
CONSTITUTIONAL ACCOUNTABILITY AND FEDERAL BALANCE IN INDIA: A CRITICAL COMMENT ON IN RE: ASSENT, WITHHOLDING OR RESERVATION OF BILLS BY THE GOVERNOR AND THE PRESIDENT OF INDIA (2025 INSC 1333)

Somya Singh, Advocate, Delhi High Court

Citation: 2025 INSC 1333 | Special Reference No 1 of 2025

Court: Constitution Bench, Supreme Court of India

Bench: CJI B.R. Gavai, JJ Surya Kant, Vikram Nath, P.S. Narasimha, A.S. Chandurkar

Decided: 20 November 2025

I. INTRODUCTION

When President Droupadi Murmu invoked Article 143¹ of the Constitution in May 2025 to seek the Supreme Court's advisory opinion on the powers of Governors and the President in relation to State Bills, she did so against a backdrop of prolonged institutional friction. Several Opposition governed States had spent years watching their legislative output languish in Raj Bhavans, with Governors offering no assent, no return, and no explanation. The Tamil Nadu Governor's withholding of assent to ten Bills eventually compelling the State government to repass them and triggering litigation that culminated in *State of Tamil Nadu v Governor of Tamil Nadu*² became the most visible symbol of a wider constitutional malfunction. The Supreme Court's April 2025 judgment in that case had attempted a structural remedy: imposing timelines on gubernatorial action, invoking Article 142 to deem assent to pending Bills, and declaring all such gubernatorial and presidential functions justiciable.

Six months later, a five-judge Constitution Bench delivered the advisory opinion that is the subject of this comment.³ The opinion is significant on multiple counts. Formally, it is the

¹ Constitution of India, art 143.

² *State of Tamil Nadu v Governor of Tamil Nadu* 2025 INSC 481 (Supreme Court of India, 8 April 2025).

³ *In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India* 2025 INSC 1333 (Special Reference No 1 of 2025) (Supreme Court of India, 20 November 2025).

sixteenth Presidential Reference since the Court's establishment. Substantively, it addresses some of the most contested questions in Indian constitutional law: the scope of the Governor's discretion under Article 200,⁴ the President's authority under Article 201,⁵ the permissibility of judicially imposed timelines, and the justiciability of assent. The answers the Court provides are, in several respects, as troubling as the institutional dysfunction they were meant to resolve.

This comment proceeds in four parts. Part II summarises the factual and legal background. Part III analyses the principal holdings of the advisory opinion and identifies their doctrinal difficulties. Part IV situates the opinion within the broader framework of Indian federalism and constitutional accountability. Part V concludes with a brief assessment of the opinion's significance and its implications for cooperative governance.

II. FACTUAL AND LEGAL BACKGROUND

The constitutional mechanism for converting State legislative Bills into law involves three potential actors: the State Legislature that passes the Bill, the Governor who is presented with it under Article 200, and where Bills are reserved the President under Article 201. The formal structure of Article 200 has always been understood to give the Governor three options: grant assent; withhold assent and return the Bill to the Legislature with a message; or reserve the Bill for the President's consideration. The first proviso to Article 200 qualifies the third option, providing that when a reconsidered Bill is presented after the Legislature has acted on the Governor's message, the Governor 'shall not withhold assent therefrom.' The purpose of this proviso, as the Constituent Assembly debates make clear,⁶ was to prevent the Governor from becoming an indefinite veto over the legislative will of the State.

The immediate context for the Presidential Reference was the controversy generated by *State of Tamil Nadu*.⁷ In that judgment, a two-judge bench of the Supreme Court held that the Governor's indefinite withholding of assent was unconstitutional, prescribed specific timelines for gubernatorial action under Article 200, and invoked Article 142 to deem assent to the Bills that had been pending before the Tamil Nadu Governor. The judgment was widely welcomed by States facing similar impasses but immediately attracted criticism for, amongst other things, varying from the positions of earlier larger benches without referring the questions to a larger

⁴ Constitution of India, art 200.

⁵ Constitution of India, art 201.

⁶ Constituent Assembly Debates, Vol IX (14 June 1949) 41 (Dr. B.R. Ambedkar).

⁷ *State of Tamil Nadu* (n 2).

bench. The Union Government, with the President's assent, framed fourteen questions for the Court's advisory opinion under Article 143(1), encompassing the scope of gubernatorial discretion, the permissibility of judicially prescribed timelines, the availability of deemed assent as a remedy, and the justiciability of assent and reservation functions.

