
GUBERNATORIAL INACTION AND THE FEDERAL FRACTURE: A CRITICAL ANALYSIS OF ARTICLE 200 AS A TOOL OF EXECUTIVE OBSTRUCTION

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I. ABSTRACT

This paper investigates the constitutional crisis caused by the indefinite withholding of assent by Governors under Article 200 of the Indian Constitution. Focusing on the period between 2023 and 2025, it examines how the ambiguity of "as soon as possible" has been exploited as a "Pocket Veto." By analysing the landmark judgments of the Punjab and Kerala High Courts and the authoritative Special Reference Case No. 1 of 2025, the study contends that although the Governor has constitutional discretion, "unexplained inaction" amounts to a justiciable breach of constitutional morality.

II. Introduction

Constitutions are not only - and perhaps not even primarily - statements of national identity and aspiration that serve to differentiate countries from one another. They are also written to satisfy and influence diverse audiences, ranging from domestic constituencies whose support is needed to ensure regime stability, to foreign investors who seek assurance that their investments are safe from expropriation, to other countries whose approbation is crucial to securing diplomatic recognition and national security."¹

The constitutional architect, Dr B.R. Ambedkar, envisaged the Governor as a "ceremonial device" primarily intended to facilitate, not obstruct, the legislative will of a state. Therefore, by excluding the phrase 'in his discretion' from the draft article, the Constitution framers aimed to restrict the actions of the governor to following the advice of his council of ministers. Additionally, when addressing the powers of the governors, they explicitly chose the stance

¹ David S Law and Mila Versteeg, 'The Evolution and Ideology of Global Constitutionalism' (2011) vol99(5) California Law Review 1163.

that, in the case of Art. 200, the governor is obliged to act on the advice of his council of ministers.²

The governor serves as the state's chief executive officer. According to the constitution, he is the sole owner of the state's executive authority, and all executive activities are carried out in his name. Indian state governors are granted the same authority and responsibilities at the legislative level as the chief executive in the nation's capital. The Union Government's use of the Governors for its own political gain has also drawn condemnation.³

However, the modern Indian political landscape has seen this office become a source of significant constitutional tension. At the heart of this conflict is Article 200 of the Constitution, which details the options available to the Governor when a Bill passed by the State Legislature is presented. While the text offers three clear choices—assent, withdrawal, or reservation for the President—a "fourth option" has developed through political practice: indefinite inaction.

This phenomenon, often termed the "Pocket Veto," thrives on the textual ambiguity of the phrase "as soon as possible" found in the first proviso of Article 200. By neither granting assent nor returning the Bill for reconsideration, Gubernatorial inaction effectively paralyses the legislative process, rendering the mandate of an elected Assembly subservient to the discretion of an unelected appointee. This paper argues that such inaction is not merely a procedural delay but a systemic "Executive Obstruction" that violates the core tenets of Constitutional Morality.

The urgency of this analysis is underscored by the landmark judicial interventions of 2025. While the Supreme Court in *State of Tamil Nadu v. Governor*⁴ Initially, it attempted to operationalise timeliness through judicial deadlines; the subsequent 16th Presidential Reference (November 2025) reaffirmed the Governor's independent discretion. However, the Court remains clear on one principle: the Governor cannot sit on a Bill indefinitely.

III. The Anatomy of Article 200: A Loophole for Obstruction?

When the State Legislature passes a Bill, Article 200 provides the Governor with four options. "Political weaponisation" occurs when the Governor opts for a fifth, unwritten option:

² Constituent Assembly of India. (1949). Constituent Assembly Debates (Vol. IX, p. 41)

³ Kohli, D. (2024). Political determinants of centre-state transfers: An empirical analysis across Indian states. *Journal of Government and Economics*, 16, 100130.

⁴ (2025) 8 SCC 1

Indefinite Inaction.

Article 200 prescribes the Governor's role upon receiving a Bill from the State Legislature. The Governor has four textual options

1. Grant Assent: The Bill becomes Law.
2. Withhold Assent: The Bill fails (rarely used as it requires ministerial advice).
3. Return for Reconsideration: The Bill is sent back to the House (not for Money Bills).
4. Reserve for the President: The Bill is sent for the President's consideration under Article 201.

