws that have been approved by the state legislature. Nevertheless, Article 201<sup>3</sup> adds an important component, stating that the President has the authority to consent, refuse consent, or direct the Governor to re-evaluate legislation that is held for the President's consideration. This complex relationship between the state government and the President, especially when it comes to questions of state autonomy and federalism, frequently sparks controversy.

Comparable to the central doctrinal examination, this aspect of the investigation examines historical practices, state-specific case law, and constitutional requirements. Its scope is expanded by comparative analysis to include variations in state bill assent processes among different states, providing insights into the complex dynamics of federalism within India's constitutional framework. This research adds to a thorough grasp of the discussions surrounding presidential assent to state legislation by clarifying the relationships between the federal and state levels and their consequences for state legislative autonomy.

The main goal of this study is to improve our understanding of the structural framework that the Indian Constitution defines. This framework has a significant impact on the dynamics of legislative and executive power in the country. The thorough examination of presidential assent, a crucial component of the constitutional fabric, is at the core of our investigation. This study aims to disentangle the complex web of considerations underlying the President's assenting authority by exploring case law, legal literature, and constitutional requirements. Tracing the historical development of this constitutional authority is a crucial component of the investigation. This historical perspective not only sheds light on the origins of the presidential assent procedure but also lays the groundwork for appreciating its relevance today. By identifying the fundamental principles that direct the President's decision-making at this pivotal juncture in the legislative process, the aim is to provide light on the contemporary significance of presidential assent.

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<sup>2</sup> Constitution of India 1950, art 200

<sup>3</sup> Constitution of India 1950, art 201

Additionally, this study aims to provide a comprehensive understanding of the complex link between the President's authoritative role through the assenting power and the legislative process as outlined in the Indian Constitution<sup>4</sup>. Through a comprehensive examination, the research endeavours to unravel the intricacies entailed in this association, illuminating the nuanced equilibrium of authority between the executive and legislative arms. Furthermore, the goal of this research is to offer a thorough comprehension of the intricate relationship between the legislative procedure as delineated in the Indian Constitution and the President's authoritative duty through the assenting power. Using an extensive analysis, the study attempts to decipher the complexities involved in this relationship, shedding light on the complex balance of power between the legislative and executive branches.

The article also seeks to elucidate the constitutional precedents and tenets that direct the President's decision-making process during the assent procedure. This research adds to a deeper knowledge of the constitutional framework that controls legislative dynamics and executive authority in India through a thorough analysis of legal literature, case law, and constitutional provisions<sup>5</sup>.

## STATEMENT OF PROBLEMS

This comprehensive study sheds light on a number of the intricate connections between the Indian Constitution's legislative process and the president's assent. This research tries to find out the main points of contention and discussion about the President's ability to reject assent and what effect dissenting views have on India's democratic system of government. It delves deep into the issue of how much has India's legislative results and policy choices been impacted by the President's discretionary power when approving bills. It further addresses the issue of when the President uses his power to send non-money measures back for reconsideration, what difficulties the legislative process faces, and how this affects the effectiveness of the legislative

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<sup>4</sup> Mark Tushnet, 'The Political Constitution of Emergency Powers: Parliamentary and Presidential Roles in the Indian Constitution' (2007) 3(4) International Journal of Law in Context <<https://doi.org/10.1017/S1744552307004016>> accessed 10 August 2024

<sup>5</sup> Aziz Z Huq, 'Democratic Erosion and the Courts: Comparative Perspectives' (2018) 93(21) New York University Law Review <[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13592&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13592&context=journal_articles)> accessed 10 August 2024

process. These problem statements provide specific areas of focus to go deeper into the complex relationship between the President's assent and the legislative process in India.

## RESEARCH QUESTIONS

**The following questions will be discussed and addressed in this paper:**

1. What is the procedure adopted for the President's assent to the bills?
2. What are the grounds on which the centre scrutinises the state bills before assent is given? Does the centre prescribe conditions subject to which the assent is given? What is the constitutional validity of such conditions? Does the centre, through his power of veto, dictate the policies of the state?
3. Has the operation of the provision for presidential assent affected the legislative autonomy of the state?

