
ASYMMETRIC FEDERALISM AND THE ASSENT DILEMMA: EVOLVING JUDICIALLY MANAGEABLE STANDARDS FOR STATE-CENTRE FRICTIONS

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ABSTRACT

Indian federalism is based on a fragile, almost-federal balance between the Union and the States that make it, a balance that is progressively being disrupted by constitutional friction at the gubernatorial level. This paper is a critical analysis of the current jurisprudence of discretionary powers of the Governor under Article 200 of the Constitution of India, with particular reference to the constitutionally dubious phenomenon of indefinite withholding of assent to State legislative Bills. Placing this problem of assent dilemma in the wider theoretical context of asymmetric federalism, the study examines how the unequal distributions of constitutional power, which was initially aimed at meeting regional diversity, have, however, inadvertently made the execution of the executive oversight more complex and further intensified the Centre-State hostilities. The main point of the research is to thoroughly trace the judicial search of the so-called judicially manageable standards in order to examine and control gubernatorial and presidential inaction, which reached a critical and highly controversial inflection point in the jurisprudence of the Supreme Court in 2023-2025.

The paper breaks down some of the most significant constitutional decisions, such as *State of Punjab v. Principal Secretary to the Governor of Punjab* through an intensive doctrinal, comparative, and analytical approach, and the historic *Special Presidential Reference No. 1 of 2025*. The results indicate that there was a deep judicial conflict in the quest to reconcile the rigid doctrine of separation of powers with the democratic demands of dialogic federalism. Although the judiciary first tried to provide strict timelines on the assent process in order to restrict the so-called pocket veto, the next advisory opinion in the *Presidential Reference* reiterated the strict constitutional boundaries of such judicial interference, denying the idea of the so-called deemed assent but at the same time providing a narrow, highly limited, window of judicial review of the so-called protracted unexplained inaction. Finally, the paper recommends that in order to resolve the assent dilemma, more than just judicial recalibration is needed, and that an institutional revival of constitutional morality, codification of the criteria of reservation,

and a dedication to federal comity is necessary in order to protect the legislative autonomy of the States in the Indian complex federal grid.

Keywords: Asymmetric federalism, Article 200, Gubernatorial discretion, Judicially manageable standards, Constitutional morality, Dialogic federalism.

I. Introduction

The Centre-State relations are the cornerstone of the constitutional system in India, as they portray a unique model of federalism, which is characterised by a powerful Union, constitutionally acknowledged State autonomy and complicated institutional arrangements of inter-governmental coordination ¹. But it would be a serious error of analysis to regard this federal scheme as a homogeneous, monolithic structure. The Indian Constitution adopts an asymmetric approach to federalism, which intentionally does not follow the absolute uniformity but instead recognizes that some regions have special historical, cultural or strategic features that demand special constitutional treatment. Although this asymmetry was cleverly designed as a unifying element in a highly pluralistic society, it has in the recent times been the raucous backdrop as the tension between the Centre and the States grows. This tension is the most acute in the practical, daily process of the gubernatorial office.

The Governor, with his precarious dualism of constitutional head of a State and a representative of the Union appointed, is in an exceedingly delicate situation in this federal system. ²There has been a very worrisome trend in the past few years, especially in states where the political parties are opposite to the Union government, like Punjab, Tamil Nadu, Kerala, and Telangana. Governors in these jurisdictions have frequently used their powers under Article 200 of the Constitution to veto Bills passed by the State Legislative Assemblies indefinitely and without any stated reasons. ³This is a very conscious blockading of the legislative process, sometimes colloquially and somewhat pejoratively known as a pocket veto, which causes a terrible democratic deficit. It essentially cripples the power of the elected state government to enact its mandated policy agenda and questions the very fabric of representative, parliamentary

¹ *Centre-State Relations in India: Constitutional Framework, Judicial Interpretation and Contemporary Challenges*, The Academic (Feb. 2026), <https://theacademic.in/wp-content/uploads/2026/02/119.pdf>.

² Abhishek Kumar, *Introduction to Federalism and the Office of the Governor*, 3 Int'l J. Legal Affs. & Exploration (2025).

³ *2023 Supreme Court Review: Democracy and Governance*, SC Observer, <https://www.scobserver.in/journal/2023-supreme-court-review-democracy-and-governance/> (last visited Mar. 24, 2026).

democracy.⁴

The topicality of this constitutional issue is great and urgent. The refusal of a Governor to act on a piece of legislation, whether by granting assent, withholding it, sending it back to be reconsidered, or by reserving it to the consideration of the President, is a complete nullification of the legislative will of the State, without any substantive debate, political responsibility, or constitutional explanation.⁵ This extended lack of action compels a conflict between the unelected executive nominee and the legislature that is elected democratically. The root of the trouble here, however, is not, after all, a question of administrative sluggishness or bureaucratic inefficiency; but a great constitutional crisis of moral conduct, and an entire collapse of federal comity.

The first issue that this study will deal with is the profound constitutional ambiguity of the time limits and the discretionary limits of the Governor and the President under Articles 200 and 201, and the inherent, and frequently insurmountable, challenge posed to the judiciary in adapting the standard measures-or judicially manageable measures-to scrutinize and rectify such executive inaction.⁶ Although central predominance has been historically defended as a measure of political stability and national integration, the excessive concentration of power based on the uninspectable, unrestrictible gubernatorial discretion is extremely dangerous to derail the whole process of democratic decentralisation. Thus, the purposes of the whole study are to critically analyze the text of the constitution, radically deconstruct the recent and highly fraught Supreme Court interventions to restrain this discretion, and to examine how the normative principles of dialogic federalism could offer a viable theoretical and practical solution to the current dilemma of assent.