The Crisis: Governors in opposition-ruled states began utilising a "Fifth Path"-Silent Inaction. By neither granting nor withholding assent, the legislative will of the people is placed in a "constitutional void."

The "As Soon As Possible" Loophole

The first proviso of Article 200 states that if the Governor withholds assent, they must return the bill with a message "as soon as possible." Since "as soon as possible" isn't defined in days or months, Governors have historically sat on bills for years.

The Constitutional Morality Argument: Silence is not an option. In the Tamil Nadu (2025) case, the Court held that the Governor cannot simply "withhold and sit" on a bill; they must communicate a decision.

IV. Recommendations by Commissions:

Sarkaria Commission (1988)⁵:

They recommended that the Governor should not act as a "bottleneck" and that the President should decide on reserved bills within 6 months. The Sarkaria Commission emphasised that the Governor should function as a constitutional bridge between the Union and the State rather

⁵ Commission on Centre-State Relations (Sarkaria Commission) (1988). Report of the Sarkaria Commission: <https://share.google/KAyPpuBqO45T53G2j>

than as an agent of the Central Government. Regarding Article 200, the Commission recommended that the Governor generally grant assent to Bills passed by the State Legislature, and that any delay be avoided by disposing of the Bill within one month. It suggested that Bills should be reserved for the President's consideration only in rare cases, such as when a Bill is patently unconstitutional or conflicts with Union laws. On the issue of the "Pleasure Doctrine" under Article 156, the Commission advocated for a fixed five-year tenure for Governors, stating they should only be removed before their term expires for "rare and compelling" reasons.

Punchhi Commission (2010)⁶:

The Punchhi Commission took a more stringent approach, arguing that constitutional conventions had proven insufficient and that formal legal safeguards were necessary to protect federalism. For Article 200, it recommended a specific constitutional amendment to prescribe a strict time limit of six months for the Governor to decide on a Bill. It strongly criticised the practice of indefinite delay, which it viewed as a disruption of the legislative process. Regarding the "Pleasure Doctrine," the Commission made the radical recommendation to delete the phrase "during the pleasure of the President" from Article 156. Instead, it proposed that the Governor should only be removed through a formal impeachment process by the State Legislature, similar to the procedure for the President of India. This was intended to ensure that the Governor remains accountable to the State Constitution and enjoys security of tenure independent of the Central Government's political interests.

II. Judicial Evolution: Three Pillars of Jurisprudence

1. State of Punjab v. Principal Secretary to the Governor of Punjab and another (2023)⁷

• Core Legal Dispute

The conflict arose when the Governor of Punjab questioned the validity of the Vidhan Sabha session convened in June 2023. The Governor termed the session "patently illegal" because the Budget Session (held in March) had been adjourned sine die by the Speaker but not formally

⁶ Commission on Centre–State Relations (2010). Punchhi Commission Report.

⁷ (2023) 15 S.C.R. 777

prorogued by the Governor. Consequently, the Governor withheld assent to four Bills passed during this "extended" session, arguing they were void ab initio.

The Supreme Court was tasked with determining:

Whether the Speaker has the authority to reconvene a session that has been adjourned sine die without a fresh summons from the Governor.

Whether the Governor can withhold assent to Bills on the ground that the legislative session was invalid.

The interpretation of "as soon as possible" under Article 200 regarding the Governor's assent.

• **Issue I: Validity of Summoning and Adjournment**

The Supreme Court upheld the validity of the Vidhan Sabha session, establishing the following principles:

There is a distinct legal difference between "adjournment" and "prorogation." Adjournment is an act of the Speaker that suspends the sitting of the House. If adjourned sine die (without a fixed date), the Speaker retains jurisdiction to reconvene the House. Prorogation is an act of the Governor (under Article 174) that terminates the session itself.

