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## DRAWING THE LINE ON GUBERNATORIAL DISCRETION

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### ABSTRACT

The Supreme Court's ruling in the case of State of Tamil Nadu v Governor of Tamil Nadu constitutes a watershed moment in the evolution of the Indian Constitution on the extent of the Governor's discretion under Articles 200 & 201 of the Indian Constitution. This paper will interrogate the ruling within the historical evolution of the Indian Constitution, the discipline of administrative law, as well as the ideals underlined in world constitutions that emerged during the struggle for independence, to contend that the interference on the Supreme Court's part is a legitimate one under the Constitution and does not amount to Judicial Overreach.

The paper further examines the Court's interpretive methodology, particularly its consideration of the textualist and purposive approaches, including the weight it gives to the fact that the Constituent Assembly deleted the phrase "in his discretion" from Article 200. Further, the judgment falls within a broader trend in the Court's administrative law jurisprudence, grounded in the four traditional grounds of administrative law review: relevance of considerations, natural justice, absence of mala fides, and the giving of reasons for decisions. Holding certain observations in *B.K. Pavitra v Union of India* to be *per incuriam* reiterates the consistent view that gubernatorial discretion cannot be absolute or beyond the scope of judicial review.

In response to the criticism that imposing timelines amounts to "re-legislation" and judicial overreach into the separation of powers, this paper argues that the timelines merely provide a flexible framework for assessing reasonableness rather than rigid, mandatory requirements. The judgment prevents indefinite deferment akin to a "pocket veto," thereby reinforcing legislative primacy in law-making while subjecting the exercise of discretion to the discipline of the rule of law.

**Keywords:** Governor, Article 200, Assent to Bills, Judicial review, Separation of powers.

## Introduction

The decision of the Supreme Court in *State of Tamil Nadu v Governor of Tamil Nadu*<sup>1</sup> marks a significant development in Indian constitutional jurisprudence concerning the scope, limits, and accountability of gubernatorial discretion under Article 200<sup>2</sup> and 201<sup>3</sup> of the Constitution. The Court undertook an extensive examination of constitutional history, drawing upon aspirational constitutional documents from the freedom struggle, the Constituent Assembly Debates, and comparative constitutional practices to demonstrate a gradual dilution of the Governor's discretionary powers. By employing both textualist and purposive interpretive methods, the Court rejected the notion of absolute or unfettered discretion in matters of assent and emphasised that the constitutional design envisages accountability, reasonableness, and restraint, particularly where the actions of an unelected constitutional authority may frustrate the will of an elected legislature.

The Court held that discretion under Article 200 is subject to judicial review on well-established grounds, such as importance of considerations, adherence to the principle of natural justice, absence of mala fides, and reasoned decisions, placing gubernatorial assent within broader rule of law and administrative law principles. The prescription of timelines was upheld not as an act of re-legislation, but as a constitutional safeguard against arbitrary inaction and an effective “*pocket veto*”. By aligning Indian constitutional practice with comparative democratic systems that reject absolute executive veto power, the judgment reinforces legislative primacy and democratic accountability, while clarifying that such timelines are flexible and operate only as objective standards for judicial review. The ruling thus strengthens constitutional governance by ensuring that discretionary power is exercised within clearly defined legal and constitutional bounds.

## Assent in Historical Constitutions

In a section titled “*Concept of assent to bills as envisaged by certain historical documents drafted during the freedom struggle*”, the Supreme Court started its discussion with the National Convention’s<sup>4</sup> which provided that Bills passed by the provincial legislature would

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<sup>1</sup> *State of Tamil Nadu v Governor of Tamil Nadu* 2025 SCC OnLine SC 770

<sup>2</sup> Ind. Const. art. 200.

<sup>3</sup> Ind. Const. art. 201.

<sup>4</sup> ‘The Commonwealth of India Bill (National Convention, India, 1925) Archives’ (*Constitution of India*) <https://www.constitutionofindia.net/historical-constitution/the-commonwealth-of-india-bill-national-convention-india-1925/> accessed 15 January 2026

be presented to the Governor for obtaining the King's assent. However, it did not contain elaborate provisions about the procedure and scope of the powers of the Sovereign when it came to assent<sup>5</sup>.

The Court then considered the Nehru Report of 1928, which gave the Governor the options to declare or withhold assent. Every Bill had to be mandatorily assented to by the Governor-General. The Act could still be disallowed by the King<sup>6</sup>.