A. Research questions

- i. To what extent can constitutional courts legitimately evolve and apply "judicially manageable standards" to review the discretionary inaction of Governors and the

⁴ *State of Tamil Nadu v. Governor of Tamil Nadu*, Wikipedia, https://en.wikipedia.org/wiki/State_of_Tamil_Nadu_v._Governor_of_Tamil_Nadu (last visited Mar. 24, 2026).

⁵ *Clarifying Gubernatorial Powers in the Legislative Process: The Indian Supreme Court's Judgment in State of Tamil Nadu v. Governor of Tamil Nadu*, I-CONnect Blog, <https://www.iconnectblog.com/clarifying-gubernatorial-powers-in-the-legislative-process-the-indian-supreme-courts-judgment-in-state-of-tamil-nadu-v-governor-of-tamil-nadu/> (last visited Mar. 24, 2026).

⁶ Paras Khetan, *Guest Post: Judicial Review of Governors' Delay in Assenting to Bills - A Response*, Indian Const. L. & Phil. (Mar. 11, 2023), <https://indconlawphil.wordpress.com/2023/03/11/guest-post-judicial-review-of-governors-delay-in-assenting-to-bills-a-response/>.

President under Articles 200 and 201 without fundamentally violating the orthodox doctrine of separation of powers?

- ii. How does the concept of asymmetric federalism interact with the uniform application of gubernatorial assent, and does regional constitutional exceptionalism inadvertently exacerbate Centre-State legislative frictions?
- iii. In what specific ways does the Supreme Court's landmark advisory opinion in *Special Presidential Reference No. 1 of 2025* recalibrate the federal equilibrium and redefine the scope of judicial review over high constitutional functionaries?

B. Hypothesis

Lack of clear constitutional deadlines on gubernatorial and presidential consent allows systemic executive overreach that immobilizes State legislative sovereignty, forcing the judiciary to play the balancing act between the high severity of powers separation and the requirements of dialogic federalism. This strain ends up causing a narrow scope of judicial review that is aimed at the long-term, non-explainable inaction instead of the introduction of strict, non-textual deadlines.

C. Research Objectives

- i. To critically and exhaustively analyze the constitutional architecture of Articles 200 and 201, tracing the historical, political, and jurisprudential evolution of the Governor's discretionary powers and the emergence of the "pocket veto" controversy in India.
- ii. To deeply examine the intersection of asymmetric federalism and the assent dilemma, assessing how the unique, unequal constitutional status of certain states influences and complicates the dynamics of Centre-State legislative friction.
- iii. To evaluate the efficacy, textual fidelity, and constitutional validity of "judicially manageable standards" as developed by the Supreme Court—particularly in light of the turbulent 2023–2025 judgments and the Special Presidential Reference—and to propose actionable legal reforms rooted in constitutional morality.

D. Literature Review

The scholarly literature on Indian federalism, especially the structural imbalances of the Constitution and the hotly debated position of the Governor is voluminous, thick and ever-changing in the immediate reaction to current political crises. A review of the literature that is available shows that there has been a long-standing, historical conflict between the centralising tendencies which were bequeathed by the colonial legal systems, most notably the Government of India Act, 1935, and the contemporary demand of a democracy to have meaningful, unimpeded regional autonomy.

A considerable part of the literature is very much concerned with the conceptualization of India as a more-or-less asymmetric federation. The difference between fiscal, administrative and political arrangements in India has been carefully recorded by scholars like M. Govinda Rao and Nirvikar Singh who have shown that there is a significant disparity in the sub-national governments of India. These asymmetries were created to effectively handle the geographic, ethnic, and linguistic diversities in the country, so that the marginalized or culturally distinct groups could be incorporated into the Union without losing their identity.⁷ Louise Tillin adds to this basic knowledge by suggesting that although India has de facto asymmetry, the de jure asymmetrical constitutional forces, including those previously in Article 370 and now in Article 371, were created to safeguard certain cultural minorities but have not necessarily been the dominant tool that has held the enormous nation together⁸. Tillin is provocative in questioning the normative political philosophy which invariably advocates asymmetric federalism, noting that such intricate and convoluted relations may breed regional resentment, administrative confusion and political polarization, a dynamic which inevitably spills out into broader Centre-State relations and complicates normal governance.⁹

The position of the Governor has been one of the most actively, and frequently extremely critical, scholarly debates in the particular area of constitutional operation. The Punchhi Commission (2010) and the Sarkaria Commission on Centre-State Relations (1988) reports continue to be authoritative seminal writings in the field. The two commissions on several

⁷ M. Govinda Rao & Nirvikar Singh, *Asymmetric Federalism in India*, in *Fiscal Fragmentation in Decentralized Countries* (Richard M. Bird & Robert D. Ebel eds., 2007).

⁸ Louise Tillin, *United in Diversity? Asymmetry in Indian Federalism*, King's Coll. London Rsch. Portal, <https://kclpure.kcl.ac.uk/portal/en/publications/united-in-diversity-asymmetry-in-indian-federalism/> (last visited Mar. 24, 2026).