The Court held that the Speaker is the master of the House. Until the Governor issues an order of prorogation under Article 174(2)(a), the session is deemed to be continuing. The Speaker acted within his powers to reconvene the sitting, and the June session was a valid continuation of the Budget Session 1.

• **Issue II: Governor's Powers under Article 200**

The judgment in *State of Punjab v. Principal Secretary 1* significantly clarified the Governor's options when a Bill is presented for assent under Article 200 of the Constitution.

A. The Three Options Upon presentation of a Bill, the Governor "shall declare" one of three actions:

Assent to the Bill.

Withhold assent therefrom.

Reserve the Bill for the consideration of the President.

B. Interpretation of "Withhold Assent" The Supreme Court clarified that the power to "withhold assent" is not a final veto.

Mandatory Return: If the Governor decides to withhold assent, they are constitutionally bound by the first proviso of Article 200 to return the Bill to the Legislature "as soon as possible" with a message requesting reconsideration.

No Pocket Veto: The Governor cannot simply sit on a Bill (withhold assent) without returning it. Withholding assent triggers the mandatory return mechanism.

Binding Nature of Re-passage: If the Legislature reconsiders the Bill and passes it again (with or without amendments), the Governor must give assent. They cannot withhold it a second time. **Meaning of "As Soon As Possible"** The phrase "as soon as possible" in the first proviso to Article 200 has significant constitutional content. It conveys a sense of urgency and does not allow for indefinite delays.

The Governor must act with reasonable dispatch. The constitutional scheme does not permit the Governor to paralyse the legislative process by inaction.

The Supreme Court (CJI Chandrachud) held that the Governor cannot cast doubt on the validity of a legislative session convened by the Speaker. It established that the Governor is not an "elected authority" and cannot act as a "bottleneck" to the democratic process. It reinforced that the power to return a bill must be exercised "as soon as possible."

2. State of Kerala and another v. Governor for the State of Kerala and others⁸

- The core issue in the Kerala conflict was the Governor's delay in granting assent to bills passed by the State Legislature. The Supreme Court has now clarified the constitutional obligation under Article 200. Article 200 stipulates that when a Bill is presented to the Governor, they "shall declare" either assent, withholding of assent, or reservation for the President. The first proviso specifically states that the Governor may return the Bill "as soon

⁸ Writ Petition (Civil) No.1264/2023

as possible." The Supreme Court in the State of Punjab case held that the expression "as soon as possible" has "significant constitutional content" and must be strictly adhered to by constitutional authorities. The Court ruled that the Governor cannot keep a Bill pending indefinitely. The use of the word "shall" in Article 200 implies that the Governor is required to exercise their powers and to make a decision rather than to sit on the Bill.

• **Mandatory Return of Bills**

The Supreme Court established a clear procedure that resolves the deadlock seen in the Kerala context:

Withholding Assent: If the Governor decides to withhold assent, they must return the Bill to the Legislature "as soon as possible" with a message requesting reconsideration.

Cannot Just "Withhold": The Court clarified that the power to "withhold assent" is not a standalone power to kill a Bill. It is inextricably linked to the proviso of returning the Bill to the House. They cannot virtually veto bills that have been presented for assent.⁹

Effect of Re-passage by Assembly

This is the most critical aspect of the Kerala bills: If the State Legislature re-passes the Bill (with or without amendments) after it has been returned by the Governor, the Governor "shall not withhold assent therefrom". Once the legislative process of reconsideration is complete, the Governor has no discretion left and must sign the Bill. This ensures that the appointed Head of State (Governor) cannot defeat the will of the elected State Legislature.

The Court expressed "serious concern" over Governors acting only after a petition is filed in the Supreme Court. The Court reminded the Governor that if he withholds assent, he must return the bill to the legislature with a message for reconsideration. He cannot simply withhold assent and stay silent. This effectively removed the "Absolute Veto" from the Governor's arsenal.

