
FROM CONSTITUTIONAL SILENCE TO CONSTITUTIONAL SUPREMACY: THE SUPREME COURT'S REINVENTION OF ARTICLES 200 AND 201 IN STATE OF TAMIL NADU V GOVERNOR OF TAMIL NADU

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I. INTRODUCTION

What happens when a constitution assigns an act to an authority who simply refuses to perform it? Article 200 answers this for the Governor's assent to State Bills by prescribing three courses of action and, on the Court's reading, no fourth. Yet for a prolonged period, the Governor of Tamil Nadu treated silence as a permissible course of conduct, and when he eventually acted, he did so in ways the Court held were not sanctioned by the text, first withholding assent without the reconsideration message the Constitution requires, then reserving re-passed Bills for presidential consideration a second time. Confronted with this pattern, the Supreme Court, invoking Article 142, directed that the ten Bills at the centre of the dispute be treated as having received the Governor's assent.¹

That remedy is the focus of this note. Existing commentary on *State of Tamil Nadu v. Governor of Tamil Nadu*² has largely engaged with the political theatre of Centre-State confrontation. This note asks a narrower and more consequential question: was the deemed-assent order an extraordinary constitutional remedy properly fashioned to complete justice, or did the Court, in performing an act the text commits to the Governor, substitute itself for that constitutional authority? That inquiry, rather than the merits of the Governor's conduct, is this note's central concern.

¹ *State of Tamil Nadu v. Governor of Tamil Nadu*, Writ Petition (Civil) No. 1239 of 2023, [2025 INSC 481] (Pardiwala and Mahadevan JJ, 8 April 2025) ('Tamil Nadu').

² *Tamil Nadu* (n 1) para 39.

The argument advanced is this: the judgment is at once a landmark affirmation of responsible government and, it is submitted, among the most consequential deployments of Article 142 yet seen in Centre-State relations. It resolves the immediate deadlock on its particular facts. It does not resolve, and perhaps cannot resolve, the deeper question of what remedies survive when constitutional actors default and no outcome besides the one directed by the Court remains available. That unresolved residue, not the result itself, is where this judgment's lasting significance arguably lies.

II. CONSTITUTIONAL BACKGROUND

Article 200 requires the Governor to assent, withhold assent, or reserve a Bill for the President's consideration; the three options, joined by "or," represent the constitutionally available courses of action. Where the Governor returns a Bill with a reconsideration message and the Legislature re-passes it, the first proviso commands that "the Governor shall not withhold assent therefrom."

The provision's history helps explain its structure. Section 75 of the Government of India Act 1935 conferred these very functions on the Governor "in his discretion"; the Constituent Assembly's deletion of that phrase supports the view that Article 200 limits independent gubernatorial discretion and aligns the Governor more closely with ministerial accountability than with colonial-era executive autonomy.

D.D. Basu read the omission as confirmation that the Governor acts on ministerial advice, and the added proviso as foreclosing any veto over a reconsidered Bill.³ Article 163(1) reinforces the same architecture, and Granville Austin traced it to a deliberate design for parliamentary government at the State level.⁴ The Sarkaria Commission also recommended timelines as salutary conventions, including an outer limit of one month for taking action in certain situations, though not as binding law.⁵

Article 142 operates on a different register altogether. It empowers the Supreme Court to pass any order necessary for "complete justice" in a pending cause. The doctrine has evolved unevenly: A.R. Antulay v. R.S. Nayak⁶ warned against using it to override express legal

³ D.D. Basu, *Commentary on the Constitution of India* (8th edn, Wadhwa Nagpur 2009) 6311.

⁴ Granville Austin, *Working a Democratic Constitution: The Indian Experience* (OUP 1999) 180.

⁵ Report of the Sarkaria Commission on Centre-State Relations (1988) Vol I, ch V, paras 4.12.05–4.12.07.

⁶ A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602.

provisions; *Rupa Ashok Hurra v. Ashok Hurra*⁷ addressed its curative dimension while describing it as an inherent power that supplements gaps ordinary remedies cannot reach; *Supreme Court Bar Association v. Union of India*⁸ confirmed it cannot circumvent the Constitution's express scheme. Locating the deemed-assent remedy within that spectrum is the central doctrinal task this note undertakes.