⁹ Louise Tillin, *United in Diversity? Asymmetry in Indian Federalism*, 37 *Publius: J. Federalism* 45 (2007).

occasions cautioned against the progressive politicization of the gubernatorial office and specifically suggested that there should be clear conventions or constitutional amendments to place timelines within which the Governor should take action on State Bills.¹⁰ Regardless of these authoritative suggestions, legislative inaction has continued, especially due to the ambiguity which is beneficial to the political executives at the Centre. The failure of legislative intervention that persists as Paras Khetan observes in his trenchant examination of the delay by the Governor to give consent to Bills, requires immediate judicial intervention. Khetan makes a strong case that a pressing necessity is to establish judicially manageable standards to scrutinize the authority to withhold assent, and that absolute discretion is the bane of constitutionalism.

The idea of judicially manageable standards, a term of jurisprudence often borrowed in the American constitutional law, best known through *Baker v. Carr*¹¹, is a very controversial case in the Indian context.¹² Devansh Yadav uses this ambiguous notion to consider Article 356 in the background of a doctrine of "Principled Caution" which, in the very subjective constitutional text, has allowed the Supreme Court of India to establish a precarious yet essential middle ground of judicial review.¹³ Nonetheless, one can clearly and noticeably see a research gap in applying this theoretical framework to Article 200. Although a good deal of scholarly blood has been shed upon the judicial review of affirmative executive actions like the removal of state governments (*S.R. Bommai v. Union of India*,) or the exercise of the pardoning power (*Maru Ram v. Union of India*), the case law on the examination of pure, unadulterated legislative inactivity by the Governor is just beginning to develop in the immediate aftermath of the incendiary 2023 and 2025 Supreme Court decisions.

Moreover, the theoretical framework of dialogic federalism is also being applied more and more by contemporary constitutional scholars to comprehend and, perhaps, to correct such frictions. Dialogic federalism views intergovernmental relations as a space, dynamic and ongoing, to accommodate and negotiate conflict in dialogue, instead of litigating conflict in an

¹⁰ *Clarifying Gubernatorial Powers in the Legislative Process: The Indian Supreme Court's Judgment in State of Tamil Nadu v. Governor of Tamil Nadu*, I-CONnect Blog, <https://www.iconnectblog.com/clarifying-gubernatorial-powers-in-the-legislative-process-the-indian-supreme-courts-judgment-in-state-of-tamil-nadu-v-governor-of-tamil-nadu/> (last visited Mar. 24, 2026).

¹¹ *Baker v. Carr*, 369 U.S. 186 (1962).

¹² *Baker v. Carr*, 369 U.S. 186 (1962); see also Brian S. Gould, *Roberts, Rules, and Rucho*, 52 U. Conn. L. Rev. 427 (2020).

¹³ Devansh Yadav, *Deconstructing Article 356: The Role of Judicial Review in Shaping Centre-State Dynamics*, TSCLD Blog (2024), <https://www.tsclld.com/article-356-judicial-review-centre-state-federalism>.

adversarial way. Nonetheless, as certain modern critics can shrewdly suggest, the normative appeal of dialogic federalism tends to collide with the descriptive reality of contemporary Indian politics in a very violent way. Federalism is often today characterised by extreme partisanship and harsh centralisation, with the Governors often seen as trying to be direct political breaks on the opposition-controlled States, to selectively block certain policy agendas.¹⁴

The main research gap that is determined in this literature is the overall, unified synthesis of the active role of the abstract, structural concept of asymmetric federalism in the context of the particular, procedural bottleneck of assent dilemma. Furthermore, the profound academic unanimity over the effect of the abrupt, dramatic turn in the 2025 Presidential Reference by the Supreme Court on the current search of judicially manageable standards is wanting. It is against this background that this paper aims to fill that gap with a comprehensive, thoroughly-researched analysis of the overlap of the subject of regional asymmetry, executive discretion, and the absolute boundaries of judicial authority.

E. Research Methodology

The present study is largely doctrinal and analytical in nature, which is highly based on systematic, textual analysis of constitutional provisions, statutory provisions and landmark judicial declarations. The study is systematically organized to critically assess the changing legal principles of the Centre-State relations with a very specific, forensic interest on the discretionary legislative powers of the Governor and the President.

The basic data sources are the legal provisions, which are mostly the Constitution of India. The study is based on extensive textual interpretation of recent and past Supreme Court decisions that have influenced federal jurisprudence, namely Articles 371A to 371-J (asymmetric provisions). Key case laws rigorously analysed include *State of Punjab v. Principal Secretary to the Governor of Punjab*, (2024);¹⁵ *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025¹⁶; *Kaiser-I-Hind Pvt. Ltd. v. National Textile Corporation*, (2002); *S.R. Bommai v. Union of India*, (1994)¹⁷; and the highly pivotal advisory opinion in *Special Presidential Reference No.*

¹⁴ Devansh Yadav, *Deconstructing Article 356: The Role of Judicial Review in Shaping Centre-State Dynamics*, TSCLD Blog (2024), <https://www.tsclld.com/article-356-judicial-review-centre-state-federalism>.

¹⁵ *State of Punjab v. Principal Sec'y to the Governor of Punjab*, (2024) 1 S.C.C. 384 (India).

