

FROM DISCRETION TO DUTY: RECONCEPTUALISING THE GOVERNOR'S ROLE UNDER ARTICLES 200 AND 201 IN LIGHT OF THE PRESIDENTIAL REFERENCE

by

J.Laxmi Rajashekhar¹

ABSTRACT

The Governor's power over State Bills under Articles 200 and 201 of the Constitution of India has become one of the most contested sites of Indian federalism. In *State of Tamil Nadu v. Governor of Tamil Nadu* (2025), a two-judge Bench of the Supreme Court read timelines into Article 200 and, invoking Article 142, declared ten Bills to have received deemed assent. Months later, a five-judge Bench answering a Presidential Reference under Article 143 rejected both judicially fixed timelines and deemed assent. It held that the Governor has only three options, may exercise discretion in choosing among them, and is answerable only to a 'limited mandamus' for prolonged, unexplained and indefinite inaction. This article argues that the Reference, read carefully, does not restore unfettered gubernatorial discretion. By foreclosing the pocket veto and confirming that inaction is justiciable, it accepts the premise that the Governor's power is held in trust for the constitutional scheme. Drawing on constitutional morality, the federal structure recognised in *S.R. Bommai*, and the Constituent Assembly's understanding of the office, the article proposes a framework of 'duty-bound discretion' resting on four obligations: to decide, to give reasons, to act in good faith, and to act within reasonable time. It contends that this framework fills the space the Reference left open, gives content to the undefined limited mandamus, and points towards institutional reform, including a constitutional amendment prescribing outer time limits, as the legitimate path to the certainty the Court declined to supply.

Keywords: Governor; Article 200; Presidential Reference; Deemed Assent; Constitutional Morality; Cooperative Federalism

¹ Research Scholar, Lovely Professional University, Phagwara, Punjab.

I. Introduction

Few constitutional offices in India attract as much controversy, and as little textual guidance, as that of the Governor. The office was designed as that of a constitutional head who would ordinarily act on ministerial advice, yet in recent years it has become a site of open confrontation between elected State governments and Raj Bhavans. Nowhere is this more visible than in the grant of assent to Bills. Between 2020 and 2023, the Tamil Nadu Legislative Assembly passed twelve Bills that remained pending before the Governor for periods running, in some cases, into years.² Similar disputes reached the Supreme Court from Punjab, Kerala and Telangana.³

The Supreme Court's response came in two strikingly different registers. In *State of Tamil Nadu v. Governor of Tamil Nadu*, decided on 8 April 2025, a two-judge Bench held the Governor's inaction illegal, prescribed outer time limits for each option under Article 200, and, invoking Article 142, declared ten Bills to have received deemed assent.⁴ The Union regarded the ruling as judicial legislation, and in May 2025 the President referred fourteen questions to the Court under Article 143(1).⁵ On 20 November 2025, a five-judge Constitution Bench delivered its opinion: courts cannot fix timelines, deemed assent is impermissible, and the Governor enjoys discretion in choosing among the options in Article 200. Yet the Bench also held that the pocket veto is unconstitutional and that prolonged, unexplained and indefinite inaction may attract a 'limited mandamus'.⁶

Much early commentary has read the Reference as a reversal that restored gubernatorial power.⁷ This article offers a different reading. It argues that the Reference, while rejecting the remedies devised in *Tamil Nadu*, accepts the premise that underlies them: the Governor's power over Bills is not a prerogative but a duty held in trust for the constitutional scheme. Part II sets out the text of Articles 200 and 201 and its silences. Part III traces the judicial turn towards duty from *State of Punjab* to *Tamil Nadu*. Part IV analyses the Reference. Part V proposes a framework of 'duty-bound discretion' grounded in constitutional morality and federalism. Part VI considers institutional reform, and Part VII concludes.

² *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025 INSC 481 (India).

³ *State of Punjab v. Principal Sec'y to the Governor of Punjab*, (2024) 1 SCC 384 (India). Writ petitions raising comparable grievances were filed by the States of Kerala and Telangana in 2023.