3. In Re: Assent, Withholding or Reservation of Bills by the Governor and the President

⁹ Supreme Court Observer <https://www.scobserver.in/cases/kerala-governor-pendency-of-bills-state-of-kerala-v-governor-for-state-of-kerala/>

of India (Special Reference No. 1 of 2025)¹⁰

This reference was invoked by the President of India under Article 143(1) of the Constitution to clarify the scope of gubernatorial and presidential powers concerning State Bills under Articles 200 and 201.

• Preliminary Objections & Maintainability

The primary challenge from the States (Kerala, Tamil Nadu, etc.) was that the Reference was an "appeal in disguise"¹¹ attempting to overturn the binding judgment in *State of Tamil Nadu v. Governor of Tamil Nadu*. The Attorney General countered this with the following arguments:

The Advocate General argued that this was not an adversarial appeal but a "functional reference" designed to clarify the roles of high constitutional functionaries (Governors and the President). He submitted that when a "state of doubt" exists regarding the discharge of constitutional duties, Article 143 allows the President to seek clarity to ensure future compliance with the Constitution.

He contended that while the Tamil Nadu judgment resolved a specific dispute between a State and its Governor, the Reference sought to settle the "institutional responsibility" of the office of the Governor and President for all future instances across India.

Precedential Support: Relying on principles from *In re: Special Courts Bill (1978)*¹² The AG submitted that an advisory opinion guides future conduct and does not vacate existing judgments between parties, thus maintaining the sanctity of Article 141 while utilising Article 143.

• Submissions on Article 200 (Powers of the Governor)

The core legal battleground was the interpretation of Article 200, specifically whether Governors are bound by strict timelines when withholding assent or reserving bills.

Rejection of Rigid Timelines: The AG vehemently argued against the judicial imposition of

¹⁰ 2025 INSC 1333

¹¹ https://api.sci.gov.in/supremecourt/2025/39157/39157_2025_1_1501_66169_Judgement_20-Nov-2025.pdf

¹² AIR 1979 SC 478

rigid timelines (e.g., the "three-month rule" suggested in earlier judgments). He submitted that the Constitution deliberately omits specific time limits for high functionaries, trusting their discretion. He argued that reading a mandatory timeline into Article 200 constitutes judicial overreach and rewriting of the Constitution.

The "Sub Silentio" Argument: A critical part of the AG's submission was attacking the precedential value of the *State of Punjab v. Principal Secretary to Governor (2023)* judgment. He argued that the observations in the *State of Punjab* regarding Article 200 were passed sub silentio (without a full legal argument on that specific point) and failed to consider the binding Constitution Bench decision in *Hoechst Pharmaceuticals Ltd. v. State of Bihar (1983)*¹³.

He argued that the *Hoechst* judgment, which recognised the Governor's discretion in reserving bills for the President's consideration to protect Art 254(2) (repugnancy with Central laws), was the correct position, rather than the restrictive view taken in recent smaller bench judgments.

• **Submissions on Article 201 (Presidential Veto)**

Absolute Discretion: The AG submitted that the President's power to withhold assent to a State Bill is absolute and not subject to judicial review regarding the "reasons" or "timelines".

He argued that the President, acting on the aid and advice of the Union Council of Ministers, acts as a check in the federal setup to ensure State legislations do not conflict with Central laws or constitutional policy. Imposing timelines on the President would disrupt this federal balance.

• **Separation of Powers & Judicial Review**

Limits of Judicial Review: The AG contended that while the act of withholding assent might be reviewable if mala fide, the process and timing adopted by the Governor or President are part of their constitutional satisfaction and generally beyond the pale of writ jurisdiction.

He argued that the Supreme Court's power under Article 142 (to do complete justice) cannot be used to create a "deemed assent" fiction (where a Bill is assumed to be passed if the Governor delays), as this is substantive legislative power that the Court does not possess.

¹³ AIR 1983 SC 1019

• **Outcome & Acceptance by the Court**

The Constitution Bench's opinion largely accepted the Attorney General's structural arguments while balancing them with federal principles:

Maintainability Accepted: The Court agreed with the AG that the reference was maintainable and not an "appeal in disguise". The Court accepted the AG's submission that judicially fixed timelines (like 3 months) are impermissible. However, it qualified this by stating that action must be taken within a "reasonable time". The Court agreed with the AG that "deemed assent" is a concept alien to the Constitution.