¹⁶ *State of Tamil Nadu v. Governor of Tamil Nadu*, (2025) 8 S.C.C. 1 (India).

¹⁷ *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1 (India).

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Besides these primary legal texts, the research uses high-impact secondary materials of data, such as journal articles, scholarly commentaries by constitutional experts, and comprehensive reports by historical constitutional commissions (like the Sarkaria and Punchhi Commissions) in order to put the rigid doctrinal analysis into much broader political, historical, and theoretical discussions. The analytic model integrates these sources based on the complicated theoretical terms like a judicially manageable standard, constitutional morality and dialogic federalism to analytically divide the jurisprudence and suggest practical and realistic legal reforms. This strict mixed methodology of doctrinal textualism and high-level theoretical jurisprudence permits a very subtle, comprehensive, and academic discussion of the topic in question.

II. The Federal Matrix and the Asymmetric Anomaly

To really understand the seriousness and structural complexity of the assent dilemma, it might be important to first unravel the deep constitutional architecture of the assent dilemma, and the asymmetric nature of the Indian quasi-federation. The framers of the Indian Constitution, strongly guided by the inflexible, centralised model of the Government of India Act 1935, intentionally created a federal model that is tilted immensely towards the Centre. The tendency of centralization is most evident and powerful in the office of the Governor. In accordance with Article 200 of the Constitution, a Bill passed by the Legislative Assembly of a State should be sent to the Governor. According to the text of the Constitution, the Governor has four seemingly available ways: declare assent, withhold assent, send the Bill (unless a Money Bill) with a message asking it to be reconsidered, or leave the Bill to be solemnly considered by the President.

Nevertheless, the Constitution does not work in a clean environment of structural homogeneity. The federalism of India is strongly and deliberately asymmetric, i.e. the Constitution does not treat all states equally. It rather acknowledges that there are regions with special historical, cultural, geographic, or strategic features which simply demand special constitutional treatment to provide them with an integration and security. This asymmetry is enshrined in the Constitution mainly in Part XXI, known as Temporary, Transitional and Special Provisions, within Articles 371 to 371-J, which gives special constitutional provisions to twelve states

including Maharashtra, Gujarat, Nagaland, Mizoram and Manipur.¹⁸

The essence of such provisions changes drastically the normal federal dynamic. As an example, in Chapter 371A (added by the 13th Amendment Act, 1962), no Act of Parliament concerning the religious or social life of the Nagas, or the Nagas customary law and procedure, or the transfer and ownership of land, applies to the State of Nagaland, unless an express resolution is passed by the State Legislative Assembly to the effect. Article 371G. has similar but very strong safeguards of Mizoram. Also, in other states, such as Maharashtra and Gujarat, Article 371 imposes on the Governor a special responsibility to form separate development boards in socio-economically backward areas such as Vidarbha, Marathwada, and Saurashtra.¹⁹ When the Governor is performing this special duty, he is constitutionally authorised to do so in his own discretion, without reference to the usual practice of acting on the assistance and advice of the Council of Ministers. Particularly, Article 371 gives the Governor special responsibility in the development boards in such areas as Vidarbha and Saurashtra in Maharashtra and Gujarat. Article 371A provides that Nagaland customary law and transfer of land Acts are not applicable in Nagaland without the consent of the Assembly. Likewise, Article 371C has special provisions to the administration of Hill Areas in Manipur. Lastly, Article 371G provides that the Acts of Parliament on Mizo customary law and transfer of land do not apply in Mizoram without the approval of its Legislative Assembly.

This unequal distribution of power causes an unparalleled, extremely unstable weakness in the relations between Centre and State. The Governor, in a state which is under special rules, is not a nominal or ceremonial chief, but a working administrative agent, with certain, constitutionally prescribed discretionary powers to him or her. The office of Governor is usually the main source of political strife when the political orientation of the Union government at the Centre is different at the core level with the State government. The non-symmetrical design, which was originally aimed at mildly dealing with the diversity and ensuring fair development, paradoxically gives the appointee of the Centre the power to meddle with delicate state matters. This structural tension is the groundwork to the assent dilemma. Using the textual ambiguity of Article 200 to delay legislation is a strategy that disturbs both

¹⁸ *Special Provisions for Some States*, Drishti IAS, <https://www.drishtias.com/to-the-points/Paper2/special-provisions-for-some-states-1> (last visited Mar. 24, 2026); see also India Const. arts. 371–371J.

¹⁹ *Special Provisions of States*, Shankar IAS Parliament, <https://www.shankariasparliament.com/blogs/pdf/special-provisions-of-states> (last visited Mar. 24, 2026); see also India Const. art. 371.

symmetric and asymmetric states, but with very destabilizing consequences in the regions where local legislative autonomy is relied upon to help safeguard vulnerable indigenous rights and to implement localized development.²⁰

III. The Mechanics of Article 200 and the Genesis of the Pocket Veto

The hypothetical weakness of Article 200 transformed into a massive, debilitating constitutional crisis between 2022 and 2024, which was mostly concentrated in non-BJP ruled states. The nub of this dilemma is that the phrase in question is as soon as possible, which appears in the first proviso of Article 200, requiring the Governor to send a Bill back to be reconsidered in case he or she does not assent. Most importantly, the framers of the Constitution came up with a conscious decision not to specify a specific time frame in which the Governor should give assent or withhold it in the first place. This literary silence has given rise to the most contentious and legally questionable process of the so-called pocket veto, that is, a Governor just sitting on a piece of legislation without any assent, without any refusal, without returning it, without reserving it. The Governor makes the Bill dead by refusing to take any action without necessarily giving any constitutionally acceptable justification to the legislature.

