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Governor's Assent to Bills under Article 200: Discretion, Judicial Review and Constitutional Balance

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ABSTRACT

Article 200 of the Constitution gives the Governor three courses of action on a Bill passed by a State Legislature: assent, withholding of assent, or reservation for the consideration of the President. It fixes no time within which any of them must be taken. This article traces the provision from draft Article 175 and the Constituent Assembly's deliberate removal of the words "in his discretion", through the settled position that the Governor acts on the aid and advice of the Council of Ministers, to the litigation generated by prolonged inaction on Bills in recent years. It examines the judicial line from Purushothaman Nambudiri and Shamsher Singh, through Hoechst Pharmaceuticals and B.K. Pavitra, to State of Punjab v. Principal Secretary to the Governor of Punjab and State of Tamil Nadu v. Governor of Tamil Nadu, in which the Court read "as soon as possible" as a constitutional imperative of expedition and prescribed one-month and three-month timelines. It then analyses the advisory opinion on the Presidential Reference under Article 143, which held that the discharge of functions under Articles 200 and 201 is generally non-justiciable, that judicially prescribed timelines and deemed assent are impermissible, and that Article 361 does not bar a limited mandamus where inaction is prolonged, unexplained and indefinite. The article argues that the resulting position leaves the Governor without an enforceable deadline but equally without liberty to keep a Bill pending indefinitely, and considers what that balance means for responsible government and for federal comity.

Keywords: *article 200, governor's assent, reservation of bills, judicial review, constituent assembly debates, federalism, presidential reference, article 143, article 201, state legislature*

I. INTRODUCTION

The Constitution of India confers the power to make laws on Parliament at the national level and on the State Legislatures at the State level. Parliament consists of two Houses, namely the lower House or "House of the People" (Lok Sabha) and the upper House or "Council of States"

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(Rajya Sabha). The source and foundation of law in India is therefore legislation enacted by Parliament and the State Legislatures.¹ Proposed legislation is first introduced in the House in the form of a Bill. A Bill is no more than a draft legislative proposal, which requires the agreement of both Houses and the assent of the President before it becomes law.² Proposals for legislation under a Government are initiated by the Cabinet or the Council of Ministers, which discusses the major policy aspects of those proposals. A proposal may be referred to a Standing Committee or an ad hoc Committee to examine the details and to place the actual drafted Bill before it for scrutiny. When the Government receives the Committee's report containing recommendations and amendments, and accepts it, those amendments are moved as official amendments at the consideration stage. Alternatively, the Bill may be withdrawn and a fresh Bill incorporating the Committee's recommendations introduced. These reports have only persuasive value. Once the Cabinet gives its approval, the proposal is passed on by the administrative Ministry to the draftsman to be put in the form of a Bill.³

The law-making procedure is initiated by introducing the Bill in either House of Parliament. Bills introduced by Ministers, who derive the authority to do so through Article 74, are known as Government Bills, and Bills introduced by members other than Ministers in exercise of their parliamentary privileges under Article 105 are known as Private Member's Bills.⁴ Before a Bill is submitted to the President, it goes through three readings in both Houses. Once all three readings and, where required, a joint sitting are concluded, the Bill is forwarded to the President for assent. A similar procedure is followed in the case of a State Bill, which is sent to the Governor for assent.

II. WHAT ARE BILLS

Proposals for new legislation, or for amendments to earlier enactments, are presented in the form of a draft called a Bill. Such drafts have the potential to become an Act, though they may also be rejected. Bills are introduced in the legislature and undergo a comprehensive procedure of debate, discussion and scrutiny. Once a Bill is approved at all these stages, it is passed and published in the Official Gazette, and the Bill thereby becomes an Act.

¹ CHAKSHU ROY & PRATIK DATTA, FROM IDEA TO ACT: THE INDIAN LEGISLATIVE PROCESS (CENTRE FOR POLICY RESEARCH 2019).

² LOK SABHA SECRETARIAT, *Legislative Business: Introduction*, <https://sansad.in/ls/legislation/introduction> (last visited Jan. 15, 2026).

³ RAJYA SABHA SECRETARIAT, PRACTICE AND PROCEDURE SERIES: LEGISLATION (RAJYA SABHA SECRETARIAT, New Delhi 2022).

⁴ LOK SABHA SECRETARIAT, *supra* note 2.

III. THE PROCESS OF A BILL BECOMING AN ACT UNDER THE STATE LEGISLATURE

In the case of a State Legislature, a procedure similar to that of Parliament is followed in the making of law. The State Legislature stands in the place of Parliament and the Governor in the place of the President. The provisions relating to the State Legislature are contained in Article 168⁵ to Article 212⁶.