⁴ *Tamil Nadu*, *supra* note 1.

⁵ *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India*, Special Reference No. 1 of 2025 (India) (order of reference under INDIA CONST. art. 143(1)).

⁶ *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India*, Special Reference No. 1 of 2025, 2025 INSC 1333 (Nov. 20, 2025) (India) [hereinafter *Presidential Reference*].

⁷ See, e.g., *Analysis: Advisory Opinion on Governors' Assent to State Bills*, SUPREME COURT OBSERVER (Nov. 2025), <https://www.scobserver.in/?p=18108> (arguing that the opinion undoes the gains made in *Tamil Nadu*).

II. The Constitutional Text and Its Silences

A. Article 200 and Its Provisos

Article 200 provides that when a Bill passed by the State Legislature is presented to the Governor, he 'shall declare' either that he assents to the Bill, that he withholds assent, or that he reserves the Bill for the consideration of the President.⁸ The first proviso allows the Governor, 'as soon as possible' after presentation, to return a Bill other than a Money Bill with a message requesting reconsideration; if the House passes the Bill again, with or without amendment, the Governor 'shall not withhold assent therefrom'.⁹ The second proviso makes reservation mandatory where, in the Governor's opinion, the Bill would so derogate from the powers of the High Court as to endanger its constitutional position.¹⁰

Three features of the text matter. First, the opening clause is cast in mandatory language: the Governor 'shall declare' one of the options. The provision presupposes a decision; it does not contemplate indefinite silence. Second, the phrase 'as soon as possible' in the first proviso is the only temporal marker in the Article, and it signals urgency rather than indifference to time. Third, the Article does not itself say whether, or when, the Governor may act otherwise than on the advice of the Council of Ministers. That question must be answered by reading Article 200 together with Article 163, which requires the Governor to act on ministerial aid and advice except where the Constitution requires him to exercise his functions 'in his discretion'.¹¹

B. Article 201 and the Reserved Bill

Article 201 governs what follows reservation. The President may declare assent or withhold it, and may direct the Governor to return a Bill other than a Money Bill to the Legislature for reconsideration, which must then take place within six months.¹² Unlike the first proviso to Article 200, the proviso to Article 201 does not oblige the President to assent once the Bill is passed again. The asymmetry is deliberate. Reservation moves the Bill into the Union's sphere, where the President acts on the advice of the Union Council of Ministers. A Governor's decision to reserve therefore carries federal consequences: it can transfer effective

⁸ INDIA CONST. art. 200.

⁹ *Id.* art. 200, proviso 1.

¹⁰ *Id.* art. 200, proviso 2.

¹¹ *Id.* art. 163(1).

¹² *Id.* art. 201.

control over a State law to the Union executive. This is why the manner in which the power to reserve is exercised matters as much as the existence of the power itself.

C. The Constituent Assembly's Understanding

The framers did not intend the Governor to be an independent centre of power. When draft Article 175, which became Article 200, was debated, Dr. B.R. Ambedkar explained that a Governor under a system of responsible government could not be given a function to be discharged on his own judgement in this sphere, and the Assembly deleted the words 'in his discretion' that had appeared in an earlier draft of the proviso.¹³ The Supreme Court has repeatedly relied on this history. In *Shamsher Singh v. State of Punjab*, a seven-judge Bench held that the President and the Governor are formal heads who exercise their powers on ministerial advice save in a few well-known exceptional situations.¹⁴ In *Nabam Rebia*, a Constitution Bench held that the Governor's discretion is confined to matters where the Constitution expressly, or by necessary implication, confers it, and that even then it must not be exercised arbitrarily or fancifully.¹⁵ Read against this background, Article 200 is best understood as conferring a set of carefully bounded choices on a constitutional head, not a reservoir of personal judgement.