The landmark case of *State of Punjab v. Principal Secy. to the Governor of Punjab*, (2024). was hotly opposed in the Supreme Court of India as a highly undemocratic practice. The dispute was caused by the Governor of Punjab, who, with extreme personal reservations against the constitutionality of the legislative session, openly declined to call the Budget Session, and at the same time withheld the action on a number of important State Bills. The State of Punjab with the total failure of constitutional machinery appealed to the jurisdiction of the Supreme Court by the Article 32.

The case that was adjudicated by the Supreme Court resulted in a bitter, very scathing criticism of the overreach by the governor. The Court categorically decided that in a parliamentary democracy based on the Westminster model, the Governor is a constitutional symbolic head. This is based on the heavy reliance on the precedents *Shamsher Singh v. State of Punjab*, (1974), and *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016).

²¹The Court once again confirmed that, in all but the most exceptional cases, the Governor is

²⁰ *Empowering Local Government for Development: 'Asymmetric Localism' in India*, Int'l Ctr. for Pub. Pol'y Working Paper Series, Paper 25-16 (2025), <https://icepp.gsu.edu/files/2025/10/paper2516.pdf>.

²¹ *Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legis. Assembly*, (2016) 8 S.C.C. 1 (India).

under strict obligation to take the advice and counsel of the Council of Ministers in the discharge of his or her duties, and is by no means free to decline to act on the Bills submitted to him or her, according to his or her own political judgment.

In addition, the Court made it very clear that the Governor has absolutely no right to deny assent on the basis of subjective suspicions as to the procedural validity of the legislative session. The Court strongly maintained the sovereign and unquestionable area of the Speaker of the House in affairs of reconvening a prorogued or adjourned Vidhan Sabha.²² The Punjab case was a critical reaffirmation of the primacy of the law. It also aggressively made the point that the term as soon as possible creates the impression of constitutional urgency, and that indefinite inaction is, essentially, incompatible with the responsibilities of a high constitutional officer.²³ Nevertheless, the Punjab decision, though conceptually sound, had no concrete coercive measures that would be used to impose timeliness throughout the board, which preconditioned an even greater clash in the southern state of Tamil Nadu.

IV. The Tamil Nadu Saga and the Initial Judicial Overreach

Concurrently with the Punjab crisis, in the state of Tamil Nadu, a far more protracted and bitter constitutional struggle was being fought, which ended in the extremely complicated litigation of *State of Tamil Nadu v. Governor of Tamil Nadu*, (2025). The Tamil Nadu Legislative Assembly had methodically enacted many Bills, including the most controversial the Tamil Nadu Universities Laws (Amendment) Bill, which was aimed at limiting the powers of the Governor as the Chancellor of state universities, which the Governor, R.N. Ravi, had left in abeyance more than seventeen months without having formally communicated to the legislature.

When the State government, long exasperated by the stalemate of the legislature at last resorted to the jurisdiction of the Supreme Court in October 2023, the Governor was quick and perfunctory in refusing to assent to ten Bills, particularly in simpliciter that is to say, without any statement of his reasons to the State Assembly, which is the violation of the spirit of the first proviso to Article 200. To this sudden rejection, a special session of the Tamil Nadu

²² *State of Punjab v. Principal Secretary to the Governor of Punjab & Another: Case Comment*, CALJ (2024), <https://www.calj.in/post/state-of-punjab-v-principal-secretary-to-the-governor-of-punjab-another-case-comment>; see also *State of Punjab v. Principal Sec'y to the Governor of Punjab*, (2024) 1 S.C.C. 384 (India).

²³ *State of Punjab v. Principal Sec'y to the Governor of Punjab*, Writ Petition (Civil) No. 1224 of 2023, 2023 INSC 1017 (India).

Legislative Assembly was called on November 18, 2023, during which the ten Bills were reintroduced, reconsidered, and re-passed in their original form as they were initially proposed. On the re-presentation of the Bills, instead of giving the necessary assent to the proviso, the Governor tried a new constitutional gambit, he sent the re-passed Bills to the President of India to be considered under Article 201.

The Supreme Court was to look into this unprecedented turn of events and ended up invalidating the legality of the actions of the Governor. In a stinging decision, passed on April 8, 2025, the Court decided that, according to the well-considered plan of Articles 200 and 201, a Governor has no right whatever to reserve a Bill to the President when, once sent back to reconsideration, it has been re-passed by the Assembly in its original form. The Court has argued that Article 200 offers three different alternatives at the first stage: grant assent, withhold assent and send the Bill back, or reserve it. Nevertheless, after the legislature has had its constitutional right to revisit and re-affirm the Bill, the Governor is bound to assent. A reservation to the President at that late hour would have practically destroyed the legislative power of reconsideration expressly and deliberately conferred in the first proviso to Article 200.

The Court has categorically pronounced the indefinite suspension, and the consequent and later, *ex post facto* reservation, by the Governor, to be unlawful, and erroneous, expressly denouncing the perilous doctrine that gubernatorial silence or a pocket veto is a constitutionally known mode of action. The ruling in this case was radical since it essentially restored the balance of power to the legislature, which grossly limited the power of the Union appointee to obstruct state policy. However, this aggressive judicial stance was quickly followed by some deep questions of the boundaries of judicial authority and the separation of powers.

