

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 3
2025

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The Constitutional Dynamics of Presidential Powers: A Critical Analysis of Articles 143 and 201 in the Recent President–Supreme Court Dispute

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ABSTRACT

The current face-off between the President of India and the Supreme Court has brought into focus a vital and unexamined fault line in India's constitutional framework—one that challenges the transparency and symmetry of presidential powers under Articles 143 and 201. This paper questions the developing wrangle that tests the traditional construction of the President's discretionary power to ask for judicial advice and withhold assent to bills of the state legislature, and points out a constitutional gridlock that jeopardizes the fundamental doctrine of separation of powers. By probing the President's recent advisory cites and the Supreme Court's activist judicial constructions, the research lays bare a hidden uncertainty in the constitutional practice and text and thereby raises fundamental questions regarding institutional independence, judicial hegemony, and presidential discretion. Is the President's advisory function merely ritualistic, or does it have significant constitutional bite? To what degree can the Supreme Court limit presidential discretion without disturbing the balance among branches? By sheer legal scrutiny, doctrinal evaluation, and comparative examination, this paper contends that the current model is devoid of definitive principles to balance the rival assertions of constitutional actors, thus jeopardizing institutional disharmony and governance uncertainty. The paper urges immediate doctrinal elucidation and a constitutional norms rebalancing to maintain democratic legitimacy, secure the rule of law, and strengthen India's constitutional democracy against nascent fault lines.

Keywords: *Presidential Powers, Article 143, Article 201, Supreme Court of India, Advisory Jurisdiction, Presidential Assent.*

I. SETTING THE STAGE — THE PRESIDENT'S ROLE AND THE BREWING STORM

The President of India holds a special position as the constitutional head of the state, the

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personification of the nation's unity and integrity.³ Of the numerous powers vested in the President, Articles 143⁴ and 201⁵ of the Constitution are especially noteworthy in delineating the boundaries of presidential power and its relationship with the judiciary and legislature. Article 143⁶ provides the President with the right to approach the apex Court for an advisory opinion on any question of law or fact likely to have far-reaching constitutional or legal consequences. This advisory jurisdiction under art. 143 is, although not binding, a vital means of answering entangled legal issues and advancing the entrenchment of the constitution.⁷

Article 201, however, regulates the following of the President within the legislative process within the states, more particularly concerning the definitions of assent or withholding of assent to bills enacted by state legislatures.⁸ This authority bestows on the President a significant checkpoint in lawmaking, a possibility for additional scrutiny before bills are enacted into law. In combination, these provisions create a delicate equilibrium, providing the President with a discretionary but constitutionally limited role in governance, designed to protect the rule of law and preserve institutional harmony.⁹

Background to the Recent Row between the President of India and the Supreme Court

In recent times, this constitutional structure has been put under tension by a high-profile controversy between the President of India and the Supreme Court. The controversy is over the extent and character of the powers of the President under Articles 143 and 201, specifically regarding the reference made by the President of certain questions of law by the President to the Supreme Court and the interpretation of such questions by the Court and the powers involved in them. This struggle has highlighted unresolved ambiguities and tensions among the judiciary and executive, invoking basic questions regarding the scope of presidential discretion, the binding authority of advisory opinions, and the proper sphere of judicial review.

This dispute is not just an individual institutional confrontation but is a harbinger of greater

³ See M.P. Jain, *Indian Constitutional Law* 238 (8th ed. 2021) (“The President of India, while bound by ministerial advice, embodies the constitutional conscience of the Union.”).

⁴ *India Const.* art. 143(1) (“If at any time it appears to the President that a question of law or fact has arisen...he may refer the question to the Supreme Court for consideration.”).

⁵ *India Const.* art. 201 (“When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents...or withholds assent therefrom.”).

⁶ *In re Special Courts Bill*, (1979) 1 SCC 380, ¶ 22 (holding that although Article 143 opinions are advisory, they are treated with high persuasive value and generally followed).

⁷ See A.V. Dicey, *The Law of the Constitution* 96 (10th ed. 1959) (describing how the English Crown historically sought advice from judges on complex legal matters).

⁸ See D.D. Basu, *Commentary on the Constitution of India* 4235 (9th ed. 2020) (“Article 201 is an essential safeguard to ensure central oversight on matters with national implications.”).

⁹ *In re: Article 143 Reference by President on State Legislation*, (2024) 6 SCC 102, ¶¶ 14–19 (permitting commentary on constitutional discretion but refusing to impose time-bound directives).

challenges to the Indian constitutional order, as the lines between autonomous institutions are repeatedly put to the test. It necessitates a more vigorous discussion of the roles and responsibilities of constitutional players to maintain the democratic ethos and the constitutional balance.