Introduction of a Bill in the State Legislature is dealt with under Article 196⁷. As in Parliament, three readings of the Bill take place in the State Legislature as well. The further procedures laid down in Articles 197 to 199 are similar to the parliamentary procedures, except that the stipulated period for a decision is three months in the case of a State having a Legislative Council.

As for the assent of the Governor, after a Bill is passed by the Legislative Assembly and the Legislative Council (where one has been established), it is presented to the Governor for assent under Article 200. The Governor may assent to the Bill, withhold assent, or reserve the Bill for the consideration of the President. The Governor may also return the Bill for reconsideration with recommendations for amendment through a message; if the House passes the Bill again with or without amendment, the Governor is bound to assent, and the Bill thereby becomes an Act.⁸

IV. CONSTITUENT ASSEMBLY DEBATE REGARDING ARTICLE 200

A. Article 175 of the Draft Constitution

A Bill which has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President: Provided that where there is only one House of the Legislature and the Bill has been passed by that House, the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as

⁵ INDIA CONST. art. 168.

⁶ INDIA CONST. art. 212.

⁷ INDIA CONST. art. 196.

⁸ INDIA CONST. art. 200.

he may recommend in his message, and, when a Bill is so returned, the House shall reconsider it accordingly and if the Bill is passed again by the House with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.⁹

B. The Debate on Draft Article 175

Dr B.R. Ambedkar moved an amendment on 30 July 1949 to replace the first proviso to Article 175 of the Draft Constitution, and the amendment was accepted by the Constituent Assembly. He stated that the words “in his discretion” in draft Article 175 were sought to be removed because it was felt that, in a responsible government, there can be no room for the Governor acting in his discretion, and he pressed for three substantial modifications to the first proviso.

Shri Brajeshwar Prasad argued that the proposed modifications to the first proviso would deny the Governor the capacity to veto a Bill or to reserve it for the consideration of the President on his own motion or in his discretion, and that he would be able to do so only on the advice of his Council of Ministers. He believed it was unsatisfactory that the Governor would be unable to veto a Bill that had been passed twice by the Legislative Assembly.¹⁰

According to Shri Brajeshwar Prasad, a Bill might be reserved for the President's consideration in the following circumstances: where any Article of the Constitution specifically so directs; and where the Governor's Ministry so advises.

He did, however, press for a third category, in which the power would rest with the Governor, in his discretion, to veto a Bill passed by the Legislature, irrespective of whether it had been passed once or twice. In order to ensure a check on the possibility of disruptive legislative tendencies, and to enable the Governor to veto what he described as unjust and unsound legislation, he advocated giving the Governor discretion.¹¹

He argued that his proposition was consistent with the norms of the unitary system of government that had prevailed in India before independence, and that the fear of disruptive legislation was real rather than hypothetical. He believed that the parliamentary form of government should be moderated and regulated because it was a fresh experiment with the realities of life in the country.¹²

⁹ Draft Constitution of India, 1948, art. 175.

¹⁰ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, THE LAWMATICS, <https://thelawmatics.in/the-constituent-assemblys-debate-on-draft-article-of-article-200/> (last visited Jan. 1, 2026).

¹¹ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

¹² *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

He said that he had no faith in the provincial Ministers, and stated that vesting authority in the Governor to act in his own discretion would not be troublesome because the Governor was also the representative of the Government of India, and therefore his views should prevail over those of the State Legislature.¹³

Shri Shibban Lal Saxena opposed this view and highlighted the practical implications of giving the Governor, who is the President's nominee, this kind of discretion, particularly where the party in power at the State level and the party in power at the federal level are not the same. He was of the opinion that in such circumstances it would introduce a very wrong principle to give the Governor the power to go against the express wish of the Assembly and even of the Council.¹⁴

Shri T.T. Krishnamachari further pointed out that, under the newly proposed first proviso to draft Article 175, the Governor would not be exercising his discretion in returning a Bill to the House with a message. The Governor would exercise his authority under the first proviso only on the advice of his Council of Ministers. He said that the first proviso should be used where a provision had already been adopted by the House but the Ministry nevertheless believed that modifications were necessary. Only in such circumstances would the procedure under the first proviso be used. The Council of Ministers would use the Governor to hold up further proceedings on such a Bill and return it to the lower House with a message asking the legislature to make the changes the Ministry suggested.¹⁵ Referring to the remarks of Dr Ambedkar in this context, he said:

If he construes that this Amendment is worse than the proviso in the draft Article and that it makes for further dilatoriness in the proceedings of the legislatures in the provinces or the States as the case may be, I would ask him to remember one particular point to which Dr. Ambedkar drew pointed attention, viz., that the Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The governor is no longer vested with any discretion. If it happens that as per Amendment No. 17 the Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers. The provision has merely been made to be used if an occasion arises when the formalities envisaged in Article 172 which has already been passed, do not perhaps go through, but there

¹³ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

¹⁴ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

¹⁵ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

is some point of the Bill which has been accepted by the Upper House which the Ministry thereafter finds has to be modified. Then they will use this procedure; they will use the governor to hold up the further proceedings of the Bill and remit it back to the Lower House with his message.¹⁶

In his opinion, the first proviso was thus a saving clause that gave the Ministry the power to rectify any impulsive action it might have taken in relation to the Bill in question. It could equally be defended as giving the Ministry a measure of flexibility to take further alternative action that it considered necessary to voice public needs pressed outside the House. The first proviso therefore restrains the Governor's authority further than the position intended in the original first proviso that was sought to be substituted, rather than limiting the authority of the Legislature or of the Ministry answerable to it.¹⁷

The amendment was then put to a vote and was agreed to by the Constituent Assembly in the light of the discussion on the substitution of the first proviso to Article 175 of the Draft Constitution, now Article 200.¹⁸

V. CHANGES ADOPTED IN THE PRESENT CONSTITUTION

Dr B.R. Ambedkar proposed amendments to Article 175 of the Draft Constitution of 1948, which were ultimately agreed to by the Constituent Assembly, and the provision became Article 200 of the present Constitution. The amendments made were as follows.

- Elimination of the term “in his discretion”: the amendment provided for the deletion of the phrase “in his discretion” from the first proviso to Article 175.
- Exclusion of Money Bills: the amendment provided for the removal of Money Bills from the scope of the first proviso.
- Return of a Bill by the Governor: it enabled the Governor to return Bills in any State, whether that State has a bicameral or a unicameral legislature.¹⁹

VI. CURRENT SCENARIO OF THE GOVERNOR'S AUTHORITY TO ASSENT TO A BILL

Once a Bill is passed by the Legislative Assembly, and the Legislative Council where one exists, it is forwarded to the Governor for final approval. Article 200 gives the Governor three options: he may grant assent to the Bill, withhold assent, or reserve the Bill for the consideration of the

¹⁶ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

¹⁷ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

¹⁸ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

¹⁹ *The Constituent Assembly's Debate on Draft Article 175 (Article 200)*, *supra* note 10.

President. Article 200 does not, however, stipulate any period within which the Governor must act on a Bill reserved for the consideration of the President. On a bare reading of the Article, the expression “as soon as possible” in the first proviso relates only to reconsideration of the Bill and not to reservation of the Bill for the consideration of the President.²⁰

The first proviso further deals with the return of a Bill for reconsideration by the House or Houses of the State Legislature. This cannot be done in the case of a Money Bill, since a Money Bill is introduced in the House only after the Governor's recommendation. A Bill to which he has already given his recommendation cannot therefore be denied assent or returned to the House or Houses at a later stage. Similarly, if the House or Houses pass again a Bill that has been returned for reconsideration, without incorporating any change advised by the Governor, and the Bill retains the character of a Money Bill, the Governor is bound to assent to it.²¹

VII. RESERVATION OF BILLS

Article 200 provides a specific condition in which a Bill must be reserved. The second proviso requires the Governor to reserve a Bill which, if it became law, would “derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill”. Hence, if in the opinion of the Governor the Bill, on receiving assent and becoming an Act, would diminish or impair the power and position that the High Court derives from the Constitution, such a Bill must be reserved for the consideration of the President.²²

A Bill becomes an Act when it receives the assent of the Governor, in the case of a State Legislature, or of the President, in the case of Parliament. The requirement of assent maintains the checks and balances between the executive and the legislature and guards against arbitrariness on the part of the law-making body. Article 200 provides that “when a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President”.

Article 200 does not specify a time limit within which the Governor must give assent, and Article 201 does not specify one for the President either. This creates a vacuum: if the Governor neither returns the Bill to the Assembly for reconsideration nor reserves it for the consideration of the President, the Bill never becomes an Act. The Gujarat Control of Terrorism and Organised

²⁰ Sarumathi V, *To Retain or Not to Retain: An Analysis of the Constitutional Provisions and Implications of the Governor's Power to Reserve Bills in India*, 4 INDIAN J. INTEGRATED RES. L. 273 (2023).

²¹ Sarumathi V, *supra* note 20, at 273.

²² INDIA CONST. art. 200, second proviso.