III. From Punjab to Tamil Nadu: The Judicial Turn Towards Duty

A. State of Punjab (2023): The End of Withholding Simpliciter

The first decisive step came in *State of Punjab v. Principal Secretary to the Governor of Punjab*.¹⁶ A three-judge Bench led by Chief Justice D.Y. Chandrachud held that a Governor who withholds assent must follow the course indicated in the first proviso and return the Bill to the Legislature. The Court reasoned that allowing the Governor to withhold assent simpliciter would permit an unelected head of State to veto the functioning of a duly elected Legislature, and that the substantive part of Article 200 must therefore be read with its first proviso. The Court also observed that the Governor cannot keep a Bill pending indefinitely without taking any action. *State of Punjab* thus changed the nature of the power: withholding became the opening move in a dialogue with the Legislature rather than a final veto.

¹³ 9 CONSTITUENT ASSEMBLY DEBATES (Aug. 1, 1949) (statement of Dr. B.R. Ambedkar) (India).

¹⁴ *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831 (India).

¹⁵ *Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1 (India).

¹⁶ *State of Punjab*, *supra* note 2.

B. State of Tamil Nadu (2025): Timelines, Reasons and Deemed Assent

Tamil Nadu went considerably further. The Bench, comprising Justices J.B. Pardiwala and R. Mahadevan, held that the Governor ordinarily acts on ministerial advice under Article 200; that once a Bill has been passed again after reconsideration, the Governor cannot reserve it for the President unless it differs materially from the original; and that the exercise of power under Articles 200 and 201 is justiciable.¹⁷ Drawing on the recommendations of the Sarkaria and Punchhi Commissions and on guidelines issued by the Ministry of Home Affairs, the Court prescribed outer limits: one month where the Governor withholds or reserves a Bill on ministerial advice, three months where he acts contrary to that advice, and one month to assent to a Bill presented after reconsideration. It also required the President to decide on reserved Bills within three months and to record reasons for any delay beyond that period.¹⁸ Holding the Governor's conduct to be inconsistent with the constitutional scheme, the Court invoked Article 142 and declared the ten Bills to be deemed to have received assent on the date on which they were presented to him after reconsideration.¹⁹ The achievement of *Tamil Nadu* was conceptual as much as remedial. It treated the Governor's power as a duty whose performance could be measured against time, reasons and good faith. Its vulnerability lay in its remedies. Fixed timelines appear nowhere in the constitutional text, and deemed assent replaced the decision of a constitutional functionary with that of the Court.²⁰ These were precisely the features against which the Presidential Reference was directed.

IV. The Presidential Reference: Discretion Restored?

The President's reference posed fourteen questions, ranging from the options available under Article 200 and the role of ministerial advice to the scope of Article 142 and the effect of the immunity in Article 361.²¹ The Constitution Bench, comprising Chief Justice B.R. Gavai and Justices Surya Kant, Vikram Nath, P.S. Narasimha and A.S. Chandurkar, rejected the preliminary objections to maintainability raised by Tamil Nadu, Kerala and West Bengal,

¹⁷ *Tamil Nadu*, *supra* note 1.

¹⁸ *Id.* (relying on 1 COMM'N ON CENTRE-STATE RELATIONS, REPORT (1988) (India) [hereinafter *Sarkaria Commission Report*] and COMM'N ON CENTRE-STATE RELATIONS, REPORT (2010) (India) [hereinafter *Punchhi Commission Report*]).

¹⁹ *Id.*

²⁰ *See Constitutional Silence or Judicial Activism? Dissecting the Tamil Nadu Case*, LAW AND OTHER THINGS (2025), <https://lawandotherthings.com/?p=16674> (arguing that the Court exceeded constitutional limits by reading timelines and deemed assent into Article 200).

²¹ *Presidential Reference*, *supra* note 5.

reasoning that the questions concerned the foundational working of the constitutional machinery.²² Its answers on the substantive questions can be grouped under four heads.

A. Three Options and No Pocket Veto

The Bench held that Article 200 offers only three options: to assent, to reserve the Bill for the consideration of the President, or to withhold assent and return the Bill to the Legislature with comments. The first proviso does not add a fourth option; it binds a Governor who withholds assent to return the Bill, except where it is a Money Bill.²³ On this point the Reference and *Tamil Nadu* converge, and both build on *State of Punjab*. The Bench further opined that once a Bill is presented again after reconsideration, the Governor cannot withhold assent, although he retains the option of reserving it for the President.²⁴ This last point departs from *Tamil Nadu*, which had confined second-round reservation to Bills that were materially altered.