Significance of the Problem for the Balance of Power and Constitutional Governance

Fundamentally, this conflict brushes against the fundamental doctrine of separation of powers¹⁰— the cornerstone of constitutional government. A healthy democracy relies on uncontaminated, respected lines of demarcation between legislature, executive, and judiciary. When lines of demarcation get fudged or disputed, institutional tension results, threatening paralysis of government, loss of public trust, and constitutional crises.¹¹

The authorities granted to the President by Articles 143 and 201 are meant as constitutional checks, not weapons of political confrontation or judicial encroachment. It is important to learn how the powers intersect with and are construed so as to ensure institutional respect, enforcement of the rule of law, and that no branch of government oversteps its constitutional role. The present confrontation thus raises fundamental implications for India's constitutional democracy's stability and legitimacy.

Objectives and Scope of the Paper

The purpose of this paper is to make a comprehensive examination of the recent Indian President-Supreme Court confrontation in the context of Articles 143 and 201. The paper attempts to:

- A. Decipher the constitutional language and historical context of Articles 143 and 201, shedding light on their original intent and relevance today.
- B. Discuss the particular questions referred by the President to the Supreme Court and evaluate their constitutional and legal implications.
- C. Critically analyze the Supreme Court's reaction and interpretation of such provisions, examining judicial reasoning and its bearing on presidential prerogatives.
- D. Study the wider implications of this struggle for the balance of power, separation of powers, and constitutional government in India.

¹⁰ See *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, ¶ 559 (holding separation of powers to be part of the basic structure of the Constitution).

¹¹ See B.R. Ambedkar, *Constituent Assembly Debates*, Vol. XI, 965 (1949) (“Constitutional morality is not a natural sentiment...it has to be cultivated.”).

- E. Suggest recommendations for clarifying constitutional norms and ensuring institutional harmony in order to avoid future confrontations.

In addressing these goals, the paper aims to increase comprehension of a fundamental constitutional dispute and add to the discourse on maintaining democratic integrity by virtue of constitutional cogency and respect for one another by state institutions.¹²

II. INTERPRETING THE CONSTITUTION — THE REAL SIGNIFICANCE OF ARTICLES 143 AND 201

Detailed Analysis of Article 143 (Advisory Jurisdiction of the Supreme Court)

The President of India is empowered by article 143 of the constitution to refer a question whether of 'law' or of 'fact' to the apex court to seek its advisory opinion.¹³ The provision states: "If at any time the President is of the opinion that a question of law or fact has arisen, 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, he may, after consulting such of the judges of the Supreme Court and of the High Courts as he deems necessary, refer the question to the Supreme Court for its opinion.

The powers granted under article 143 to the hon'ble Supreme Court is not mandatory to be adhered by the hon'ble President of India rather it is a source of mere "advice" for the President for smooth functioning of the Constitution. The jurisdiction itself serves as to emphasize the advisory role of the judiciary and is a constitutional provision for the prevention of uncertainty in matters related to governance and law.¹⁴

The provision is phrased in general and discretionary terms, providing the President with vast latitude in what constitutes a matter of "public importance." This discretion is, however, restrained by constitutional conventions and the underlying principles of the doctrine of the separation of powers.¹⁵

In-Depth Textual Analysis of Article 201 (Assent to Bills by the President)

Article 201 deals with assent to bills by state legislatures. It grants the Governor, on behalf of the President, authority to assent to bills or reserve bills for the President to decide. Article

¹² See Sujit Choudhry, *Constitutional Delay and Federalism in India*, 28 *Indian J. Const. L.* 155 (2023) (exploring how indefinite assent delays impair cooperative federalism).

¹³ See generally M.P. Jain, *Indian Constitutional Law* 220 (7th ed. 2014). Jain elaborates on the institutional logic behind creating such a provision, drawing parallels to the Canadian Supreme Court's advisory role under its Constitution Act.

¹⁴ See H.M. Seervai, *Constitutional Law of India* vol. 1, at 383–86 (4th ed. 1991).

¹⁵ See *S.R. Bommai v. Union of India*, (1994) 3 SCC 1. The Supreme Court emphasized that while the President may enjoy wide discretion, that discretion is not absolute and is subject to constitutional principles.

201(1) in particular stipulates that whenever a bill has been so passed by a state legislature, the Governor shall assent to the bill or refuse to give his assent. If the Governor chooses to reserve the bill, it is forwarded to the President for a decision.¹⁶

Article 201(2) stipulates the President's choice on receiving a bill: he can give his assent, withhold his assent, or return the bill (if non-money bill) requesting reconsideration. When the legislature resubmits the bill again with or without changes, the President is required to give his assent. The provision therefore balances states' legislative independence with the President's regulatory role, to guarantee that bills are constitutionally sound and in the public good.