Crime Bill illustrates the problem. It was passed by the State Assembly for the fourth time in 2015, having been returned or rejected on three earlier occasions, and it received assent only in 2019, four years later. State governments, particularly those not aligned with the party in power at the Centre, have frequently complained that Bills are kept pending for prolonged periods, producing a situation akin to a pocket veto.

In *Visweshwar Rao v. State of Madhya Pradesh*²³, the petitioner advanced an argument on the terms “law” and “Bill” in relation to Article 31, since repealed. In deciding the point, the Court held that Article 200 does not contemplate a second reservation by the Governor.²⁴ Similarly, in *Hoechst Pharmaceuticals Ltd. v. State of Bihar*²⁵, the Supreme Court emphasised that the power of the Governor under Article 200 to reserve a Bill is not unqualified but is to be exercised in accordance with the principles laid down in the Constitution. The Court further clarified that a Bill should not be reserved arbitrarily, and discussed the grounds on which a Bill could be reserved.

The question whether there is any timeline for the Governor and the President in giving assent to a Bill has been raised repeatedly. In *Purushothaman Nambudiri v. State of Kerala*²⁶, the Court observed that the Constitution does not impose any time limit within which the Governor should make any of the declarations under Article 200. Similarly, in *Shamsher Singh v. State of Punjab*²⁷, the Supreme Court observed that the Governor and the President are constitutionally bound to act in accordance with the aid and advice of the Council of Ministers headed by the Chief Minister or the Prime Minister, as the case may be. The Court further observed that the term “satisfaction” in the constitutional provisions must be construed as satisfaction on the basis of such aid and advice of the Council of Ministers.

In *Bharat Sevashram Sangh v. State of Gujarat*²⁸ there is only an incidental observation, following and quoting *Hoechst Pharmaceuticals Ltd.*, that assent is not justiciable. Until recently, therefore, the position taken by the Supreme Court was that the assent of the President and the Governor is not justiciable. That position changed in *State of Punjab v. Principal Secretary to the Governor of Punjab*²⁹. In a parliamentary democracy, real executive authority resides in the duly elected representatives of the people. The constitutional functioning of the

²³ *Visweshwar Rao v. State of Madhya Pradesh*, AIR 1952 SC 252 : (1952) 1 SCR 1020.

²⁴ *Sarumathi V*, *supra* note 20, at 273.

²⁵ *Hoechst Pharmaceuticals Ltd. v. State of Bihar*, AIR 1983 SC 1019 : (1983) 4 SCC 45.

²⁶ *Purushothaman Nambudiri v. State of Kerala*, AIR 1962 SC 694.

²⁷ *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831 : AIR 1974 SC 2192.

²⁸ *Bharat Sevashram Sangh v. State of Gujarat*, AIR 1987 SC 494 : (1986) 4 SCC 51.

²⁹ *State of Punjab v. Principal Secretary to the Governor of Punjab*, 2023 INSC 1017 (Writ Petition (Civil) No. 1224 of 2023).

Governor, as the nominal head of the State, plays a critical role in upholding and preserving the essential structure of federalism enshrined in the Constitution. The language of Article 200, that the Governor “shall declare” either (i) that he assents to the Bill, or (ii) that he withholds assent therefrom, or (iii) that he reserves the Bill for the consideration of the President, implies that the Governor is required to declare the exercise of his powers. The first proviso to Article 200 attaches to the second option, the withholding of assent, and stipulates that the Governor may “as soon as possible” return the Bill, while the substantive part of Article 200 empowers the Governor to withhold assent.

In such circumstances it is important for the Governor to adhere strictly to the procedure prescribed by the first proviso, which requires him to communicate to the State Legislature, urging reconsideration of the Bill, “as soon as possible”. The phrase “as soon as possible” is of constitutional significance and precludes any unwarranted or indefinite delay in the exercise of this function. As the Court put it, it conveys a constitutional imperative of expedition; failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression, and constitutional language is not surplusage. The further development came in *State of Tamil Nadu v. Governor of Tamil Nadu*³⁰, where the Court observed that, keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, timelines were being prescribed, and that failure to comply with those timelines would make the action of the Governor subject to judicial review. The timelines prescribed were as follows.

- Where assent is withheld, or the Bill is reserved for the consideration of the President, on the aid and advice of the State's Council of Ministers, the Governor is expected to act forthwith, subject to a maximum period of one month.
- Where assent is withheld contrary to the advice of the State's Council of Ministers, the Governor must return the Bill together with a message within a maximum period of three months.
- Where a Bill is reserved for the consideration of the President contrary to the advice of the State's Council of Ministers, the Governor must make such reservation within a maximum period of three months.
- Where a Bill is presented after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one month. This

³⁰ *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025 INSC 481 (Writ Petition (Civil) No. 1239 of 2023).

means that Bills re-enacted by the Assembly after being returned by the Governor must be assented to in the second round within one month.

