

Governor's Powers to Reserve a Bill: Disha Bill of Andhra Pradesh

March 19, 2021

The Union government informed the Lok Sabha that an inter-ministerial consultation for the Andhra Pradesh Disha (Special Courts for Specified Offences against Women and Children) Bill, 2020, had been initiated and based on the inputs, the Bill would be processed further. As per practice, bills received from States for assent of President are processed in consultation with the nodal ministries/departments. This warrants a relook of the provisions related to reservation of bill by Governor for President's assent.

In news: A.P.'s Disha Bill sent for inter-ministerial consultation: MHA

Placing it in syllabus: Law & Policy

Dimensions

- Provisions of the bill
- Governor's Power to Reserve Bill (Article 200 and 201)
- Importance of this power
- Misuse and Solutions

Content:

Provisions of the bill:

- Andhra Pradesh Disha (Special Courts for specified offences against women and children) Bill, 2020 provides for awarding death sentence for offences of rape and gangrape and expediting trials of such cases to within 21 days.
- The Act envisages the completion of investigation in

seven days and trial in 14 working days, where there is adequate conclusive evidence, and reducing the total judgment time to 21 days from the existing four months.

- It also prescribes life imprisonment for other sexual offences against children and includes Section 354 F and 354 G in IPC.
- In cases of harassment of women through social or digital media, the Act states two years imprisonment for the first conviction and four years for second and subsequent convictions. For this, a new Section 354 E will be added in IPC, 1860.

Introducing women and children offenders registry:

- In the Andhra Pradesh Disha Bill, 2020, the Andhra Pradesh government will establish, operate and maintain a register in electronic form, to be called the 'Women & Children Offenders Registry'. This registry will be made public and will be available to law enforcement agencies.
- NOTE: The government of India has launched a National Registry of Sexual offenders but the database is not digitized and is not accessible to the public.

Exclusive punishment of death penalty for rape crimes:

- At present, provision for punishing an offender in a rape case is a fixed jail term leading to life imprisonment or the death sentence.
- The Disha Act 2020 has prescribed the death penalty for rape crimes where there is adequate conclusive evidence.
- Provision is given by amending Section 376 of the Indian Penal Code, 1860.

Reducing the judgment period to 21 days:

- The existing judgment period as per the Nirbhaya Act, 2013 and Criminal Amendment Act, 2018 is 4 months (two

months of investigation period and two months of trial period)

- As per the Andhra Pradesh Disha Bill 2020, the judgment will now have to be pronounced in 21 working days from date of offence in cases of rape crimes with substantial conclusive evidence.
- The investigation shall be completed in seven working days and trial shall be completed in 14 working days.
- For this, amendments have been made to Section 173 and Section 309 of the Code of Criminal Procedure Act, 1973 and via the introduction of additional clauses in the act.

Stringent punishment for sexual offences against children:

- In cases of molestation/sexual assault on children under the POCSO Act, 2012, punishment ranges from a minimum of three years to maximum of seven years of imprisonment.
- In the Andhra Pradesh Disha Act 2020, apart from rape, the Government of Andhra Pradesh prescribes life imprisonment for other sexual offences against children.
- New Sections 354F and Section 354G 'Sexual Assault on Children' is being inserted in the Indian Penal Code, 1860.

Punishment for harassment of women through social media:

- In the AP Disha Bill, 2020, in cases of harassment of women through email, social media, digital mode or any other form, the guilty shall be punishable with imprisonment.
- The imprisonment will be for a term which may extend to two years on first conviction and with imprisonment for a term which may extend to four years on second and subsequent conviction.
- At present, no such provision exists in the Indian Penal Code. A new Section 354E 'Harassment of Women' is being added in Indian Penal Code, 1860

Establishment of exclusive special courts in every district of Andhra Pradesh

- In the Disha Act, 2020, the government will establish exclusive special courts in each district to ensure speedy trial.
- These courts will exclusively deal with cases of offences against women and children including rape, acid attacks, stalking, voyeurism, social media harassment of women, sexual harassment and all cases under the POCSO Act.
- The state government has introduced the 'Andhra Pradesh Special Courts for Specified Offences against Women & Children Act, 2020'.

Reducing appeal to 3 months for disposal of rape cases

- At present, the period for disposal of appeal cases related to rape cases against women and children is six months.
- In the Disha Act, 2020, the period for disposal of appeal cases has been reduced to three months.
- Amendments are being made in Section 374 and 377 of Code of Criminal Procedure Act, 1973.

Constitution of special police teams and appointment of the special public prosecutor in special courts

- There is no such provision in existing laws.
- In the AP Disha Bill, 2020, the government will constitute special police teams at the district level to be called District Special Police Team to be headed by DSP for investigation of offences related to women and children.
- The government will also appoint a special public prosecutor for each exclusive special court.