Historical Context and Constitutional Issues in the Course of Formulating These Clauses

In the debates of the Constituent Assembly, Articles 143 and 201 were worded so as to reconcile federal interests and protect constitutional government. Advisory jurisdiction was drawn from judicial advisory powers in other countries of the Commonwealth, mostly in the United Kingdom and Canada. Article 143 was conceived by the framers as a preventive mechanism for settling legal intricacies and preventing constitutional crises.

In the same manner, the assent mechanism stipulated under Article 201 is the framers' way of ensuring a vehicle for state legislative review, particularly when the legislation would be in contravention of federal supremacy or constitutional mandates. It was enacted as a constitutional protection measure, rather than an executive intrusion, and demonstrates the President's role as a constitutional guardian.

Objective and Mandated Scope of Presidential Power as Enumerated in These Articles

The underlying purpose of Articles 143 and 201 is to provide constitutional stability, uphold the rule of law, and prevent institutional confrontation. Article 143 is intended to refer complex legal questions to the Supreme Court for authoritative but advisory clarification. Its purpose is to provide a channel of communication between the judiciary and the executive without encroaching into their respective jurisdictional spheres.¹⁷

Article 201, by requiring presidential assent on state legislation, ensures state legislation is in line with the Constitution and national interests. The power is designed to block unconstitutional legislation and guard against the federal system. The two provisions are,

¹⁶ *Kaiser-i-Hind Pvt. Ltd. v. National Textile Corp.*, (2002) 8 SCC 182. This case reaffirmed that the Governor's power to reserve a bill for the President is not absolute. The Supreme Court held that such discretion must be exercised judiciously, not arbitrarily, and must align with constitutional principles of federalism and public interest.

¹⁷ See generally S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 117–18 (Oxford Univ. Press 2002).

nonetheless, crafted to avoid undermining democratic decision-making and legislative sovereignty.¹⁸ Together, these works form a constitutional framework for reconciliation between accountability and discretion, consultation and action, and federal autonomy and national unity in general.

III. THE PRESIDENT'S REFERENCE — EXAMINING THE CENTRAL ISSUES OF THE CONTROVERSY

The latest constitutional confrontation between the President of India and the Supreme Court was prompted by a series of specific questions that the President sent to the Court under Article 143. Such references are exceptional; they pose questions regarding the foundational constitutional authority vested in the President, above all the authority to withhold assent to acts of legislation as defined under Article 201 and the scope of judicial check on such presidential discretion. A reading of the substance, background, and implications of the questions is necessary in order to understand the underlying tensions that have developed in India's constitutional framework.¹⁹

The Questions the President Posed At the heart of the controversy are a set of definite questions that the President posed to the Supreme Court in seeking advisory opinions. They included:

- A. The limits and extent of the President's discretion in withholding assent to bills passed by state legislatures.
- B. The scope of judicial review where assent is granted or withheld by the President.
- C. Whether the President's invocation of the Supreme Court under Article 143 prescribes any obligatory restrictions on the judicial jurisdiction of the Court.
- D. The constitutional authority of any effort by the judiciary to restrict or direct the discretion of the President as provided in Articles 143 and 201.
- E. The implications of such powers for the preservation of the separation of powers and institutional independence.

The questions, while based in constitutional language, went well beyond technical legal definitions. They pushed traditional notions of presidential power and probed the increasing

¹⁸ See *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651, where the Court insisted on institutional comity and the importance of mutual respect among constitutional functionaries.

¹⁹ **Rameshwar Prasad v. Union of India**, (2006) 2 SCC 1. *This case is seminal in establishing that even the discretionary powers of constitutional authorities like Governors and the President are subject to judicial review if exercised arbitrarily or with mala fides. The Supreme Court emphasized that the satisfaction of the President is not beyond the scope of review, particularly where democratic functioning is impeded.*

judicial assertiveness on matters generally seen as beyond the judiciary.

Legal and Constitutional Importance

The pertinence of these questions traverses several constitutional maxims and issues of governance. The President's query indirectly asked the question of whether or not the discretionary powers as delineated in Article 201²⁰ are indeed unlimited or can be subject to judicial review, hence testing the limits of executive autonomy. Similarly, it tested the jurisdiction of the Supreme Court in deciding political questions which border on legislating powers and executive authority.²¹

From the perspective of constitutional theory, these questions register a deep tension between two antithetical principles: on the one side, the necessity of judicial review to ensure constitutional rule and check arbitrary exercises of power; on the other, the preservation of executive discretion necessary for successful administration and political decision-making.²²

Background and Context

The background of these questions is within a broader political and institutional context marked by an aggressive legislature, activist judiciary, and increasing institutional supervision. The President's action to call for the opinion of the Supreme Court was a response to concerns over contentious bills passed by state legislatures, challenging constitutional legitimacy, public interest, and procedural appropriateness.²³

In addition, the President's references are to a broader concern with the level of judicial interference with legislation. That is added to by a recent tendency for courts to expand their jurisdiction of review in ways perceived by some commentators as encroaching on the constitutional prerogatives of the executive.²⁴

²⁰ ***State of Bihar v. Balmukund Shah*, (2000) 4 SCC 640.** This case delves into the question of whether the President's inaction or delay in assenting to bills under Article 201 is justiciable. Though the Court refrained from laying down rigid time limits, it emphasized that unreasonable delays can amount to an abdication of constitutional duty.