V. The Search for Judicially Manageable Standards in Article 200

The harsh judicial reprimands in the Punjab and Tamil Nadu cases put in sharp focus a most knotty, nearly intractable jurisprudential problem, namely, how does a constitutional court impose timely executive action where the text of the Constitution expressly and visibly does not prescribe strict numerical deadlines? This is a very theoretical issue that leads the analysis to the doctrine of judicially manageable standards.

It began in much of American constitutional jurisprudence to ascertain whether or not political

questions are justiciable, most notoriously expressed by the U.S. Supreme Court in *Baker v. Carr*, a standard that can be judicially administered is a clear framework, measure, or rule on the basis of which a court can make a rational decision-making to a legally valid conclusion without encroaching upon the policy making powers of coordinate arms. Such standards have been previously, and to some extent, successfully developed by the Supreme Court in India to thoroughly scrutinize apparently absolute executive powers. For example, in *S.R. Bommai v. Union of India*, the Court set objective criteria to assess the imposition of President's rule under Article 356 and shifted it to the pure subjective satisfaction.. Similarly, in *Maru Ram v. Union of India*²⁴, it was established that there were strict parameters that had to be observed to guard against arbitrary exercise of the pardoning power in Article 72.

Using this complicated model to Article 200, the Supreme Court in its April 2025 decision (*State of Tamil Nadu v. Governor of Tamil Nadu, 2025*) tried an extraordinarily radical constitutional creation. Aware of the fact that the ongoing legislative paralysis was literally eating away at the very heart of democratic governance, the two-judge Bench attempted to inject some artificial life into Article 200 by imposing time limits on it, judicially. In order to give life to the abstract principle of timeliness, the Court exercised its extraordinary inherent powers under Article 142 of the Constitution to make certain, binding directions. By these directions, a decision was ordinarily expected within one month by a Governor acting on aid and advice alone. In case the Governor was acting contrary to the advice by discretion, the period was established to a maximum of three months. Moreover, the re-passage of Bills by the Assembly was rigidly required within a month. Lastly, in the case of the President on the decision on reserved Bills under Article 201, the Court anticipated that the resolution would be made in the next three months in general.

The Court was scrupulous in justifying that these new-minted time-limits were not an impermissible interpretation of the text of the Constitution, but a needed lodestar to the end of the purpose of exercise of judicial review, an indispensable tool of the benchmark to conclusively determine whether unconstitutional inactivity or malfeasance had taken place. This ruling even implied that in extreme circumstances, a long-standing refusal to comply with such judicially established timetables might lead to a legal fiction of a so-called de facto assent, applying Article 142 to prevent the legislative process from being vetoed by executive inaction. Many of the progressive federalists welcomed this extremely belligerent judicial stance as a

²⁴ *Maru Ram v. Union of India*, (1981) 1 S.C.C. 107 (India).

corrective, pragmatic remedy to systemic executive overreach. Nonetheless, it essentially and violently upset the traditional conception of the separation of powers, and the Union government responded immediately and harshly to it, believing it to be pure judicial legislation.

VI. Special Presidential Reference No. 1 of 2025: A Recalibration

The over-the-line aggressive judicial stance of the April 2025 ruling caused an immediate and dramatic constitutional crisis on the absolute limitations of judicial review. Directly in response to the perceived judicial overreach, the President of India, May 13, 2025, officially used the advisory jurisdiction of the Supreme Court under Article 143(1) of the Constitution. In what was later known as Special Presidential Reference No. 1 of 2025, the President made fourteen very complicated questions on the precise constitutional outlines and boundaries of the authority of the Governor and the President under Articles 200 and 201.²⁵

In the long, hotly-contested hearings, the Union Government, led by the vigorous Solicitor General Tushar Mehta, made a strong case to the effect that the essence of the functions under Article 200 is simply non-justiciable. The Union argued that the high plenary power of coordinate constitutional authorities, in no case, can be exposed to judicially imposed time constraints, since it will entirely break the porous walls that uphold the separation of powers. They reasoned that the discretion of the Governor under Article 200 is completely *sui generis*, i.e. different to the emergency powers in Article 356, and that it concerns highly polycentric political considerations to which the court merely has no judicially manageable standard. On the other hand, the States, through high-profile advocates such as Kapil Sibal, contended that in the absence of a judicial check, the issue of endemic gubernatorial delay would permanently cripple state legislatures and the democratic process would become a sham.

A five-judge Constitution Bench delivered its landmark advisory opinion on November 20, 2025, in the case *In Re: Assent, Withholding or Reservation of Bills by the Governor and the President of India, 2025 INSC 1333*, a silent but very important re-calibration of Indian federal jurisprudence. The Court of Appeal clearly and conclusively appealed the April 8 ruling.²⁶ The

²⁵ *Presidential Reference on Powers of the Governor and President*, SC Observer, <https://www.scobserver.in/cases/presidential-reference-on-powers-of-the-governor-and-president-re-assent-withholding-or-reservation-of-bills-by-the-governor-and-president-of-india/> (last visited Mar. 24, 2026)

²⁶ *No Timelines for Governor/President to Act on Bills for Assent, No Deemed Assent; Decisions Under Articles 200 & 201 Not Justiciable, Says Supreme Court*, The Leaflet, <https://theleaflet.in/leaflet-reports/no-timelines-for-governor-president-to-act-on-bills-for-assent-no-deemed-assent-decisions-under-articles-200-201-not-justiciable-says-supreme-court> (last visited Mar. 24, 2026).