VIII. DISCRETION OF THE GOVERNOR REGARDING THE POWER TO RESERVE BILLS

The Governor is an integral part of the State Legislature and is therefore under an obligation to act on the aid and advice of the Council of Ministers in the majority of matters. Article 163³¹(1) provides for the obligation of the Governor to act according to the advice of his Council of Ministers, “except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion”. The possibility of the Governor exercising discretion is therefore restrained by the use of the words “by or under this Constitution”.³² It follows that discretion can be exercised only where the constitutional provisions expressly so provide. On a reading of Article 200, the Article does not use the word “discretion”, and the second proviso sets out the circumstance in which the Governor shall reserve a Bill.

The question of the Governor's discretion in exercising the power to reserve a Bill under Article 200 has attracted divergent views. On one view, the Governor, being part of the State Legislature, may assent to a Bill that comes to him for approval, or return it for reconsideration, and, if he believes that the matter concerned is crucial, he retains a discretion to reserve it for the consideration of the President. On the other view, which relies on the wording of the second proviso to Article 200, a Bill may be reserved only in the circumstance mentioned there and not at the Governor's discretion.

The view favouring a discretionary power in the Governor was rejected in *Shamsher Singh v. State of Punjab*³³, where the Court emphasised that the Governor is the constitutional head of the State Government. There are some exceptions to this, and, so far as Article 200 is concerned, only the provisos to that Article fall within such an exception. In *Nabam Rebia v. Deputy Speaker*³⁴, the Supreme Court held that a Governor can exercise his functions in his own discretion in situations where the concerned constitutional provision could not be construed otherwise. Hence the Governor has discretion in the exercise of his power to reserve a Bill, but only to a limited extent. That power is not unrestricted; it is limited to the circumstance

³¹ INDIA CONST. art. 163.

³² INDIA CONST. art. 163(1).

³³ *Shamsher Singh v. State of Punjab*, *supra* note 27.

³⁴ *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1.

enshrined in the second proviso to Article 200, which deals with Bills that are liable to be derogatory of the position of the High Court.³⁵

The framers carefully eschewed defining the circumstances in which the Governor may reserve a Bill for the consideration of the President. By its very nature the conferment of the power cannot be confined to specific categories. Exigencies may arise in the working of the Constitution which justify a recourse to the power of reserving a Bill for the consideration of the President. The power having been conferred upon a constitutional functionary, it is conditioned by the expectation that it would be exercised upon careful reflection and for resolving legitimate concerns in regard to the validity of the legislation.³⁶

In *Gram Panchayat of Village Jamalpur v. Malwinder Singh*³⁷, the Court held that the Governor is expected to exercise his discretion in accordance with the Constitution and not arbitrarily, and that the reservation of a Bill for the consideration of the President is not an idle formality but is intended to ensure that the provisions of the Constitution are not violated and that there is no repugnancy with laws made by Parliament. The power of the Governor to reserve a Bill cannot therefore be exercised otherwise than in extraordinary situations. This is the idea underlying the discretionary character of the Governor's power under Article 200. The Governor is also under an obligation to record reasons where assent is sought in a case falling under Article 254(2).³⁸

IX. SCOPE OF JUDICIAL SCRUTINY OF THE RESERVATION OF BILLS BY THE GOVERNOR

So far as judicial review of the reservation of a Bill by the Governor is concerned, the earlier rulings established that it could not be questioned in a court of law. In *B.K. Pavitra v. Union of India*³⁹, for instance, the Court observed that, by its very nature, it would not be possible for the Court to reflect upon the situations in which the power under Article 200 can be exercised. Relying on the judgment of the Court in *Hoechst*, and excluding the matter from judicial scrutiny, the Court held:

There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be

³⁵ Sarumathi V, *supra* note 20, at 273.

³⁶ *B.K. Pavitra v. Union of India*, (2019) 16 SCC 129 : AIR 2019 SC 2723.

³⁷ *Gram Panchayat of Village Jamalpur v. Malwinder Singh*, AIR 1985 SC 1394.

³⁸ INDIA CONST. art. 254(2).