B. Discretion Beyond Aid and Advice

The sharpest departure from *Tamil Nadu* concerns ministerial advice. The Bench held that the Governor is not bound by the aid and advice of the Council of Ministers when choosing among the three options, reading the reference to the Governor's opinion in the second proviso as a definite indication of discretion. It added, however, that this interpretation does not confer unfettered power.²⁵ This holding sits uneasily with *Shamsher Singh* and *Nabam Rebia*, and with the Constituent Assembly's deliberate deletion of the words 'in his discretion'.²⁶ The second proviso concerns only Bills that would endanger the position of the High Court. Reading it as a general grant of discretion over all three options stretches a narrow, subject-specific exception across the whole of Article 200.

C. No Timelines, No Deemed Assent, but a Limited Mandamus

The Bench held that the paragraphs of *Tamil Nadu* imposing timelines on the Governor were erroneous, and that the question of timelines for the President under Article 201 had not properly arisen in that case.²⁷ It described deemed assent as a virtual takeover of the functions of a separate constitutional authority and held that Article 142 cannot be used to supplant the

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *Shamsher Singh*, *supra* note 13; *Nabam Rebia*, *supra* note 14.

²⁷ *Presidential Reference*, *supra* note 5.

provisions of the Constitution itself.²⁸ The Governor's choice on the merits is not justiciable, and the validity of a Bill can be examined only after it becomes law, consistently with the earlier view that the act of assent is not open to challenge.²⁹ But where inaction is prolonged, unexplained and indefinite, the Court may issue a limited mandamus directing the Governor to discharge his function within a reasonable time, without commenting on the merits. Article 361, which confers personal immunity on the Governor, does not bar this limited review.³⁰ Finally, the President is not obliged to seek the Court's opinion under Article 143 whenever a Bill is reserved.³¹

D. The Precedential Puzzle

The Reference raises a difficult question about its own authority. Advisory opinions under Article 143 carry great weight and have been treated as binding on courts, yet in *In re Cauvery Water Disputes Tribunal* the Court held that its advisory jurisdiction cannot be used to review a decision it has already rendered.³² The Reference nonetheless described parts of a binding two-judge decision as erroneous. Chief Justice Gavai is reported to have emphasised, after the opinion was delivered, that it was an advisory opinion rather than a judgment rendered in exercise of review jurisdiction.³³ The practical consequence is that the operative directions in *Tamil Nadu*, including the deemed assent of the ten Bills, have not been formally set aside, while its reasoning on timelines has been disapproved by a larger Bench. This ambiguity strengthens the case for a framework that does not depend on either decision alone but rests on principles that both accept.

V. Reconceptualising the Role: Discretion as Duty

The Reference and *Tamil Nadu* disagree about remedies, but they share more than is usually acknowledged. Both reject the pocket veto. Both treat indefinite inaction as unconstitutional. Both hold that the Governor's conduct under Article 200 is, at least in part, justiciable notwithstanding Article 361. These shared commitments make sense only if the power is understood as a duty. A true prerogative may be exercised or left unexercised at will; a duty

²⁸ *Id.*

²⁹ *Id.*; see also *Hoechst Pharms. Ltd. v. State of Bihar*, (1983) 4 SCC 45 (India).

³⁰ *Presidential Reference*, *supra* note 5.

³¹ *Id.*

³² *Special Reference No. 1 of 1964*, AIR 1965 SC 745 (India); *In re Cauvery Water Disputes Tribunal*, 1993 Supp. (1) SCC 96(2) (India); *In re Natural Resources Allocation*, Special Reference No. 1 of 2012, (2012) 10 SCC 1 (India).

³³ See *Presidential Reference on Governors & State Bills (2025)*, CIVILSDAILY (Nov. 2025), <https://www.civildaily.com/news/presidential-reference-on-governors-state-bills-2025/>.

may not. The task, then, is to give content to that duty in a manner that respects the limits the Reference placed on judicial timelines and judicial substitution.