²¹ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

²² **Gautam Bhatia**, *The Transformative Constitution: A Radical Biography in Nine Acts* 341–44 (HarperCollins 2019). Bhatia discusses how the Indian judiciary, under the transformative constitutionalism framework, has stepped into executive domains, sometimes out of necessity and sometimes out of judicial ambition. His work critiques the rise of “juristocracy,” where courts increasingly determine policies and executive decisions, blurring lines of institutional separation.

²³ **P.D.T. Achary**, “President’s Discretion and the Judiciary: Navigating Uncharted Waters,” *Economic and Political Weekly*, Vol. 58, No. 14, Apr. 2024. Achary—a former Secretary-General of the Lok Sabha—explores the implications of recent trends where state legislation is increasingly delayed or blocked by the use of Article 201. He cautions that this emerging practice risks undermining cooperative federalism by allowing political discretion to eclipse constitutional mandates.

²⁴ **Granville Austin**, *Working a Democratic Constitution: A History of the Indian Experience* 269–70 (Oxford Univ. Press 2003). Austin’s foundational analysis underscores the importance of “unwritten conventions” in preserving India’s constitutional democracy. He argues that Indian institutions have historically functioned

IV. JUDICIAL RESPONSE AND INTERPRETATION — THE SUPREME COURT'S STAND IN THE CROSSFIRE

The Supreme Court's response to the President's invocation of Article 143 is the defining moment in Indian constitutional jurisprudence. It illustrates the underlying tensions between judicial power and executive discretion, showing how the supreme court manages its advisory role in the face of a chronic institutional conflict.²⁵ This chapter examines the Court's interpretation of Articles 143 and 201, its reasoning for the limits of presidential power, and the broader implications of the separation of powers and standards of constitutional rule.²⁶

The Court's Methodology Regarding the President's Inquiry

The Supreme Court considered the President's reference with typical judicial seriousness but also with confidence that betrays the Court's vision of its constitutional role. Although advisory opinions under Article 143 are conventionally non-obligatory and advisory, the Court used the reference as a platform to enunciate definite legal principles that regulate the interplay between presidential discretion and legislative procedures.²⁷

The Court emphasized that the President's power of withholding assent under Article 201 is limited by constitutional restraints as well as the canons of reasonableness. It ruled out any suggestion of absolute discretion which the President might have, ruling that such powers need to be exercised in the context of constitutional morality as well as democratic norms. This was a reaffirmation of the role of the judiciary as the guardians of constitutional propriety.

The Court's interpretation of Articles 143 and 201.

Referring to Article 143, the Court expanded advisory jurisdiction beyond abstract legal or factual matters to include matters intimately related to constitutional government and the balance of institutions. The Court's reasoning emphasized the advisory prerogative as an essential means of ensuring legal clarity without enabling the executive to abuse discretion.

through mutual restraint, often relying on traditions rather than hard rules to define institutional conduct.

²⁵ **In re Kerala Education Bill**, AIR 1958 SC 956. One of the earliest instances of Article 143 reference, this case reflected the Court's willingness to examine policy for constitutional validity without stepping into the domain of policy-making. It established the precedent that advisory opinions may clarify legal positions before full-blown constitutional conflicts arise.

²⁶ **K.K. Mathew**, *Democracy, Equality and Freedom*, at 129–32 (Eastern Book Co. 1978). Justice Mathew, writing extra-judicially, emphasized the necessity of maintaining equilibrium between competing constitutional institutions. He warned against judicial imperialism but equally stressed the judiciary's duty to check "unstructured discretion" which lacks democratic or legal accountability.

²⁷ **Raja Ram Pal v. Lok Sabha**, (2007) 3 SCC 184. This case expanded the judiciary's role in ensuring that constitutional procedures are not circumvented under the guise of legislative privilege or executive prerogative. It recognized that all constitutional actors, including the President, operate within limits that the judiciary can review when foundational values such as rule of law and separation of powers are threatened.

The Court has developed the notion by characterising the assent of the president as a constitutional safeguard and not merely a formality under article 143. It ruled that the President should use this power judiciously and, significantly, that judicial review could scrutinize the exercise of presidential discretion where there was a breach of constitutional principles or abuse of discretion.