## RESEARCH OBJECTIVES

The goal of this study is to clarify the complex link that exists between the Indian Constitution's legislative procedure and the president's assent. This study aims to investigate the assent process in detail, exploring the constitutional framework described in Article 111<sup>6</sup>. The goal of the study is to examine the criteria by which the federal government considers state legislation before ratification, assessing the requirements set forth and the constitutionality of those requirements. Evaluating the presidential assent provision's effect on states' legislative autonomy is a crucial component of the inquiry, especially in light of how much the president's veto power may affect state policy. In addition, the study aims to document the assent procedure's historical growth, providing insight into its development and placing its current importance in context. The study aims to provide a greater knowledge of the constitutional framework guiding legislative dynamics and executive authority in India through a thorough analysis of constitutional precedents, legal literature, and case law. The ultimate goal of this research is to offer a thorough understanding of the President's authoritative role in the Indian

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<sup>6</sup> Constitution of India 1950, art 111

democratic system, as well as insights into the complex balance of power between the legislative and executive branches.

## RESEARCH METHODOLOGY

The present study employs a doctrinal approach to examine the debates surrounding the President of India's discretionary powers in endorsing or rejecting bills, with a particular focus on the constitutional equilibrium between the legislative and executive branches. The research begins with a thorough analysis of pertinent statutes, scholarly works, and legal publications to provide a baseline knowledge of constitutional requirements. Examining the Indian Constitution's Article 111<sup>7</sup> in detail, as well as pertinent case law, aims to identify trends, court rulings, and seminal decisions that have shaped the President's function in the legislative branch. Furthermore, to give a more comprehensive background for the debates in India, a comparative study of comparable mechanisms in other parliamentary systems is being conducted.

The research will also examine how presidential assent norms have historically developed, providing insight into the customs and legal precedents that affect the use of discretionary authority. By combining these data, the study seeks to provide a thorough understanding of the legal and constitutional aspects of presidential assent, advancing a more sophisticated comprehension of the debates and possible reform targets.

## THE PROCEDURE INVOLVED IN PRESIDENTIAL ASSENT

**Part V Article 11:**<sup>8</sup> When a Bill has been passed by the Houses of Parliament, it shall be given to the President, who shall declare either that he assents to the Bill or that he withholds assent from it.

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the

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<sup>7</sup> Constitution of India 1950, art 111

<sup>8</sup> Constitution of India 1950, pt V art 11

desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

**Article 91:**<sup>9</sup> When a Bill has been passed by the Houses of Parliament, it shall be given to the President, who shall declare either that he assents to the Bill or that he withholds assent from it. The President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly.

## STATE BILLS

**Mandatory Provisions:** The Constitution specifies the situations under which a state bill must gain the President's assent to become law. Article 31(3)<sup>10</sup> states that state legislation governing forced acquisition or requisition of property is only legitimate if it has been reserved for the President's assent and approval. This condition guarantees that, while compensation must be given for the property acquired or requisitioned under Article 31(2)<sup>11</sup>, the sufficiency of the compensation cannot be challenged in court. By providing assent, the President may guarantee that governments do not seize private property without compensation and that compensation is delivered by national standards.

Similarly, Article 31A<sup>12</sup> needs the President's assent to certain forms of governmental property purchase laws. These statutes are immune to challenges based on infringement of fundamental rights under Articles 14,<sup>13</sup> 19<sup>14</sup> and 31<sup>15</sup>. The Centre's assessment during the assent stage helps

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<sup>9</sup> Constitution of India 1950, art 91

<sup>10</sup> Constitution of India 1950, art 31(3)

<sup>11</sup> Constitution of India 1950, art 31(2)

<sup>12</sup> Constitution of India 1950, art 31A

<sup>13</sup> Constitution of India 1950, art 14

<sup>14</sup> Constitution of India 1950, art 19

<sup>15</sup> Constitution of India 1950, art 21



to guarantee that state legislation does not include elements that undermine the basic rights to equality before the law and property.

The provision to Article 200<sup>16</sup> compels a state governor to reserve for the President's consideration any law approved by the state legislature that, in the governor's judgment, might have a detrimental effect on the High Court's authority. This clause allows the Centre to maintain the Constitutional standing of the High Court<sup>17</sup>.

Article 254(2)<sup>18</sup>, with the President's assent, authorises state legislation on a concurrent list topic that clashes with an existing central law on the same subject. This clause permits contradictory state legislation to continue in force.

Article 288(2)<sup>19</sup> states that a state statute placing a charge on water or power from an interstate river project requires the President's approval. This assures that states cannot tax water or power from such projects without the President's assent, thus prohibiting measures that may impede the healthy development of interstate rivers.

Article 304(b)<sup>20</sup> allows states to adopt reasonable trade and commerce limitations in the public interest, but it needs the President's prior approval before initiating or pushing such measures or amendments through the state assembly.