Governor's Power to Reserve Bill (Article 200 and 201)

Article 200 provides that when a Bill passed by the State Legislature, is presented to the

Governor, the Governor shall declare—

1. that he assents to the Bill; or
2. that he withholds assent therefrom; or
3. that he **reserves the Bill for the President's consideration**; or
4. the Governor may, as soon as possible, return the Bill (other than a Money Bill) with a message for reconsideration by the State Legislature. But, if the Bill is again passed by the Legislature with or without amendment, the Governor shall not withhold assent therefrom (First Proviso); or
5. if in the opinion of the Governor, the Bill, if it became law, would so derogate from the powers of the High Court as to endanger its constitutional position, he shall not assent to but shall reserve it for the consideration of the President (Second Proviso).

If the Governor reserves a Bill for President's consideration, the enactment of the Bill then depends on the assent or refusal of assent by the President. In the case of a reserved Bill, the President shall, under Article 201—, either declare his assent or withhold his assent thereto. Instead of following either of these courses, the President may (if the Bill is not a Money Bill) direct the Governor to return the Bill together with a message to the State Legislature for reconsideration.

The State Legislature shall then reconsider the Bill within 6 months of its receipt and, if it is again passed, it shall be presented again to the President for his consideration.

In contrast with the power of the Governor regarding a reconsidered Bill, it is not obligatory for the President to give his assent to a reconsidered Bill.

The Supreme Court's stand is that the Governor's power to reserve the Bill for the consideration of the President cannot be questioned in court. Therefore, the Governor may use his discretion by reserving the Bills for the consideration of the President.

Importance of this power

An instrument of Cooperative Federalism:

Providing for reservation of State legislations for the consideration and assent of the President are intended to subserve the broad purpose of cooperative 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. They are necessary means and tools for evolving cohesive, integrated policies on basic issues of national significance.

Bringing Uniformity and Harmony between Union and State Govt.

The chief utility of the provisions in Articles 200 and 201— for reservation of State Bills for the

consideration of the President, lies in the fact that they help ensure uniformity and harmony in the exercise of the legislative power of the Union and State Legislatures with respect to the basic aspects of a matter in the Concurrent List.

Survey shows that approximately, 75 percent of the total number of Bills reserved by the Governors for President's consideration, relate to matters in the Concurrent List. They were purportedly reserved under Article 254 (2) or the advice of the Council of Ministers.

There are other provisions also in the Constitution which require reservation for President's

consideration of certain kinds of Bills. For reservation of such Bills also Article 200 is a necessary channel.

safety-valve against hasty legislation:

These provisions also act as a safety-valve against hasty legislation, and by their operation enable the State Government and Legislature to have a second look at it.

It's also possible where under popular pressure a State Legislature rushes through a Bill without fully considering its implications. Soon after it has been passed by the Legislature, the Council of Ministers, on second thought, may themselves discover defects in the Bill and decide that it should be further considered. In such a situation, Articles 200 and 201— afford them a

way to get out of the predicament. They may advise the Governor to withhold assent from the Bill or return it for reconsideration of the Legislature or reserve it for the consideration of the President.

Misuse and Solutions

There have been cases where Governors have reserved Bills contrary to the advice of the Council of Ministers.

Also, these provisions are basically inconsistent with the supremacy of the State Legislature, consisting of representatives of the people in whom the sovereignty of the State vests. The power of referring a State Bill for President's consideration operates to subordinate the State Legislature to the Union Executive.

The provisions of Article 200 and 201 are being misused to serve the partisan interests of the Union Council of Ministers. Governor being the appointee of the Union Government, his discretionary powers are often misused to the advantage of the Union government.

Several States have expressly or impliedly complained of delays in the consideration of State Bills referred to the President.

Solutions:

- Fixing of a time-limit for processing and securing President's orders on the reserved Bills.
- Reformulation of Articles 200 & 201, to exclude the power of the Governor to reserve a Bill relating to a matter in the State List and the President's power to veto such a Bill
- modification of Article 200 so as to make it clear that, in the exercise of his functions under it, the Governor shall, in all cases, act on the advice of his Council of Ministers
- the existing Second
- Proviso to Article 200 be replaced to provide that the Governor shall exercise his functions under Article 200 in accordance with the advice of the State Council of Ministers.

Mould your thought: Comment on the powers of the Governor with respect to reservation of bill for President's consideration. Highlight the issues surrounding the provisions and possible solutions.

Approach to the answer:

- Introduction
- Discuss provisions of Article 200 and 201
- Mention the importance in brief
- Highlight the cases of misuse of discretionary powers
- Suggest solutions
- Conclusion