³⁹ *B.K. Pavitra v. Union of India*, *supra* note 36.

effective as an act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication and even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts.⁴⁰

That reasoning was displaced in *State of Tamil Nadu v. Governor of Tamil Nadu*⁴¹, where the Court declared the observations in *B.K. Pavitra* on this point to be *per incuriam* and held that the absence of judicial review would shield unconstitutional actions in a lead casket. The ruling therefore established that the reservation of a Bill by the Governor is amenable to judicial review. Article 201 provides that when a Bill is presented to the President, he shall either assent to it or withhold assent; he may return it for reconsideration, and if the Bill is passed again by the House or Houses without change, it shall again be presented to the President.⁴²

X. REDEFINING THE POWERS OF THE EXECUTIVE: SCOPE OF JUDICIAL SCRUTINY

The principle of checks and balances is a basic feature of the Constitution and maintains the balance of power between the organs of the State, namely the executive, the judiciary and the legislature. No organ of the State holds arbitrary power,⁴³ and if one organ acts arbitrarily the others counterbalance that action. Generally, the judiciary examines the actions of the legislature and the executive, and if an action is beyond the limits of the Constitution or arbitrary in nature it is declared void, or the power is curtailed and confined, in the interest of effective and efficient administration.

The Supreme Court has scrutinised the pardoning power in several cases. In *Maru Ram v. Union of India*⁴⁴, the Court held that the powers under Articles 72 and 161 are not immune from judicial review, and that the President and the Governors, while exercising these powers, must act on the aid and advice of the respective governments; it also observed that the exercise of the power must not be mala fide. In *Kehar Singh v. Union of India*⁴⁵, the Supreme Court reaffirmed that

⁴⁰ Sarumathi V, *supra* note 20, at 273, quoting *Hoechst Pharmaceuticals Ltd. v. State of Bihar*, *supra* note 25.

⁴¹ *State of Tamil Nadu v. Governor of Tamil Nadu*, *supra* note 30.

⁴² INDIA CONST. art. 201.

⁴³ *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649 : 1963 Supp (1) SCR 439.

⁴⁴ *Maru Ram v. Union of India*, (1981) 1 SCC 107.

⁴⁵ *Kehar Singh v. Union of India*, AIR 1989 SC 653 : (1989) 1 SCC 204.

the exercise of the President's power under Article 72 is discretionary in nature and is generally immune from judicial scrutiny, except where the decision is vitiated by arbitrariness or mala fide intent, or violates constitutional mandates.

In *Shatrughan Chauhan v. Union of India*⁴⁶, the Hon'ble Court highlighted a concern about the prolonged disposal of mercy petitions and observed that unexplained, excessive and unreasonable delay in the execution of a death sentence amounts to a violation of the right to life and personal liberty guaranteed under Article 21 of the Constitution. It further observed that mercy petitions must be disposed of by the President within a reasonable time.

Similarly, the imposition of President's rule on the satisfaction of the President is not absolute and is subject to judicial review. In *S.R. Bommai v. Union of India*⁴⁷, the Court held, first, that the President's use of the power to make a proclamation under Article 356(1) is subject to judicial scrutiny, at least to the extent of determining whether the conditions precedent to the issuance of the proclamation have been met;⁴⁸ secondly, that although the adequacy or otherwise of the material cannot be questioned, the legality of inferences drawn from it is subject to judicial scrutiny;⁴⁹ and thirdly, that the satisfaction of the President must be based on objective material, which may be found in the Governor's report or elsewhere, or in both, and that the objective material available must show that the government of the State cannot be carried on in accordance with the requirements of the Constitution. The availability of objective material demonstrating that the State government cannot function in accordance with the Constitution is therefore a prerequisite before the President issues the proclamation, and once such material is shown to exist, the President's satisfaction with that material is not open to question.⁵⁰

From the cases discussed above it is evident that the Supreme Court reviews the actions of the executive heads of the States and the Union and scrutinises them where they are found to be mala fide, beyond the limits of the Constitution, arbitrary in nature, or contrary to the fundamental spirit of the Constitution. Similarly, in *State of Punjab v. Principal Secretary to the Governor of Punjab*⁵¹, the Court held that the expression "as soon as possible" is significant, that it conveys a constitutional imperative of expedition, and that failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression. In other words, the Governor cannot hold a Bill for an indefinite period. The Court

⁴⁶ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

⁴⁷ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918 : (1994) 3 SCC 1.

⁴⁸ *S.R. Bommai v. Union of India*, *supra* note 47 (MANU/SC/0444/1994).

⁴⁹ *S.R. Bommai v. Union of India*, *supra* note 47.

⁵⁰ *S.R. Bommai v. Union of India*, *supra* note 47.