III. FACTS AND PROCEDURAL HISTORY

Between January 2020 and April 2023, the Tamil Nadu Legislature forwarded twelve Bills to the Governor for assent. The Bills remained pending without action for a prolonged period, prompting the State to file the present writ petition on 31 October 2023.⁹ Following issuance of notice, on 13 November 2023 the Governor withheld assent simpliciter to ten Bills, without the reconsideration message the first proviso requires, and reserved two for presidential consideration.¹⁰ The Legislature convened a special session, re-passed the ten Bills without material change on 18 November 2023, and forwarded them to the Governor the same day.¹¹ On 28 November 2023, the Governor, without the aid and advice of the Council of Ministers, reserved all ten re-passed Bills for the President, citing repugnancy with Entry 66 of the Union List.¹² The President withheld assent to seven, granted it to one, and left two undecided.¹³

What began as executive delay had, by this point, become a structural test of how far gubernatorial obstruction could extend and what the judiciary could do about it.

IV. ISSUES BEFORE THE COURT

The Court's questions can be grouped under three heads. Institutionally: does any discretion survive the omission of "in his discretion" from Article 200, and must the Governor act on ministerial advice? Procedurally: may the Governor reserve a re-passed Bill for presidential consideration a second time, and does Article 200 carry an implicit time-limit? Remedially: is gubernatorial inaction justiciable, and if so, does Article 142 extend to compelling assent itself?

⁷ *Rupa Ashok Hurra v. Ashok Hurra* (2002) 4 SCC 388.

⁸ *Supreme Court Bar Association v. Union of India* (1998) 4 SCC 409.

⁹ *Tamil Nadu* (n 1) para 3.

¹⁰ *ibid* para 4.

¹¹ *ibid* para 5.

¹² *Tamil Nadu* (n 1) para 6.

¹³ *ibid* para 12.

V. DECISION OF THE SUPREME COURT

The constitutional duty to act. The Court held that Article 200 imposes a constitutional duty on the Governor to act whenever a Bill is presented to him; prolonged inaction is impermissible. Neither indefinite silence (a pocket veto) nor a bare withholding of assent unaccompanied by a reconsideration message is constitutionally available. Once the Governor decides to withhold assent, the first proviso operates mandatorily: the Bill must be returned with a message as soon as possible. Where the Legislature reconsiders and re-passes the Bill without material change, the Governor is thereafter constitutionally bound to grant assent and may not withhold it again.

No second-round reservation. On the facts of this case, once assent had been withheld and the ten Bills re-passed under the first proviso, the Governor's reservation of those Bills for the President in the second round was held to be erroneous in law and non-est. The general principle established is that such a second reservation is not open to the Governor after re-passage, absent any material change in the re-passed Bill.

Judicially prescribed timelines. The Court prescribed time limits as determinable judicial standards for ascertaining the reasonable exercise of power under Article 200, not as a constitutional amendment. These are: one month for withholding or reservation on ministerial advice; three months for withholding or reservation contrary to ministerial advice; and, upon presentation of a re-passed Bill under the first proviso, assent forthwith, within one month at most.¹⁴ The Court drew on *Keisham Meghachandra Singh*¹⁵ and *A.G. Perarivalan*¹⁶ to confirm that courts are competent to prescribe such limits where the exercise of power is inherently expedient in character.

Gubernatorial discretion confined. The Court rejected the claim that the Governor possesses general independent discretion in the discharge of his functions under Article 200. It reaffirmed *Samsher Singh v. State of Punjab*'s¹⁷ holding that the Governor exercises all powers on ministerial aid and advice, save where the Constitution expressly provides otherwise. The Court treated *B.K. Pavitra v. Union of India*¹⁸ as per incuriam to the extent of its observations

¹⁴ Tamil Nadu (n 1) Conclusion (XIV).

¹⁵ *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly* (2021) 16 SCC 503.

¹⁶ *A.G. Perarivalan v. State* (2023) 8 SCC 257.

¹⁷ *Samsher Singh v. State of Punjab* (1974) 2 SCC 831, para 28.