The Governor serves as the Union's "eyes and ears" in the state. The Governor has an iron fist and velvet gloves, like the "long arm" of the Union. The Sarkaria Commission stated that the Governor "is a lynchpin." As a lynchpin, the Governor must "build bridges." He is responsible for informing the Union of the state's goals. The Governor contributes a national perspective to state affairs.

The original Constitution did not vest the President with legal authority to act *contra legem* or to do whatever he judged necessary to save the nation or the Constitution. In a nutshell, the Constitution fashioned something of an imbecilic emergency executive, one lacking constitutional authority to take property, suspend habeas corpus, or impose military rule.

The Ruling: No Fixed Timelines: The Court ruled that the Judiciary cannot impose rigid deadlines (like 60 or 90 days) on the Governor or President, as it violates the Separation of Powers.

No "Deemed Assent": It rejected the theory that a bill becomes law automatically if a Governor doesn't act in time.

Justiciability of Inaction: Crucially, it held that "prolonged, unexplained, and indefinite inaction" is subject to judicial review. While the Court won't set a clock, it can direct a Governor to "take a decision" within a reasonable period if the delay is found to be *mala fide*.

IV. Critical Analysis: The Federal Fracture

The increasing weaponisation of Article 200 risks creating a federal fracture, enabling the

Union's appointee, the Governor, to effectively stall or paralyse State legislative policy, thereby disrupting the constitutional balance between the Centre and the States.

The Re-Passage Loophole:

Article 200 mandates that if a State Assembly re-passes a Bill after the Governor has returned it, assent must ordinarily follow. However, this safeguard is being circumvented by reserving re-passed Bills for Presidential consideration under Article 201, shifting the legislative deadlock from the Raj Bhavan to the Union executive, particularly the Ministry of Home Affairs.

Constitutional Morality and the Limits of Discretion:

The constitutional scheme suggests that the Governor's discretion is not an unfettered personal power, but a constitutional duty. It must be exercised in accordance with the aid and advice of the Council of Ministers, except in narrowly defined exceptional situations.

V. Conclusion and Recommendations

The current legal status in 2026 is described as a "Conditional Peace." The Judiciary has declined to amend the Constitution (Special Reference 2025) but retains the right to strike down "obstructionist silence." The "Special Reference" and related judgments from 2023 to 2025 have established that the Governor is a constitutional head with limited discretionary powers in legislation. The Governor cannot veto legislation through inaction. The power to withhold assent is merely a suspensive veto that can be overridden by the State Legislature through re-passing the Bill. If a Governor has kept a Bill pending for an unreasonable period without decision, a Writ of Mandamus may be filed. The Supreme Court has emphasised that the phrase "as soon as possible" in the First Proviso is significant.

Recommendations:

1. Article 200 should be amended to state that if the Governor does not act within three months of receiving a Bill, or within one month after it is re-presented, the Bill will be deemed to have received assent.
2. Article 201 should be amended to require the President to either approve or withhold

assent to a Bill within four months of receiving it from the Governor.

3. But, by the time these amendments are not made to the Constitution, the following practice, as proposed by the Law Commission of Karnataka in its 22nd Report¹⁴, should be opted for:

“When assent of the Governor or the President as the case may be is not accorded within three months from the respective dates of presentation of the Bills, the Secretary General shall prepare a comprehensive report about the same and take steps with utmost expedition to place it before both the Houses for a period of not less than thirty days to enable the Legislature to take such measures as it considers just and proper to persuade the Governor or the President as the case may be to accord assent with utmost expedition.”

¹⁴ Law Commission of Karnataka. (2012). Twenty-second report: Assent to bills – Problems of delay (Report No. 22). Government of Karnataka, Ministry of Law.
<https://lawcommission.karnataka.gov.in/storage/pdf-files/English%20Reports%20LCK/Report%20No-22.pdf>