During a financial emergency, Article 360<sup>21</sup> allows the central executive power to instruct states to reserve money bills or financial measures for the President's consideration once they have been passed by state legislatures.

In all of these circumstances, state legislation requires the President's approval. If the President vetoes a measure, it will not become law. The legal legality of such state laws is dependent on the President's assent.

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<sup>16</sup> Constitution of India 1950, art 200

<sup>17</sup> *Ibid*

<sup>18</sup> Constitution of India 1950, art 254

<sup>19</sup> Constitution of India 1950, art 288(2)

<sup>20</sup> Constitution of India 1950, art 304B

<sup>21</sup> Constitution of India 1950, art 360

**Permissive Provisions:** Aside from the requirements requiring presidential assent for state bills, Article 200<sup>22</sup> of the Indian Constitution empowers a state governor to reserve a state bill for the President's consideration. Furthermore, Article 201<sup>23</sup> states that when a bill is reserved, the President may either give his assent, withhold it, or, in the case of a non-money bill, direct the governor to submit the bill to the state legislature for reconsideration by the governor's message to the House. There is no time restriction for presidential assent, and the President may veto any measure presented to him without providing reasons for the veto.

Unlike in some other countries, the President has no time constraint to act on a reserved law. The President may veto any law presented to him without providing grounds. This provides the President broad authority in determining whether to adopt or reject a measure.

These regulations are critical for preserving the balance between the national and state administrations in India. They guarantee that critical problems, such as those impacting the judiciary or inter-state relations, receive central attention. However, they raise concerns regarding the level of state autonomy, as the federal government can influence state law through the reservation and assent procedure.

These powers have been rarely used, and the President normally follows the advice of the central government. However, they continue to be key instruments for safeguarding the integrity of India's federal system and the division of power between the centre and the states.

## GROUNDINGS OF CENTRAL SCRUTINY

At the central level, state bills presented for presidential assent are scrutinised on a variety of grounds. This assessment goes beyond just assessing the bill's general legality or the constitutional clause under which it was introduced. Some of the criteria used to examine these bills are:

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<sup>22</sup> Constitution of India 1950, art 200

<sup>23</sup> Constitution of India 1950, art 201

**Compliance with Central Statutory Requirements:** For example, the Mysore Village Offices Abolition Bill 1961<sup>24</sup> sought to eliminate hereditary village officer positions and compensate its holders. However, it was determined that the law required the Union government's authorisation under Section 115(7) of the States Reorganisation Act of 1956.<sup>25</sup> This clause specifies that the terms of employment for state government workers in reorganised states cannot be amended to their disadvantage without prior agreement from the central government. Because village officers are considered state government officials, Mysore sought the central government's approval before eliminating these positions.

**Conformity with Central Government Policies:** Another component of the central examination is determining if state laws are consistent with central government policies in the same sector. For example, in 1961, the Gujarat legislature approved the Bombay Shops and Establishments (Gujarat Extension and Amendment) Bill<sup>26</sup> to standardise rules governing working conditions in Gujarat's shops and commercial establishments. However, following scrutiny, it was discovered that several parts of the state measure did not correspond to those of a model bill created by the Union administration. In addition, there were substantial omissions about working conditions for female employees. As a result, while obtaining assent, the state administration was instructed to make changes to ensure compliance with the model bill<sup>27</sup>.

**Consistent with Existing Central Legislation:** The Punjab Temporary Taxation Bill, 1962<sup>28</sup>, recommended a levy on products deemed crucial to interstate trade or commerce to collect revenue for the social and economic well-being of scheduled castes. However, the Union government stated that the bill's provision for a 1% surcharge on certain commodities exceeded the maximum established under the Central Sales Tax Act of 1956<sup>29</sup>. The state government had previously imposed a two per cent tax on these commodities, bringing the overall tax burden to three per cent, exceeding the limitations stipulated by central legislation. To resolve this, the

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<sup>24</sup> Mysore Village Offices Abolition Bill 1961

<sup>25</sup> The States Reorganisation Act 1956

<sup>26</sup> The Bombay Shops and Establishments (Gujarat Extension and Amendment) Bill 1948

<sup>27</sup> Kim Lane Scheppelle, 'Constitutional Coups and Judicial Review: How Transnational Institutions Can Strengthen Peak Courts at Times of Crisis' (2014) 23 *Journal of Transnational Law and Contemporary Problems*

<sup>28</sup> The Punjab Temporary Taxation Bill 1962

<sup>29</sup> The Central Sales Tax Act 1956

Union government instructed the state to revise the law following the Central Sales Tax Act. Assent was received when the state administration assured them that the measure would be amended suitably.