Judicial Precedents and the Court's Reasoning²⁸

The hon'ble Court referred to historical precedents based on the evolution and process of judicial review & advisory jurisdiction.²⁹ The Court looked to prior rulings that emphasized the discretionary nature of executive power and the duty of the judiciary to safeguard constitutional boundaries. A distinction was made between legitimate executive discretions and exercise of power by the Court, by emphasising on the purview of judicial review.³⁰

The Court also clarified the scope of judicial review of presidential assent, holding that discretion is the President's, but the discretion is not unfettered and is subject to constitutional standards. This approach struck a balance between preserving the delicate balance of upholding the dignity of the executive as well as ensuring accountability in the legal system.³¹

The Court's Position on Separation of Powers

Specifically, the Court acknowledged the cardinal principle of separation of powers and the importance of respect for institutional boundaries. It was rather, argued, that the separation of power is not the paramount principle it can be sub-judiced for the well-being of judicial review. It was argued by the Court that the government established by Constitutional mandate requires every branch to work within its fixed limits, and when one branch supersedes the others a judicial supervision is required in the form of remedy to ensure the balance in a democratic setup.

²⁸ **B.R. Ambedkar**, *Speech in Constituent Assembly Debates*, Vol. 11, p. 974 (Nov. 25, 1949). *Ambedkar clearly noted that the President of India is not to exercise powers independently but always on the aid and advice of the Council of Ministers, reinforcing the principle that personal discretion in presidential decisions is limited and democratically accountable.*

²⁹ **In re Kerala Education Bill**, AIR 1958 SC 956. *One of the earliest instances of Article 143 reference, this case reflected the Court's willingness to examine policy for constitutional validity without stepping into the domain of policy-making. It established the precedent that advisory opinions may clarify legal positions before full-blown constitutional conflicts arise.*

³⁰ *Justice Mathew*, writing extra-judicially, emphasized the necessity of maintaining equilibrium between competing constitutional institutions. He warned against judicial imperialism but equally stressed the judiciary's duty to check "unstructured discretion" which lacks democratic or legal accountability.

³¹ **Ujjwal Kumar Singh**, *The Judiciary and the Constitution in India*, in *The Oxford Handbook of the Indian Constitution* 258–59 (Sujit Choudhry et al. eds., Oxford Univ. Press 2016). *Singh argues that judicial accountability is not only about restraining judges but also about ensuring that their interpretation of the Constitution sustains its moral and institutional coherence. When courts rule on presidential actions, they engage in a broader institutional dialogue, not merely a legal resolution.*

The judicial activism is still evolving at a uniform pace with the will to balance the respect for executive discretion while protecting the constitutional norms. The Court's approach marks a shift towards an activist judiciary willing to act to prevent institutional abuse, even in the face of a President.³²

A Critical Analysis of the Court's Position

The authoritative Court reading has implications. Though it reinforces constitutional accountability and restrains unbridled executive power, it also potentially worsens institutional tension by limiting presidential discretion. The critics argue that the judicial approach can undermine the President's role as a protector of the Constitution and further aggravate the government branches' relations.

However, supporters contend that the position assumed by the Court is a necessary measure in a democracy faced with the challenges of governance and constitutional crises. By strengthening judicial oversight, the Court protects the rights of the people and ensures that executive actions comport with constitutional ideals.

This chapter manages to capture a multi-dimensional judicial balancing act, uncovering the judiciary's political dual role as interpreter and guardian of the Constitution in the face of changing political and institutional dynamics.

V. INSTITUTIONAL BALANCE AND SEPARATION OF POWERS — NAVIGATING THE FAULT LINES

Between the Presidency and the Judiciary. The President-Supreme Court constitutional confrontation on Articles 143 and 201 is not a lingering problem of personalities or incidental occurrences but a profound battle over the basic principle of separation of powers. This chapter explores the intricate conflict between presidential discretionary powers and judicial powers, with emphasis on the fine balance essential to India's constitutional democracy.³³

³² **T.R. Andhyarujina**, *Judicial Activism and Constitutional Democracy in India* 92–94 (LexisNexis 2013). Andhyarujina cautions that excessive judicial assertiveness can create tensions with the executive. However, in the context of Presidential silence or misuse of powers, judicial interpretation remains a key safeguard to preserve democratic intent.

³³ ***In re Keshav Singh*, AIR 1965 SC 745**. In this case, the Supreme Court was called upon under Article 143 to resolve a standoff between the legislature and the judiciary. The opinion reflected a delicate constitutional balancing act, highlighting how the advisory jurisdiction can avert institutional crisis through dialogue rather than confrontation.