Court conclusively ruled that the Governor and the President can never be constrained by judicially imposed deadlines of taking action on Bills. The Bench strictly argued that it is impermissible to interpret certain timelines into the Constitution that the original framers intentionally left out as a rewriting of the constitutional text and a fatal attack on the very separation of powers.²⁷

The Court also went on the offensive to invalidate the new principle of deferred assent. It believed that to invoke Article 142 and establish a legal fiction of an implied consent is almost a judicial usurpation and direct replacement of the executive functions, and is strictly forbidden within the parameters of a written Constitution. A State law cannot merely come into existence without the very, positive, and written consent of the Governor or the President.

But the States were not left without any means of repelling the executive obstinacy. It cautiously created a very narrow area of judicial intervention, extremely narrow. Although the Court reiterated that the overall discharge of functions under Article 200 is in no way subject to a "merit-review" (the court may not investigate the reasons why a Bill was sent back or not sent back at all), the Court determined that constitutional courts may engage in limited judicial review in extreme situations involving a glaring circumstance of inaction that is both protracted, unaccounted and indeterminate. In these particular, exceptional cases the Court may grant a narrow writ of mandamus to order the Governor to perform some act within a reasonable time frame, but not to specify whether that ultimate act shall be assent, withholding, or reservation.

This historic decision is a very complex, yet a very dangerous, effort to come up with an actually judicially workable standard that would be profoundly respectful to the separation of powers. The Court cleverly preserved its ultimate power to avoid a total constitutional standstill by defining the standard not as a numerical limit of days, but as the active discouragement of the so-called prolonged, unexplained inaction, yet by far extensively respecting the discretionary leeway of the executive branch.

VII. The Article 201 Black Hole and the Demands of Dialogic Federalism

Although, as is natural, a good part of the academic and political agitation revolves around the

²⁷ *State of Tamil Nadu v. Governor of Tamil Nadu*, Writ Petition (Civil) No. 1239 of 2023 (India Apr. 8, 2025); see also *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025 INSC 481 (India).

very deeds of the Governor, the final, most irreconcilable constitutional stalemate usually arises under Article 201, when a Bill is officially laid aside to the deliberation of the President of India. The Presidential Reference of 2025 advisory opinion reiterated that the vast discretion of the President under Article 201, just like that of the Governor, is non-justiciable and is not subject to any timelines by any means.

It may be well to say, that the reservation of Bills is not necessarily a wicked or anti-federal measure; it is originally, designed as an essential measure of preserving the harmony of legislation between the Union and the States. This is especially important with respect to topics on the Concurrent Schedule, where a State law may be directly repugnant to an already existing Central law. The assent granted by the President under Article 254(2) in conjunction with Article 201, as definitively determined in the Constitution Bench case of *Kaiser-I-Hind Pvt. Ltd. v. National Textile Corporation, (2002) Ltd.* entails the active exercise of the mind by the President to the particular repugnancy that is raised between the proposed State Law and the previous Central law. The reservation made by the Governor must not be a generic, unreasoned forwards of the Bill; it must be extremely specific on the conflict in order to be effective in overriding central legislation.²⁸

But reality nowadays is much more cynical. When the Governors exercise the power of reservation under Article 200 not to remedy actual constitutional repugnancy, but only to delay legislation which they politically dislike, they in effect arm the office of the President against the State legislature. Since the actions of the President are wholly immune to any kind of merit-review, and have no time-limit, a Bill submitted to the President may be effectively put in a constitutional black hole permanently, killing the legislative initiative without the political repercussions or responsibility of a direct, public veto.

This dilemma, in particular, is extremely acute in the light of the contemporary asymmetric localism. In a very diverse, massively multi-ethnic federation such as India, localized, decentralized government is absolutely necessary to meet highly heterogeneous demands.²⁹ States regularly pass very specific legislation which is shaped by their local economic, cultural and agricultural conditions. In case the Centre, acting indirectly by the broad reservation power of the Governor and the following indefinite silence of the President, vetoes

²⁸ *Kaiser-I-Hind Pvt. Ltd. v. Nat'l Textile Corp. (Maharashtra North) Ltd.*, (2002) 8 S.C.C. 182 (India).

²⁹ *Empowering Local Government for Development: 'Asymmetric Localism' in India*, Int'l Ctr. for Pub. Pol'y Working Paper Series, Paper 25-16 (2025), <https://icepp.gsu.edu/files/2025/10/paper2516.pdf>.

these so carefully designed laws, it attacks the very root of federalism. The fact that there are no judicially reviewable standards to force the President to act implies that the Union government would have a permanent shadow veto on all State legislation, an ugly fact that cripples the independence that the original federal system promised.

To correct this, one needs to revert to the theoretical paradigm of "dialogic federalism" and its analogous principle, which is the principle of constitutional morality. Dialogic federalism demands that intergovernmental relations must be a place to openly debate and negotiate policy differences, and not a place to win zero-sum legal battles. It imagines an ongoing respectful communication between the various levels of government. The authority of the Governor to send a Bill back with a message in the context of the assent dilemma is inherently dialogic, to call to the attention of the legislature to stop, think, and rethink particular provisions, creating a healthy constitutional dialogue. But the new indefinite withholding or abrupt, irrational reservation, rudely closes this conversation by forceful foreclosure.