¹⁸ *B.K. Pavitra v. Union of India* (2017) 4 SCC 620.

that the Constitution confers discretion on the Governor in relation to reservation of Bills and that such discretion is beyond judicial scrutiny. Any residual discretion is confined to constitutionally recognised situations, not a general independent power.

Deemed assent under Article 142. At paragraphs 432–433, exercising its powers under Article 142, the Court directed that the ten Bills be treated as having been assented to as of 18 November 2023. Three grounds supported this: assent was the only constitutionally available option remaining to the Governor; the Governor's conduct across three successive violations, prolonged inaction, irregular withholding of assent, and second-round reservation, demonstrated a want of bona fides; and remand would serve no purpose beyond further delay. Consequential presidential action was treated as non-est and set aside.

VI. CRITICAL ANALYSIS

A. Curtailing Gubernatorial Authority

The Court's treatment of B.K. Pavitra as per incuriam does significant doctrinal work, even though the discussion is brief. That decision had preserved a zone of gubernatorial discretion that some scholars defended as necessary insulation for a Central appointee to check State excess.¹⁹ The present Court rejected that reading to the extent it recognised broad independent gubernatorial discretion under Article 200, treating the Constituent Assembly's deletion of "in his discretion" as dispositive and recalling Maru Ram v. Union of India's description of the Governor as "but a shorthand expression for the State Government."²⁰ Given how frequently Governor-State confrontations now recur across States, confining discretion to enumerated exceptions and subjecting the remainder to judicial review supplies a durable doctrinal floor, even if individual Governors' compliance with it remains a matter of practice rather than law.

B. Article 142 and the Doctrine of Complete Justice

Antulay forbade using Article 142 to override express constitutional or statutory provisions; Supreme Court Bar Association confirmed the power aids existing legal frameworks rather than replacing them; Rupa Ashok Hurra addressed its curative and gap-filling dimensions. The question is whether deemed assent fills a genuine gap in the constitutional machinery, or

¹⁹ See generally M.P. Singh, V.N. Shukla's Constitution of India (14th edn, Eastern Book Company 2021) 476.

²⁰ Maru Ram v. Union of India (1981) 1 SCC 107, para 61; see also Tamil Nadu (n 1) para 326.

overrides the machinery itself.

The Court's own reasoning supports the conclusion it reached: where the constitutional space for the Governor's action had narrowed to a single permissible outcome, assent, compelling that outcome does not substitute the Court's judgment for the executive's, but enforces the Constitution's mandate against an authority that had already refused to honour it. Given the cumulative weight of the Governor's three successive violations, the characterisation of his conduct as lacking bona fides is difficult to resist, and remand on these facts would, it is submitted, have converted judicial process into a further instrument of the very obstruction under challenge.

Yet the order leaves important questions open. For Bills falling under Articles 31A, 31C, or 254(2), presidential assent is a condition precedent to validity that no gubernatorial act, deemed or actual, can supply. The ten Bills here required no such precondition; the judgment does not, however, reason through what would follow if a future case involved Bills that independently require presidential concurrence before they can take effect as law. Were a future bench to extend deemed assent to such a Bill without addressing that precondition, the remedy would cross from filling a gap to displacing the constitutional machinery itself, precisely what Antulay and Supreme Court Bar Association prohibit. The judgment's precedential reach is, on this analysis, most defensibly understood as confined to its factual premises: gubernatorial bad faith, a single constitutionally available outcome, and the absence of any independent presidential precondition. It is submitted that these three elements, read together, mark out a genuinely novel application of Article 142 relief, one that supplies a defaulted executive act assigned by constitutional text, rather than merely curing procedural unfairness or filling an interstitial gap in statutory meaning.²¹

C. Rebalancing Centre-State Relations

Before this judgment, an unwilling Governor could exploit Article 200's silence on time-limits to run a functional pocket veto, and a Bill reserved under Article 201 faced a second, equally unbounded delay.²² That asymmetry often favoured Governors aligned with the Centre over State governments. The judgment closes the Article 200 time-limit gap directly. As regards

²¹ Madhav Khosla, 'Addressing Judicial Activism in the Indian Supreme Court: Towards an Evolved Debate' (2009) 32 *Hastings International and Comparative Law Review* 55, 72.

²² Report of the Punchhi Commission on Centre-State Relations (2010) Vol II, ch IV, 73.