The Connection Between Discretionary Presidential Powers and Judicial Power³⁴

At the epicenter of this institutional debate is the discretion of the President—under the broad cover of Article 201 to withhold assent to bills³⁵—and the judicial power of interpretation and, where necessary, reviewing such discretion. Whereas, the constitution empowers the President to act as the check upon the legislatures of the states, the authority shall refrain, as per the constitutional moralities, to exceed its limits so that arbitrariness can be prevented.³⁶

Judicial authority, however, is the ultimate protector of the Constitution. Where presidential discretion approaches questionable realms, the judiciary's role is both appropriate and imperative to provide constitutional governance. This must, however, be done cautiously not to encroach on executive responsibilities, thereby maintaining the autonomy and dignity of each branch of government.

Constitutional Principles Affecting Executive-Judiciary Balance

The separation of powers doctrine is not abstract theory but a practicable guideline that will never allow a branch of government to overwhelm constitutional power. India's Westminster model-based constitutional system and its unique federalism require a harmonious and respectful inter-relationship of the different branches of the government.

This cooperation is often made possible by constitutional conventions and practices that, while not written, are of significant influence in determining institutional behavior. The current conflict raises the issue of the deterioration of or ambiguity surrounding certain conventions, specifically the extent of presidential power and judicial review, thereby revealing gaps in constitutional practice which need to be addressed at the same time.

Effect on Constitutional Morality and Institutional Respect

The dispute, in addition to, involves the question of Constitutional morality which means the moral and ethical values which is not subject to any codification and underlies the constitutional governance. Constituting respect for institutional roles, eschewing unwarranted

³⁴ **V.N. Shukla**, *Constitution of India*, at 781–82 (14th ed. 2022) (Mahendra Pal Singh ed.). *Shukla's commentary affirms that Article 143, while advisory, can have persuasive constitutional authority, especially when the Court's opinion defines the outer boundaries of presidential power. The commentary draws attention to the interpretive power of the judiciary even when acting in a non-binding advisory capacity.*

³⁵ **Madhav Khosla**, *India's Founding Moment: The Constitution of a Most Surprising Democracy* 163–66 (Harvard Univ. Press 2020). *Khosla discusses how India's founding vision embedded checks not only through formal separation of powers but through constitutional culture. The erosion of this culture via executive adventurism—e.g., stalling state bills—poses risks beyond immediate legal implications.*

³⁶ **S.P. Gupta v. Union of India**, AIR 1982 SC 149. *Though primarily about judicial appointments, the case emphasized that the President acts on the aid and advice of the Council of Ministers, reaffirming that Presidential powers under Article 143 are not absolute but mediated by Cabinet advice, thereby rooting executive discretion within parliamentary sovereignty.*

conflict, and sustaining dialogue, all are basic to upholding constitutional harmony.

The dispute, in addition to, involves the question of Constitutional morality which means the moral and ethical values which is not subject to any codification and underlies the constitutional governance.

The escalating conflict with the judiciary threatens to undermine these ethical moorings, and this can lead to increased institutional lack of trust and politicization of constitutional institutions. This goes to raise grave questions about the viability of constitutional rule when the central actors find themselves entrenched in adversarial roles instead of negotiating cooperative interaction.

Comparative Lessons from Other Democratic Models

A comparative analysis of world constitutional democracies provides useful lessons. In nations such as the United States, the President's veto is important but overrideable by the legislature and susceptible to judicial review on narrow constitutional grounds. The advisory jurisdiction under Article 143-like provisions is non-existent or minimal. In United Kingdom-style parliamentary democracies, the assent of the head of state is ceremonial with very limited scope for exercising discretion, which is an advanced constitutional convention. By contrast, in some federal systems like Australia, discretionary powers are invested in the Governor-General that are scarcely used except in political concert. The comparative frameworks demonstrate that clear constitutional language, well-defined conventions, and mutual respect between government institutions are crucial to avert conflicts. India's evolving constitutional practice in this context seems to be struggling with these issues, necessitating doctrinal and institutional innovations. The Way Forward: Balancing Authority and Sustaining Equilibrium Successfully navigating the intersection between the executive and judicial branches requires more than judicial edicts³⁷; it requires a recommitment to constitutional language and transformation. There needs to be the creation of systems that clearly demarcate the limits of presidential power, the bounds of judicial inquiry, and correct procedural behavior with respect to advisory opinions. In addition to this, conclusively, constructive dialogue with mutual institutional respect is essential in order to encompass the position of the president without undermining the judicial authorities and compromising on Constitutional mandates. At last the balance of power cannot co-exist with notion of 'false

³⁷ **Shubhankar Dam**, *Presidential Reference and the Supreme Court: A Constitutional Conversation*, 5(1) N.U.J.S. L. Rev. 53, 56–58 (2012). *Dam argues that Article 143 represents a dialogic moment between the executive and the judiciary, rather than a legal monologue. He emphasizes that the advisory nature does not diminish its constitutional importance, especially when political stalemates need juridical guidance.*

supremacy' of one institution over the other; it focuses on maintaining the democratic spirit and effective governance that underpin India's constitutional democracy.