**Examination of Bills for Constitutionality:** When a law is presented for presidential assent, the Union administration reviews it for constitutionality. For example, the West Bengal Highways Bill 1963<sup>30</sup> sought to abolish the Bengal Highways Act 1925<sup>31</sup> and enact new legislation to improve highway administration in the state. However, following analysis, it was determined that the measure exceeded the state legislature's authority. Clause 28<sup>32</sup> of the law attempted to classify certain national roadways within the state as state highways, therefore limiting the Union government's exclusive control over national highways. As a result, the Union government directed the governor of West Bengal to return the measure to the state assembly for reconsideration under Article 201 of the Constitution.

Similarly, the Punjab Temporary Taxation Bill of 1962<sup>33</sup> was scrutinised to see whether its provisions were discriminatory and violated Article 14<sup>34</sup> of the Constitution. The measure sought to create cash for the socioeconomic advancement of scheduled castes and tribes, potentially undermining the right to equality. However, it was determined that the law did not violate Article 14<sup>35</sup> because the preferential treatment of certain groups was based on fair categorisation rather than discriminatory discrimination.

In another case, the Rajasthan Land Reforms and Acquisition of Landowner's Estates Bill, 1963<sup>36</sup>, attempted to regularise tenancy rights on lands previously possessed by princely states in Rajasthan. The Union government assessed the bill's legality under Article 31<sup>37</sup> and found it to be legitimate. The law was found within the state legislature's jurisdiction, particularly given the guarantees offered in agreements with the prior rulers. Furthermore, because the law

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<sup>30</sup> The West Bengal Highways Bill 1963

<sup>31</sup> The Bengal Highways Act 1925

<sup>32</sup> The Bengal Highways Act 1925, cl 28

<sup>33</sup> Constitution of India 1950, art 201

<sup>34</sup> The Punjab Temporary Taxation Bill 1962

<sup>35</sup> Constitution of India 1950, art 314

<sup>36</sup> The Rajasthan Land Reforms and Acquisition of Landowner's Estates Bill 1963

<sup>37</sup> Constitution of India 1950, art 31

addressed estate purchase rather than requisition, it did not contravene the provisions of the agreements. Consequently, the law obtained presidential assent.

**The Provision of Procedural Safeguards for Affected Parties:** The Nagaland legislature approved the Nagaland Land Requisition and Acquisition Bill, 1964<sup>38</sup>, to create a complete legislation applicable to Nagaland for the acquisition and requisition of land and structures for certain public objectives, subject to compensation. The law was submitted for presidential approval under Article 31<sup>39</sup> of the Constitution. The Union government opposed the bill, claiming that it lacked provisions for giving the owner or affected party an opportunity to be heard before issuing any requisitioning order, except in circumstances involving land for landless or displaced individuals. The Union government concluded that granting a fair hearing to affected parties in requisition instances was vital to prevent the law from breaching Article 14<sup>40</sup> of the Constitution.

Furthermore, the Union government likened the measure to two key statutes: the Land Acquisition Act of 1894<sup>41</sup> and the Requisitioning and Acquisition of Immovable Property Act of 1952<sup>42</sup>. It discovered that the Nagaland Bill<sup>43</sup> featured substantial differences. For starters, it did not allow impacted parties to be heard. Second, while the 1952 central legislation permits the purchase of requisitioned land only under certain conditions, the Nagaland bill lacked such protections. Third, the Nagaland law only allowed compensation for acquired land based on its market value for the five years before the publishing of the preliminary notification, with no solatium. The Union administration considered that compensation should comprise both the market value and a 15% solatium.

The Union government's opinions were relayed to the state administration to make required changes to the law. Presumably, presidential assent was accorded to the law only after the state assembly modified its contents in response to the Union government's recommendations.

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<sup>38</sup> The Nagaland Land Requisition and Acquisition Bill 1964

<sup>39</sup> Constitution of India 1950, art 31

<sup>40</sup> Constitution of India 1950, art 14

<sup>41</sup> The Land Acquisition Act 1894

<sup>42</sup> The Requisitioning and Acquisition of Immovable Property Act 1952

<sup>43</sup> The Nagaland Land Requisition and Acquisition Bill 1964