The All India Hindu Mahasabha's 1944 aspirational Constitution of Hindustan Free State Act was also reviewed by the Court. According to this, a bill might either receive the governor's assent or not, in which case it would need to be returned for further examination. If passed again, the Bill would be deemed to have been assented to by the Governor but would only become an Act after the President's assent.<sup>7</sup>

The "*Constitution of Free India: A Draft*," authored by M.N. Roy in 1944, which didn't vest any authority in the Governor to withhold assent to a Bill, was also considered by the court. While it enabled the Supreme People's Legislature (joint sitting of both chambers of the Federal Legislature) to veto any provincial legislation, this action could be challenged before the Supreme Federal Court.<sup>8</sup>

Based on an analysis of these aspirational constitutional documents, the Judgement observes that when India was about to gain independence from British control, the idea of a clause pertaining to bill assent was very different. Later documents gave the governor less authority and discretion and experimented with ideas like presumed assent and judicial scrutiny of veto power.

### **Constitutional History as an Interpretive Device**

The Judgement highlights how constitutional history may be used to interpret the Constitution.

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<sup>5</sup> Allan, T. R. S., *Procedural Fairness and the Duty of Respect*, Oxford Journal of Legal Studies, (1998) no. 3, vol. 18, p. 497.

<sup>6</sup> 'Nehru Report (Motilal Nehru, 1928) Archives' (*Constitution of India*) <https://www.constitutionofindia.net/historical-constitution/nehru-report-motilal-nehru1928/> accessed 20 January 2026.

<sup>7</sup> 'The Constitution of the Hindusthan Free State Act, 1944 Archives' (*Constitution of India*) <https://www.constitutionofindia.net/historical-constitution/the-constitution-of-the-hindusthan-free-state-act-1944-no-of-1944/> accessed 11 January 2026

<sup>8</sup> M.N. Roy, '*Constitution of Free India : A Draft (, 1944) Archives*' (*Constitution of India*) <https://www.constitutionofindia.net/historical-constitution/constitution-of-free-india-a-draft-m-n-roy-1944/> accessed 20 January 2026.

The Supreme Court in *S.R. Chaudhuri v State of Punjab*<sup>9</sup> affirmed that the Constituent Assembly Debates may be relied upon as an interpretive aid. Despite the growing use of constitutional history, the Court's interpretative methodology has not always been lucid, consistent, or transparent in its rulings.

In its early years, the Court primarily deployed a textualist approach, most notably exemplified in its Judgement in *A.K. Gopalan v State of Madras*<sup>10</sup>, where it rejected substantive due process based on an examination of the drafting history of Article 21<sup>11</sup>. However, following *Kesavananda Bharati v State of Kerala*<sup>12</sup>, the Court began to adopt a structural or purposive approach, which took into account the broader framework and goals of the Constitution.

In *S.R. Bommai v Union of India*<sup>13</sup>, the Court interpreted Article 356<sup>14</sup> by drawing on the Constituent Assembly Debates and the values of democracy and federalism they propounded. In the last couple of decades, the Court has adopted a more flexible approach, which has been termed “panchayati eclecticism” by at least one commentator, in which a result-oriented, “polyvocal court”, often sitting in two- or three-judge Benches, has followed inconsistent interpretive approaches.<sup>15</sup>

In interpreting Article 200, the Court adopted a dual interpretive approach. A textual examination of the Constituent Assembly Debates was undertaken to identify the deliberate omission of the phrase “in his discretion”, while a purposive inquiry into historical and aspirational constitutional documents was used to illuminate the intended contours of the Governor’s authority.<sup>16</sup> In its analysis of the Governor’s discretionary authority, the Court employed a temporal framework to underscore the progressive dilution of such powers.

A contextual reading of constitutional texts allows for a deeper understanding of the Constitution than attempting to decipher the framers’ intentions by reading provisions in isolation. However, in the *TN Governor* Judgement, the Court does not clearly articulate its

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<sup>9</sup> *S.R. Chaudhuri v State of Punjab* (2001) 7 SCC 126.

<sup>10</sup> *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27

<sup>11</sup> Ind. Const. art. 21.

<sup>12</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461

<sup>13</sup> *S.R. Bommai v Union of India* (1994) 3 SCC 1

<sup>14</sup> Ind. Const. art. 356.

<sup>15</sup> Chintan Chandrachud, ‘Constitutional Interpretation’ (18 November 2015) in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (OUP 2016) <https://ssrn.com/abstract=2692834> accessed 15 January 2026.

<sup>16</sup> TRS Allan, ‘The Rule of Law: Freedom, Law, and Justice’ in *The Sovereignty of Law: Freedom, Constitution, and Common Law* (OUP 2013) 1.

interpretive approach or coherently explain how it utilised historical constitutional documents and drafting history. With the Supreme Court sitting in smaller benches, polyvocality may be unavoidable, which makes it all the more important for each Bench to clearly explain its interpretive approach and reasoning.