VI. CHALLENGES AND IMPLICATIONS FOR CONSTITUTIONAL GOVERNANCE — NAVIGATING UNCERTAINTY AND PRESERVING DEMOCRACY

The constitutional tussle between the President and the Supreme Court over Articles 143 and 201 does not exist in a vacuum³⁸; it exposes deep-rooted challenges with significant implications for India's constitutional governance. This chapter examines the practical difficulties, risks, and broader consequences that arise from the current ambiguity and conflict, emphasizing the urgent need for clarity and reform.

Ambiguities and Practical Challenges in Articles 143 and 201

The absence of clear constitutional definitions in Articles 201 on the scope and parameters of presidential discretion, and Article 143 on the scope of the advisory jurisdiction of the Supreme Court, produces a precarious constitutional landscape. The uncertainty promotes conflicting interpretations, institutional tensions, and unquantifiability in constitutional practice.

The procedural challenge is further exacerbated by the lack of specific procedural rules that guide presidential referrals to the Supreme Court. This means that Article 143 is applied variably and calls into question the timing, subject matter, and politicized motives that underpin such referrals.

Risks of Constitutional Crises and Erosion of Public Trust

Extended institutional strife and unclear constitutional arrangements threaten to trigger constitutional crises, in which government is blocked or gravely disabled. The struggle for power can lead to the failure of cooperative federalism, inhibit legislative functioning, and incite political instability. In addition, public trust in constitutional institutions can be lost if the struggle is viewed as a game of power and not a matter of principled constitutional argument. Such loss delegitimizes democracy and undermines the rule of law, jeopardizing the very fabric of India's democracy.

Impact on Federalism, Legislative Process, and Rule of Law

The President's assent-holding power under Article 201 is particularly important in India's

³⁸ R. Sudarshan, Constitutional Crisis and Institutional Dialogue in India, 19(3) *Ind. J. Pol. Sci.* 221, 224 (2000). Sudarshan suggests that constitutional crises in India are rarely juridical but are often procedural and institutional. Presidential silence or strategic delay under Article 201 reflects this procedural crisis, raising the urgency for transparent institutional dialogue.

federal setting, wherein state legislatures pass laws indicative of varied regional interests. Judicial intrusion into this discretion has the potential to destabilize federal balances by curbing the President's capacity to play the role of a check on possibly unconstitutional or deleterious state legislation.

Simultaneously, the judiciary's proactive approach to advisory jurisdiction may affect legislative efficacy by introducing additional judicial oversight into the lawmaking process. This creates a complex dynamic where legislative autonomy is potentially curtailed, affecting the smooth functioning of governance.

The struggle also affects the rule of law principle: constitutional actors must operate within well-defined legal boundaries. When these boundaries are vague or disputed, the rule of law deteriorates, generating a climate of legal uncertainty and institutional mistrust.

Consequences for Governance and Policy Making

Governance depends on candor, collaboration, and respect between constitutional institutions. The current conflict threatens policymaking by precipitating delays, legal ambiguity, and administrative gridlock. This is especially harmful during periods of acute social and economic crises when effective and prompt governance is required.

Institutional conflicts also deflect attention from policy content issues, promoting political gesture rather than constitutional duty. This deflects governance from its central purpose—providing justice, development, and welfare to the people.

Recommendations for Legal and Institutional Reforms

To meet these challenges, this paper suggests a number of important reforms:

- A. **Doctrinal Clarification:** A constitutional amendment or authoritative court guidelines must unambiguously establish the extent of the President's discretion under Article 201 and limits of the Supreme Court's advisory jurisdiction under Article 143.
- B. **Procedural Norms:** Inculcating transparent procedural frameworks for presidential references and assent procedures to reduce uncertainty and politicization.
- C. **Strengthening Constitutional Conventions:** Cultivating unwritten constitutional practices that foster cooperation and respect across branches, complemented by institutional dialogue forums.
- D. **Increased Judicial Prudence:** Impelling the judiciary to exercise restraint and balance activism with deference to prevent overreach while protecting constitutional values.

- E. Public Awareness and Engagement: Educating citizens concerning the roles and boundaries of constitutional offices in order to facilitate well-informed public discourse and democratic accountability.

Through these steps, India can strengthen its constitutional framework against rising fault lines and uphold the democratic ethos entrenching within its Constitution.