This disintegration requires a strong appeal to the so-called constitutional morality the following of the fundamental, unwritten principles of the constitutional system even in cases where the written document is not explicitly at all. This is directly connected to the German concept of *Bundestreue* or federal comity which requires a mutual duty of the federation and the states to act in a cooperative, pro-federal fashion in federal systems.³⁰ In a situation where the constitutional functionaries have failed the federal comity, it becomes apparent that imposing behavioral standards, which can only be enforced through the courts, places the harsh constraints on judicial authority. Although the 2025 advisory opinion is intellectually graceful in its uncompromising insistence on the separation of powers, descriptively, it places Indian federalism in a very precarious position to the aggressive centralization of power. The only solution is a restoration to constitutional morality, and that cannot be enacted or ordered by law, but must be developed as a part of the political culture itself.

Findings and Suggestions

The Exhaustive, doctrinal, and comparative examination of the fast-moving jurisprudence on Articles 200 and 201 provide a number of crucial, very worrying results in the contemporary

³⁰ *Canada at 150: Federalism and Democratic Renewal*, Queen's Univ. Inst. of Intergovernmental Rel. (2017), https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/PDF%20Publications/SOTF%202017%20book.pdf.

condition of Indian federalism and the structural restriction of judicial review.

To begin with, the profound asymmetric federalism of which it is undoubtedly essential to meet the vast regional diversity of India, also establishes, at the same time, deep structural channels of influence of the Centre over State legislatures with a disproportionate influence that is not always limited. This organizational deviation makes it impossible to consider federal friction only as a political conflict, occasionally, but as a structural weakness.

Second, the modern, popular form of the so-called pocket veto, i.e. when a Governor is simply refusing to act on a Bill, without any reasons, without any explanation, is essentially incompatible with the principles of parliamentary democracy, dialogic federalism, and constitutional morality. It brutally breaks the fragile federal comity that holds the Union and the States together in a unity.

Third, the jurisprudence of the Supreme Court in this particular field has been evolving rapidly, violently, and fundamentally. The first, violent, effort to judicially legislate strict deadlines and apply the legal fiction of the so-called deem assent under Article 142 was a daring, but constitutionally dangerous, overstep. The resulting, requisite recalibration by the Constitution Bench in Special Presidential Reference No. 1 of 2025 rightly and squarely gave importance to the orthodox doctrine of separation of powers by explicitly denying judicial timelines and the notion of deemed assent.

Fourth, although the Court did not embrace strict numerical boundaries, it nonetheless, albeit by a very slender margin, developed a highly subtle, judicially workable test: the doctrine of protracted, unaccounted and indefinite inaction. Under this new standard, although substantive merits of a decision of a Governor or President are strictly non-justiciable, deliberate, inexplicable stalling is now liable to a limited writ of mandamus to compel the authority to act decisively.

Although this is a welcome judicial clarity, the legal system is still very susceptible to political manipulations. By their very nature, judicial remedies are purely reactive and time consuming especially in the sense that they come way too late to salvage urgent public policy initiatives out of obsolescence. Thus, it is inherently unsustainable to leave the Supreme Court to continually patrol the gray borders of Article 200. On the basis of these findings, the following holistic policy and legal reform proposals are given:

- i. Constitutional Amendment to Article 200: A permanent solution to the assent dilemma is the most conclusive one, which is a constitutional amendment. Article 200 needs to be revised to add specific textual timeframes, taking direct suggestions of the historical, but neglected, recommendations of the Sarkaria and Punchhi Commissions. An immovable period, say three to six months, must be rigidly required to be taken by the Governor to grant assent, or to send the Bill back with a message, or reserve it to the President.
- ii. Formalization of Reservation Discretion: The extraordinarily wide discretionary authority to reserve a Bill to the President in Article 200 must be put on a statutory leash and severely limited. The Constitution needs to be changed so as to expressly list the exceedingly narrow conditions under which a Bill must or may be reserved, to restrict this extreme power in no other case than one of patent unconstitutionality, direct, irreconcilable conflict with Central laws (repugnancy), or grave danger to national security, thus absolutely preventing its abuse as a crude instrument of partisan political obstruction.
- iii. Federal Dialogue Institutionalization: To achieve in earnest the federal comity and dialogic federalism, a strong institutional process, e.g., a greatly revitalized and empowered Inter-State Council with Article 263 shall be obligatorily required to resolve disputes over withheld or reserved Bills prior to their being permitted to degenerate into devastating constitutional litigation. This would entrench the ideals of dialogic federalism into the day-to-day system of governance and see to it that Centre-State differences are settled by mature political negotiation and not by enmity of judicial confrontation.

To sum up, although the Supreme Court has brilliantly, albeit with caution, maneuvered between executive discretion and legislative primacy, the final safeguarding of the complicated, asymmetric federalism of India is solely dependent on the utmost adherence to constitutional morality by the political actors. And until Article 200 is radically and fundamentally reformed to remove the weaponized ambiguities of Article 200, the assent dilemma will remain a dark and paralyzing specter looming over the independence of the States.

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