A. Constitutional Morality as a Limit on Discretion

Constitutional morality, as the Supreme Court has used the idea, requires constitutional functionaries to act in fidelity to the spirit of the Constitution and not merely to its letter. In *Manoj Narula v. Union of India*, the Court described it as a commitment to constitutional norms that must guide those who hold high office.³⁴ In *Government of NCT of Delhi v. Union of India*, it invoked the same idea to restrain authorities who might otherwise exploit textual gaps to frustrate a representative government.³⁵ Applied to Article 200, constitutional morality forbids treating the silence of the text on time as a licence for obstruction. A Governor who keeps a Bill pending for years breaches no express provision of the Constitution, yet defeats the purpose of all of them. Whatever discretion the Constitution confers must be exercised for the purposes for which it was conferred: to protect the High Court, to flag a genuine conflict with Union law, or to secure reconsideration in good faith. It may never be used to substitute the Governor's policy preferences for those of the Legislature.

B. Federalism and the Governor as a Constitutional Functionary

Federalism is part of the basic structure of the Constitution, and the States are not mere appendages of the Union.³⁶ The Governor, appointed by the President on the advice of the Union government, sits at the junction of the two levels of government. In *B.P. Singhal v. Union of India*, the Court made clear that the Governor is not an agent or employee of the Union government.³⁷ If the power under Article 200 could be used to stall State legislation indefinitely, or to divert it to the Union through reservation, an officer appointed by the Centre would hold an effective veto over the legislative agenda of an elected State government. The Sarkaria Commission warned against exactly this, recommending that reservation be confined to rare cases involving patent unconstitutionality or conflict with Union law and policy.³⁸ A federal reading therefore requires that the Governor's discretion be narrow in scope and exercised with restraint, particularly where reservation would transfer control of a State law to the Union.

³⁴ *Manoj Narula v. Union of India*, (2014) 9 SCC 1 (India).

³⁵ *Gov't of NCT of Delhi v. Union of India*, (2018) 8 SCC 501 (India).

³⁶ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1 (India).

³⁷ *B.P. Singhal v. Union of India*, (2010) 6 SCC 331 (India).

³⁸ *Sarkaria Commission Report*, *supra* note 17, ch. V.

C. A Framework of Duty-Bound Discretion

Four duties can be derived from the text of Article 200, from *State of Punjab*, and from the Reference itself. None requires the Court to fix timelines or to substitute its decision for that of the Governor.

1. The Duty to Decide

Article 200 states that the Governor ‘shall declare’ one of the permitted options. The Reference’s prohibition of the pocket veto and its recognition of the limited mandamus both confirm that the Governor must decide. The duty to decide is the core obligation; the remaining duties give it shape and make its performance verifiable.

2. The Duty to Give Reasons

The first proviso already requires a message when a Bill is returned, and the Reference itself speaks of returning the Bill with comments. A message that merely announces disagreement would defeat the purpose of reconsideration, because the Legislature cannot respond to objections it has not been told. Reasons should equally accompany a decision to reserve, since reservation moves the Bill into the Union’s sphere and the State is entitled to know why. These reasons need not be reviewable on their merits. Their function is to make the dialogue between the Governor and the Legislature genuine and to create a record against which bad faith can be tested.

3. The Duty of Good Faith

Even the widest constitutional discretion is subject to review for mala fides and extraneous considerations. In *S.R. Bommai* and *Rameshwar Prasad v. Union of India*, the Court examined the material underlying Governors’ reports under Article 356, and in *Rameshwar Prasad* it held that the personal immunity in Article 361 does not shield the action itself from scrutiny.³⁹ Article 200 should be no different. A Governor who reserves a Bill in order to frustrate the Legislature, or who returns it repeatedly on grounds that have already been answered, acts in bad faith even though the formal option chosen is one the Constitution allows.

³⁹ *Bommai*, supra note 35; *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1 (India).