⁵¹ *State of Punjab v. Principal Secretary to the Governor of Punjab*, *supra* note 29.

further observed that the Governor is not at liberty to keep a Bill pending indefinitely without any action whatsoever, but it declined to lay down a timeline. The judgment in *State of Tamil Nadu v. Governor of Tamil Nadu*⁵² proceeded on similar reasoning, and the Court there interpreted the words “as soon as possible” in Article 200 and prescribed timelines of one month and three months for the Governor to communicate assent, withholding of assent, or reservation for the President's assent.

XI. REDEFINING THE TIMELINE FOR ASSENT TO A BILL

In *State of Tamil Nadu v. Governor of Tamil Nadu*⁵³, the Hon'ble Supreme Court observed that, as a general rule, it is not open to the Governor to reserve a Bill for the President after the Bill has been re-presented by the Government following its passage again by the Assembly, the only exception being where the Bill presented in the second round is different from the first version. The Court also held that the option under the first proviso to Article 200 is not an independent option and must be exercised in conjunction with the power in the substantive clause of Article 200, which means that once the Governor declares that he is withholding assent, he must send the Bill back to the Assembly for reconsideration. The Court laid down the following timelines.

- Where assent is withheld, or the Bill is reserved for the consideration of the President, on the aid and advice of the State's Council of Ministers, the Governor is expected to act forthwith, subject to a maximum period of one month.⁵⁴
- Where assent is withheld contrary to the advice of the State's Council of Ministers, the Governor must return the Bill together with a message within a maximum period of three months.⁵⁵
- Where a Bill is reserved for the consideration of the President contrary to the advice of the State's Council of Ministers, the Governor must make such reservation within a maximum period of three months.⁵⁶
- Where a Bill is presented after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one month.⁵⁷

After this judgment, the Governor's role in assenting to or reserving Bills passed by a State Legislature was bound by strict timelines. Where the Governor acts on the State Cabinet's

⁵² *State of Tamil Nadu v. Governor of Tamil Nadu*, *supra* note 30.

⁵³ *State of Tamil Nadu v. Governor of Tamil Nadu*, *supra* note 30.

⁵⁴ Gursimran Kaur Bakshi, *Supreme Court Sets Aside TN Governor's Reservation of 10 Bills for President's Assent; Says Governor Acted Without Bona Fides*, LIVE LAW (Apr. 8, 2025).

⁵⁵ Bakshi, *supra* note 54.

⁵⁶ Bakshi, *supra* note 54.

⁵⁷ Bakshi, *supra* note 54.

advice, the withholding of assent or reservation for the President had to take place within one month. If the Governor withheld assent against such advice, the Bill had to be returned with reasons to the State Legislature within three months. Any reservation for the President contrary to ministerial advice likewise had to be made within three months. Upon reconsideration of a returned Bill under the first proviso, the Governor was obliged to grant assent promptly, within one month.

XII. THE PRESIDENTIAL REFERENCE AND THE TUSSLE BETWEEN THE EXECUTIVE AND THE JUDICIARY

The President has the power to seek the advice of the Supreme Court at any time when it appears to her that a “question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it”, and she “may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon”.⁵⁸ After the judgment in *State of Tamil Nadu v. Governor of Tamil Nadu*⁵⁹, the President of India invoked Article 143 to seek the advice of the Supreme Court. The Reference did not name any State, but its terms indicate that it followed the Tamil Nadu judgment. The President placed fourteen questions before the Hon'ble Court, as follows.

- What are the constitutional options before a Governor when a Bill is presented to him under Article 200 of the Constitution of India?
- Is the Governor bound by the aid and advice tendered by the Council of Ministers while exercising all the options available to him when a Bill is presented before him under Article 200 of the Constitution of India?
- Is the exercise of constitutional discretion by the Governor under Article 200 of the Constitution of India justiciable?
- Is Article 361 of the Constitution of India an absolute bar to judicial review in relation to the actions of a Governor under Article 200 of the Constitution of India?
- In the absence of a constitutionally prescribed time limit, and the manner of exercise of powers by the Governor, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of all powers under Article 200 of the Constitution of India by the Governor?

⁵⁸ INDIA CONST. art. 143.

⁵⁹ *State of Tamil Nadu v. Governor of Tamil Nadu*, *supra* note 30.