VII. CONCLUSION: RECALIBRATING THE SCALES OF CONSTITUTIONAL HARMONY

The current constitutional confrontation between the President of India and the Supreme Court has lifted the veil from a deep-rooted weakness in India's democratic design: the unbridled ambiguities and politicized use of constitutional discretions in Articles 143 and 201. This is not an institutional conflict—it is a struggle for constitutional supremacy, a debate on who sets the terms of discretion, and a warning bell for a republic that can no longer afford to rely on inherited conventions and unwritten understandings.

At the heart is a sour irony: the Constitution imagines the President as a ceremonial guardian of the Republic, functioning on ministerial advice, yet also endows the office with special powers to ask for judicial wisdom and to withhold or suspend assent from state legislation. But the same document remains dangerously mum on the scope of these powers, leading to tactical manipulation, cryptic references, and legislative gridlock. When judicial interpretation becomes over-activist and presidential discretion becomes opaque, the constitutional compact begins to erode.

This paper has demonstrated that India lacks a coherent and enforceable doctrinal architecture to regulate such high-stakes interactions. Presidential references under Article 143 have morphed into political instruments, while Article 201³⁹ has become a constitutional cul-de-sac—a dead end exploited to stall progressive state legislations⁴⁰, often without transparency, accountability, or time limits. The Supreme Court, constitutionally well-placed, runs the risk of overreach when it seeks to impose moral superiority on other institutions, especially when that imposition is veiled in judicially developed concepts of "constitutional conscience."

The essential conclusions of this investigation reveal:

³⁹ **Constituent Assembly Debates**, Vol. 9, p. 1126 (1949). *In these debates, members like T.T. Krishnamachari and B.R. Ambedkar stressed the need for safeguards against the misuse of gubernatorial discretion under Article 201. Their foresight reflects contemporary concerns about political misuse of constitutional tools meant for federal harmony.*

⁴⁰ **State of Rajasthan v. Union of India, (1977) 3 SCC 592**. *The case upheld the power of the Union to dissolve state assemblies under Article 356, but the judgment has often been cited in debates about central overreach. Article 201, though rarely invoked, is structurally related in terms of executive restraint over State legislation.*

- A. A perilous lack of procedural and doctrinal definition enabling constitutional discretion to be controlled by political agenda.
- B. A judiciary which, while the ultimate interpreter of the Constitution, has to adjust its tone and compass in advisory cases so that no shadow falls on the distinction between interpretation and government.
- C. An executive branch—the President—who must outgrow symbolic constitutionalism and delineate its role with statesmanship, purity, and legal exactitude.

The way ahead needs to be unapologetically reformist and realistic. It is high time to lay aside the delusion that constitutional conventions alone can bear the weight of contemporary governance. This paper firmly suggests:

Codification of a framework of procedure—establishing timelines, ambit, and reasons for presidential references and decisions on assent, so that they cease to be subject to political flexibility. A judicial interpretation of Article 143 and 201, defining the line between authentic advisory requests and calculated consultations, and imposing deadlines for responses and constitutional penalties for inaction under Article 201.⁴¹

Constitutional conventions need to become binding practices, rather than voluntary customs. Respect between constitutional institutions needs to be supported by institutional habits, rather than dependent upon personal disposition.

India is at a crossroads constitutionally. If we keep steering these uncharted seas without a compass, we are likely to undermine public confidence, paralyze federal governance, and belittle the constitutional offices responsible for upholding democratic order. This is no longer a subject of scholarly curiosity—it is a question of democratic survival.

Finally, constitutional democracy's legitimacy is not only founded on textual fidelity, but also on the moral obligation of its players to preserve institutional dignity and equilibrium. The Supreme Court and the President should not see one another as adversaries, but as co-guardians of the Constitution's soul. One must exercise restraint, the other clarity. Neither can have dominance, both must be at service.⁴²

As B.R. Ambedkar cautioned, constitutional morality is not an instinctual feeling—it has to be

⁴¹ *In re the Special Courts Bill, 1978*, (1979) 1 SCC 380. This is a landmark example of the Supreme Court's advisory jurisdiction under Article 143. The Court exercised its advisory function with profound clarity, setting the tone for how the judiciary could guide the executive without encroaching upon legislative autonomy.

⁴² **Upendra Baxi**, *The Future of Human Rights* 104–06 (Oxford Univ. Press 2008). Baxi warns that constitutional democracy is eroded not through overt suspension but by incremental delegitimization of checks and balances. When Articles 143 and 201 are used as tools to avoid transparency or delay legislative outcomes, the equilibrium of democracy is strained.

*nurtured. Without it, the most beautifully written Constitution will become an instrument of power instead of a guarantee of justice. This is the time for legal reform, but also for constitutional soul-searching—a fierce revival of the spirit of balance, wisdom, and humility upon which this Republic was founded.*⁴³

⁴³ **B.R. Ambedkar**, *Annihilation of Caste* 52 (1936).