4. *The Duty to Act Within Reasonable Time*

The Reference rejects fixed timelines, but it does not reject time. Its own standard, under which inaction that is prolonged, unexplained and indefinite invites a limited mandamus, implies an obligation to act within a reasonable period. What is reasonable can be judged case by case, as courts routinely do in administrative law. The words ‘as soon as possible’ in the first proviso supply the benchmark, and the periods recommended by the Sarkaria and Punchhi Commissions can serve as evidence of what is reasonable without operating as rigid deadlines.⁴⁰ On this view, the limited mandamus is not a curious novelty but the ordinary remedy for breach of a public duty: the court directs the functionary to decide, and leaves the decision itself to him.

Read in this way, the Reference marks not a retreat from duty but a relocation of it. *Tamil Nadu* sought to enforce the duty through fixed deadlines and judicial substitution; the Reference leaves enforcement to a slower and more deferential remedy. The duty itself survives both decisions.

VI. Beyond the Courts: Institutional Reform

The framework of duty-bound discretion clarifies the law, but it cannot fully solve the problem. A limited mandamus requires a State to litigate, often for months, before the Governor is compelled to act, and it says nothing about the merits of a reservation made for political reasons. The certainty that *Tamil Nadu* sought, and that the Reference declined to supply through judicial means, can legitimately come from the exercise of constituent power.

Three reforms deserve serious consideration. First, Parliament could amend Article 200 to prescribe outer time limits, as the Punchhi Commission recommended when it proposed a six-month limit for the Governor’s decision on a Bill.⁴¹ Timelines enacted through Article 368 would carry the democratic legitimacy that judicially imposed timelines were said to lack. Second, the grounds for reservation could be specified in the text, codifying the Sarkaria Commission’s recommendation that reservation be confined to cases of clear unconstitutionality or conflict with Union law. Third, even without an amendment, a convention requiring written reasons for every return or reservation could be developed through the Inter-State Council, bringing practice in line with the duties described above.⁴²

⁴⁰ See Sarkaria Commission Report, *supra* note 17; Punchhi Commission Report, *supra* note 17.

⁴¹ Punchhi Commission Report, *supra* note 17, vol. II.

⁴² INDIA CONST. art. 263; see also Gov’t of NCT of Delhi, *supra* note 34 (emphasising collaborative federalism).

Comparative experience suggests that discretionary powers of this kind can be tamed by convention. In Canada, the federal powers of reservation and disallowance remain in the constitutional text but have fallen into disuse, and the Supreme Court of Canada has recognised that conventions, though not enforced by the courts, form part of the constitution.⁴³ India's difficulty is that conventions of gubernatorial restraint have not held, which is precisely why judicial and constitutional intervention has become necessary.

VII. Conclusion

The Presidential Reference is often read as the moment the Supreme Court took back what it had given in *Tamil Nadu*. That reading misses what the Reference preserved. By holding that the Governor has only three options, that the pocket veto is unconstitutional, and that prolonged inaction remains answerable to the Court despite Article 361, the Bench accepted that the Governor's power over Bills is a duty and not a prerogative. Its rejection of timelines and deemed assent concerns the remedy, not the nature of the power.

This article has argued that the space between the two decisions is best filled by a framework of duty-bound discretion: a duty to decide, to give reasons, to act in good faith, and to act within reasonable time. The framework respects the limits set by the Reference while giving content to its undefined limited mandamus. It is also consistent with the constitutional design described by the Constituent Assembly and by *Shamsher Singh* and *Nabam Rebia*, under which the Governor is a constitutional head and not a rival centre of power. The uncertainty that remains, especially over time, is a matter for constituent power rather than judicial invention. Until Parliament acts, the office of the Governor will be judged by the standard that constitutional morality sets: discretion exercised as a trust for the federal scheme, not as a veto over it.

⁴³ Constitution Act, 1867, 30 & 31 Vict., c. 3, §§ 55, 57, 90 (U.K.); *Reference re Resolution to Amend the Constitution*, [1981] 1 S.C.R. 753 (Can.).