### Scholarly support and Practical Implications

The decision of the Supreme Court in *State of Tamil Nadu v Governor of Tamil Nadu* has received strong scholarly support. Pranav Verma views the judgment as a constitutionally valid exercise of judicial review rather than an instance of judicial overreach. He argues that the Court did not rewrite the Constitution but applied established principles of administrative law to the Governor's power of assent. According to the author, discretion under Articles 200 and 201 cannot be absolute, as unchecked discretion would weaken democratic accountability and the rule of law. Verma also supports the Court's decision to prescribe timelines, stating that they serve as safeguards against prolonged inaction and provide a framework for effective judicial review. In his view, the judgment strengthens constitutional governance by ensuring that unelected constitutional authorities cannot frustrate the will of elected legislatures through delay.<sup>17</sup>

Beyond the specific legislative dispute in the *State of Tamil Nadu v Governor*, the ongoing public conflict between the Governor and the elected government, highlighted by Raj Bhavan's description of the Chief Minister as "arrogant" and the DMK's counter charges of gubernatorial arrogance, reflects the broader problem of unchecked gubernatorial discretion in constitutional practice. The episode shows how conventions and norms can be contested to assert authority rather than to discharge constitutional duties, underscoring the Supreme Court's rationale for limiting absolute power and for placing clear constitutional boundaries on the Governor's role.<sup>18</sup>

The *Columbia Law Review* essay on administrative jurisprudence anchors modern administration in basic rule-of-law values. It holds that public officials may act only within valid legal authority and must justify their actions in order to prevent arbitrariness. It also

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<sup>17</sup> Pranav Verma, 'Guardrails for Discretionary Powers: A Case Comment on *The State of Tamil Nadu v The Governor of Tamil Nadu and another*' (2025) 19(1) *National Law School Journal* art 1.

<sup>18</sup> T Muruganandham, 'CM Stalin arrogant, doesn't respect nation: Governor RN Ravi' *The New Indian Express* (13 January 2025) <https://www.newindianexpress.com/states/tamil-nadu/2025/Jan/13/cm-stalin-arrogant-doesnt-respect-nation-governor-rn-ravi> accessed 15 January 2026.

stresses procedural fairness and the need for coherent and transparent decision-making<sup>19</sup>. This framework parallels the constraints the Supreme Court placed on gubernatorial discretion in *State of Tamil Nadu v Governor of Tamil Nadu* by prescribing timelines and ensuring accountability in the exercise of assent powers. Recognising that broad discretionary authority without standards undermines the rule of law strengthens the argument that the Governor's power should not be absolute.<sup>2021</sup>

Constitutional systems that embrace representative lawmaking often reject absolute executive veto power. For example, in the United States, the Supreme Court has held that allowing the pocket veto to expand without limit would create an absolute veto that the framers explicitly rejected, bypassing the legislature and undermining constitutional balance. This rationale underscores a broader constitutional principle: discretionary powers must be limited to preserve democratic accountability and legislative participation. The Supreme Court of India's decision in *State of Tamil Nadu v Governor of Tamil Nadu* similarly rejects unfettered gubernatorial discretion by imposing reasonable timelines and standards for the exercise of assent powers, thereby preventing an effective "pocket veto" and preserving legislative primacy.<sup>22</sup>

### **Governor's Discretion and Accountability**

In the case of *BK Pavitra v Union of India*<sup>23</sup>, the court held that, to be per incuriam to the extent of the two observations made therein:

- (i) the Constitution confers discretion upon the governor insofar as the reservation of bills for the reconsideration of the president is concerned, and
- (ii) The exercise of discretion by the Governor under Article 200 constitutes a

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<sup>19</sup> Richard H Fallon Jr, 'The Rule of Law as a Concept in Constitutional Discourse' (1997) 97(1) *Columbia Law Review* 1.

<sup>20</sup> Kevin M Stack, 'An Administrative Jurisprudence: The Rule of Law in the Administrative State' (Columbia Law Review) <https://columbialawreview.org/content/an-administrative-jurisprudence-the-rule-of-law-in-the-administrative-state-2/> accessed 24 January 2026.

<sup>21</sup> LIVELAW NEWS NETWORK, 'TN Governor Judgment Caused Confusion, Authoritative Opinion Needed', Supreme Court Holds Presidential Reference Maintainable' *LiveLaw* (20 November 2025) <https://www.livelaw.in/top-stories/tn-governor-judgment-caused-confusion-authoritative-opinion-needed-supreme-court-holds-presidential-reference-maintainable-310599> accessed 21 January 2026.

<sup>22</sup> Louis Fisher, *The Pocket Veto: Its Current Status*, CRS Report for Congress No RL30909 (Congressional Research Service, Library of Congress, March 30 2001) <https://web.archive.org/web/20191109140709/https://www.senate.gov/reference/resources/pdf/RL30909.pdf> accessed 24 January 2026.

<sup>23</sup> *BK Pavitra v Union of India* [2019] 6 SCC 129

constitutional function insulated from judicial scrutiny.