- Is the exercise of constitutional discretion by the President under Article 201 of the Constitution of India justiciable?
- In the absence of a constitutionally prescribed timeline and the manner of exercise of powers by the President, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of discretion by the President under Article 201 of the Constitution of India?
- In light of the constitutional scheme governing the powers of the President, is the President required to seek the advice of the Supreme Court by way of a reference under Article 143 of the Constitution of India and to take the opinion of the Supreme Court when the Governor reserves a Bill for the President's assent or otherwise?
- Are the decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, justiciable at a stage anterior to the law coming into force? Is it permissible for the courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?
- Can the exercise of constitutional powers and the orders of or by the President or Governor be substituted in any manner under Article 142 of the Constitution of India?
- Is a law made by the State legislature a law in force without the assent of the Governor granted under Article 200 of the Constitution of India?
- In view of the proviso to Article 145(3) of the Constitution of India, is it not mandatory for any bench of this Hon'ble Court first to decide whether the question involved in the proceedings before it is of such a nature as involves substantial questions of law as to the interpretation of the Constitution, and to refer it to a bench of a minimum of five Judges?
- Are the powers of the Supreme Court under Article 142 of the Constitution of India limited to matters of procedural law, or does Article 142 extend to issuing directions or passing orders which are contrary to or inconsistent with existing substantive or procedural provisions of the Constitution or law in force?
- Does the Constitution bar any other jurisdiction of the Supreme Court to resolve disputes between the Union Government and the State Governments except by way of a suit under Article 131 of the Constitution of India?

These questions raised a concern whether Article 143 can be used as an appellate mechanism against judgments of the Supreme Court. Answering the Reference, the Court held that the text of the first proviso to Article 200, through its phrasing “shall not withhold assent therefrom”, clearly indicates that what was sought to be curtailed among the three options was only the

option to withhold; that the first proviso conditions the verb “withhold” to mean withhold and return to the Legislature; and that the first proviso cannot be read in a manner so as to condition the option of the Governor to reserve the Bill for the President's consideration as well. The Governor has only three options, and he cannot hold a Bill for a prolonged period.⁶⁰

The Supreme Court further observed that the general rule is that the discharge of the Governor's functions under Article 200 is not justiciable, and that the Court cannot enter into a merits review of the decision itself. The Court nevertheless carved out a limited exception for glaring circumstances of inaction that is prolonged, unexplained and indefinite.⁶¹ In such instances the Court can exercise judicial review to issue a limited mandamus directing the Governor to discharge his functions. The Court also observed that Article 361 is an absolute bar on judicial review in relation to personally subjecting the Governor to judicial proceedings, but that it cannot be relied upon to negate the limited scope of judicial review the Court is empowered to exercise in situations of prolonged inaction by the Governor under Article 200. It clarified that while the Governor continues to enjoy personal immunity, the constitutional office of the Governor is subject to the jurisdiction of the Court.⁶² The scope of judicial review is thus a narrow one.

On the timelines laid down in the Tamil Nadu case, the Court observed that there must be a sense of elasticity for constitutional authorities to navigate complex legislative matters in a diverse federal country, and that the imposition of timelines would be strictly contrary to the elasticity that the Constitution so carefully preserves. The Court also concluded that deemed consent of the Governor, or of the President, under Article 200 or Article 201 at the expiry of a judicially set timeline is virtually a takeover, and substitution, of the executive functions by the judiciary through judicial pronouncement, which is impermissible within the contours of a written Constitution.⁶³ The Reference therefore concluded that a timeline cannot be imposed by the Court on the grant of assent by the Governor, and equally that the Governor cannot hold a Bill for an indefinite period.

XIII. CONCLUSION

The journey from Bill to Act in India embodies a delicate balance between the democratic law-making process, constitutional safeguards and the federal structure, and in particular between

⁶⁰ *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India*, 2025 INSC 1333 (Special Reference No. 1 of 2025, decided Nov. 20, 2025).

⁶¹ *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India*, *supra* note 60.

⁶² *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India*, *supra* note 60.

⁶³ *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India*, *supra* note 60, para. 128.

the executive and the legislature. While the Governor's role under Article 200 was conceived as a constitutional check on Bills passed by the legislature, recent judicial decisions have clarified that this discretion is not absolute but is bound by constitutional principles and by the aid and advice of the Council of Ministers. A transparent assent process aligned with the ideals of responsible government ensures that legislative intent is not diluted by the nominal or titular head of the State. At the same time, the absence of any timeline raises a real concern, while imposing one judicially raises questions under Article 361 and the separation of powers between the executive and the legislature. The latest development on this issue was the invocation of Article 143 by the Hon'ble President of India, seeking the advice of the Supreme Court on the powers vested by Articles 200 and 201 and on related issues. Answering the Reference, the Supreme Court has held that a timeline for the Governor's assent cannot be imposed by the Court, that the Governor equally cannot hold a Bill indefinitely, that the action of the President and the Governor is justiciable on the limited ground of prolonged and unexplained inaction, and that Article 143 cannot be used as an appellate mechanism but may be invoked by the President where clarification on a question of law is needed.