Article 201, the Court clarified that while presidential assent may not, in the ordinary run, be subjected to judicial review, given its character as a matter of federal policy and the limited availability of judicially determinable standards of evaluation, the Governor's actions in reserving Bills remain subject to judicial scrutiny at every stage. Any consequential presidential action taken on the basis of an illegally made reservation does not survive. The assent pipeline under Article 200 is now, on the Court's reasoning, subject to enforceable judicial oversight; the position under Article 201 is more nuanced and turns on whether judicially determinable standards are available on the particular facts.

D. Time-Limits: Enforcement or Amendment?

Prescribing fixed periods under a provision that specifies none invites the charge that the Court has amended Article 200 by judicial fiat. The Court's own answer, distinguishing the unchanged text from the judicially settled content of "as soon as possible", is principled, and consistent with its earlier approach in *Keisham Meghachandra Singh*, where no statutory period existed either. The stronger objection would have to explain how "as soon as possible" could carry legal force without some judicially determinable content; absent that content, the phrase is aspiration, not command. This paper submits that, on balance, this is constitutional enforcement rather than amendment, though the doctrinal question is not beyond reasonable debate.

E. What Remains Unresolved

Three difficulties merit candour. First, the logic of deemed assent is sound only within tightly policed limits: where an outcome is genuinely contested rather than obviously predetermined, extending this remedy would let Article 142 substitute judicial preference for gubernatorial authority whenever a court happens to disagree with its exercise. Second, the simultaneous declaration that presidential action is non-est in the given sequence leaves open questions about Bills that might independently require further constitutional steps before they can take effect as law, questions the judgment does not reason through, as the ten Bills in issue were not of that description. Third, the Court's recommendation that the President consider seeking an Article 143 advisory opinion where Bills are reserved on genuinely contested constitutional grounds²³ is prudent but non-binding, leaving no sanction for non-compliance and a real gap

²³ Tamil Nadu (n 1) Conclusion (IX) and para 414.

for the next confrontation that does not present as straightforwardly unconstitutional as this one did.

VII. FUTURE CONSTITUTIONAL IMPLICATIONS

The judicially settled timelines, if followed, materially alter the calculus for Governors: delay, once costless, now invites enforceable mandamus under Article 200. The per incuriam treatment of *B.K. Pavitra* removes a precedent that Governors in Kerala, Punjab, and Telangana have invoked to justify independent reservation, and future disputes in those States will fall to be decided within this more restrictive framework. On the reasoning of this case, deemed assent under Article 142 may be available as a remedy in tightly confined circumstances, where gubernatorial bad faith coincides with a constitutionally inevitable outcome, but courts will need to police that combination with discipline, and any extension of the remedy will require careful fact-specific analysis. Whether similar reasoning can extend to presidential inaction under Article 201 is, it is submitted, the likeliest next constitutional frontier, though the present judgment's holdings on that point are limited and the Court's own analysis acknowledges the distinct character of the President's function. The Court's direction that the judgment be sent to every High Court and every Principal Secretary to the Governors of all States²⁴ signals its awareness of the framework's intended systemic reach.

VIII. CONCLUSION

The deemed-assent order in *State of Tamil Nadu v. Governor of Tamil Nadu* answers this note's central question, but only provisionally. Where a constitutional authority has defaulted in bad faith and only one outcome remains constitutionally open, the Court held, compelling that outcome enforces the Constitution rather than displacing it. That reasoning holds on these facts. Whether it survives contact with a case where the outcome is genuinely contested, or where presidential concurrence is constitutionally indispensable, is a question the judgment poses without answering.

That is precisely why the decision endures. Beyond rejecting prolonged inaction and binding Governors to enforceable timelines under Article 200, it represents, it is submitted, a novel application of Article 142 relief, one capable of supplying a defaulted executive act rather than merely curing procedural unfairness. Its ultimate constitutional worth will be measured not by

²⁴ *Tamil Nadu* (n 1) para 445.

the result in Tamil Nadu, but by the discipline with which future benches confine it to cases of genuine bad faith and genuine inevitability. Until that discipline is tested, the judgment stands as a reminder that constitutional authority, however assigned, remains answerable to the rule of law.