The court held the decision to be per incuriam for having failed to take into consideration the larger bench decisions in *Samsher Singh v State of Punjab*<sup>24</sup> and *Madhya Pradesh Special Police Establishment v State of Madhya Pradesh and others*<sup>25</sup>, which had held that there was no express requirement under the Constitution for the exercise of discretion by the Governor in discharge of his functions under Article 200, except to the limited extent of the second proviso where the expression “in his opinion” is employed for the Governor’. The Constituent Assembly had removed the phrase “in his discretion” was another point of contention for the court. Critics argue that the Court’s judgment amounts to re-legislation and disrupts the separation of powers, contending that timelines can be added only by Parliament and that Article 145(3)<sup>26</sup> was ignored. However, this critique misunderstands both the nature of judicial review and the constitutional obligation on discretionary authority to act within reasonable and accountable bounds, a core principle of constitutional governance.<sup>27</sup>

In extending its jurisprudence, the court invoked three specific standards of accountability drawn from administrative law: decision-making based on relevant considerations rather than on irrelevant ones or those wholly extraneous to the nature of the function to be exercised<sup>28</sup>, adherence to principles of natural justice (constituting the requirements of fair hearing, no likelihood of bias, and giving reasoned decisions)<sup>29</sup>, and the exercise of discretionary powers without mala fides.<sup>30</sup>

The court has also applied accountability criteria to other governors' discretion, drawing on its administrative law philosophy. Thus, it has been held that Article 163(2)<sup>31</sup> of the Constitution, contrary to what its plain language may suggest, does not confer an unfettered discretion on the governor. It is subject to judicial review on administrative law grounds of relevant considerations, natural justice, and mala fides, notwithstanding the finality clause therein.<sup>32</sup>

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<sup>24</sup> *Samsher Singh v State of Punjab* [1974] 2 SCC 831.

<sup>25</sup> *Madhya Pradesh Special Police Establishment v State of Madhya Pradesh and others* [2004] 8 SCC 788.

<sup>26</sup> Ind. Const. art. 145 cl 3.

<sup>27</sup> Hitesh Jain, ‘Tamil Nadu governor case: Judicial overreach, not constitutional interpretation’ *The Indian Express* (14 April 2025) <https://indianexpress.com/article/opinion/columns/tamil-nadu-governor-case-judicial-overreach-not-constitutional-interpretation-9943645/> accessed 21 January 2026.

<sup>28</sup> *Padfield v Minister of Agriculture* [1968] UKHL 1; *CCSU v Minister of Civil Service* [1985] AC 374

<sup>29</sup> *Mohinder Singh v Chief Election Commissioner* AIR [1978] SC 851

<sup>30</sup> *EP Royappa v State of Tamil Nadu* [1974] AIR 555.

<sup>31</sup> Ind. Const. art. 163 cl 2.

<sup>32</sup> Nazuk Sood, ‘Case Analysis: *State of Tamil Nadu v Governor of Tamil Nadu*’ (2025) 11(6) *International Education & Research Journal* (IERJ).

Further, the court has carved out scenarios in which the governor may not be bound by the aid and advice of the Council of Ministers, where such advice is tainted by a conflict of interest, where there is a likelihood of bias, or where decisions are based on irrelevant considerations<sup>33</sup>. The governor's discretion in selecting the chief minister and in exercising the authority granted by the Sixth Schedule of the Constitution has once again been guided by the theory of relevant factors, the court said. The same applies for requiring floor tests, in which case the court obliges that the governor be satisfied, based on objective materials, that there is sufficient cause to warrant the exercise of its powers in discretion.

The court's own ruling states that when "reasonable grounds" exist to support a postponement, the deadlines may be violated. They are thus not rigid or inflexible standards, even as standards for judicial review. They merely provide objective metrics for the judicial review of any delay caused by a governor and enable an enquiry into the reasonableness of the delay beyond such timelines. Accordingly, in all cases of non-adherence to timelines, a 'deemed assent' does not ipso facto follow.

The Supreme Court's decision in *State of Tamil Nadu v Governor of Tamil Nadu* represents a decisive step in aligning gubernatorial discretion with constitutionalism, democratic accountability, and the rule of law. By grounding its reasoning in constitutional history, administrative law principles, and comparative practice, the Court reaffirmed that discretion under Articles 200 and 201 is neither absolute nor immune from judicial scrutiny. The introduction of flexible timelines, far from constituting re-legislation, operates as a constitutional safeguard against arbitrary inaction and an effective pocket veto. While the judgment could have more clearly articulated its interpretive methodology, its substantive contribution lies in reinforcing legislative primacy and ensuring that unelected constitutional authorities exercise power within clearly defined legal and constitutional limits.

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<sup>33</sup> Kevin M Stack, 'An Administrative Jurisprudence: The Rule of Law in the Administrative State' (2015) 115(5) *Columbia Law Review* 1985.