III. ANALYSIS OF THE PRINCIPAL HOLDINGS

A. Gubernatorial Discretion Under Article 200

The most consequential holding of the advisory opinion and its most doctrinally contested concerns the scope of the Governor's discretion. The Constitution Bench held that the Governor exercises independent discretion when choosing between the three options under Article 200 and is not bound by the aid and advice of the Council of Ministers in doing so.⁸ Relying on *Nabam Rebia*⁹ and drawing on what it described as the distinctive constitutional character of the Governor's functions under Article 200, the Court departed from the position established in *Samsher Singh v State of Punjab*,¹⁰ where a seven-judge bench had declared, in unambiguous terms, that the President and Governor exercise their formal constitutional powers upon and in accordance with the advice of their Council of Ministers, save in a few well-known exceptional situations. The Court in *Samsher Singh* expressly stated that the function under Article 200 belonged to those species of power where the Governor is bound to act on ministerial advice.¹¹

The advisory opinion's departure from this settled position is difficult to sustain. As Seervai observed, *Samsher Singh* had 'finally established' that the President and Governor act on ministerial advice, and the area of discretion is 'clearly defined and confined.'¹² Article 200 is not amongst the constitutionally prescribed domains of discretion. The framers' intent, as Dr Ambedkar explained in the Constituent Assembly, was precisely to remove the words 'in his discretion' from the predecessor provision to Article 200 because 'in a responsible Government there can be no room for Governor acting on discretion.'¹³ To hold that the Governor enjoys independent discretion in choosing whether to assent, return, or reserve a Bill is not merely to depart from precedent; it is to create a parallel centre of power within the State polity that the

⁸ 2025 INSC 1333 (n 1).

⁹ *Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2016) 8 SCC 1.

¹⁰ *Samsher Singh v State of Punjab* (1974) 2 SCC 831.

¹¹ *Samsher Singh* (n 8), para 54.

¹² H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1996) 2037.

¹³ 2025 INSC 1333 (n 1).

Constitution deliberately withheld from the Governor.

The practical consequences of this holding are serious. An unelected Governor, appointed on the advice of the Union Government, capable of exercising independent judgment on whether to assent to Bills passed by a democratically elected State Legislature, is structurally positioned to act as an instrument of central influence over State governance. The advisory opinion acknowledges the danger of 'unfettered' discretion but does not provide adequate safeguards against it. The distinction between discretion that is 'structured' and discretion that is 'unfettered' is of limited comfort when no doctrinal framework exists to enforce it.

B. The Question of Timelines and Deemed Assent

On the question of timelines, the advisory opinion holds that no prescribed timeline can be implied from Articles 200 and 201, and that the phrase 'as soon as possible' cannot be translated into strict temporal requirements.¹⁴ The Court found that *State of Tamil Nadu* had erroneously imposed timelines based on a misreading of *Keisham Meghachandra Singh v Speaker, Manipur Legislative Assembly*, a case dealing with the quasi-judicial function of a Speaker deciding disqualification petitions, a function the advisory opinion rightly distinguishes from the gubernatorial role.

This is the most persuasive aspect of the advisory opinion. There is force in the argument that judicially prescribed timelines, derived not from constitutional text but from administrative circulars and by analogy from distinct constitutional functions, exceed the appropriate scope of judicial interpretation. The Constitution is not silent on timelines where they are intended: Article 200's second proviso imposes a six-month limit on the Legislature's reconsideration of a Bill returned with a presidential message. The absence of an equivalent limit on the Governor's initial action may plausibly reflect a drafting choice rather than an oversight. It does not follow, however, that the complete absence of timelines is constitutionally satisfactory. The advisory opinion's answer that courts may issue a 'limited mandamus' directing the Governor to act within a reasonable time where inaction is 'prolonged, unexplained, and indefinite'¹⁵ preserves a residual space for judicial intervention, but its practical utility is limited by the very discretionary framework the opinion simultaneously reinforces.

¹⁴ 2025 INSC 1333 (n 1).

¹⁵ 2025 INSC 1333 (n 1).

The consequential ruling on deemed assent follows logically from the rejection of timelines: if no timeline can expire, no trigger for deemed assent can arise. The Court held that Article 142 cannot be used to usurp the Governor's constitutional function. There is doctrinal merit in this position. Article 142's power to do 'complete justice' has long been understood to supplement constitutional provisions and not to supplant them. Using Article 142 to deem assent where assent has been deliberately withheld would transform a curative remedy into a mechanism for bypassing a constitutional office however imperfectly that office may be discharging its functions.

C. Justiciability: A Doctrinal Retreat

The advisory opinion's holding on justiciability represents its most significant departure from the trajectory of Indian constitutional law. The Court held that the dialogic process under Articles 200 and 201 is not adjudicatory and is therefore not subject to judicial review, save in cases of 'prolonged, unexplained, indefinite inaction. 'The logic of this position is that judicial assessment of whether a Governor should have assented, reserved, or returned a Bill would require courts to form views on the substance of Bills before they become law, a function antithetical to the separation of powers.

This logic has some force in its narrowest application. Courts should not, as a general rule, pronounce on whether a Bill is good law before it has been enacted. But the holding sweeps wider than this legitimate concern warrants. The proposition that Article 361's immunity of the Governor does not bar review of the 'validity of the action'¹⁶ is acknowledged by the Court itself and rightly so, given the consistent line of authority from *Samsher Singh* through *B.P. Singhal v Union of India*¹⁷ holding that various gubernatorial functions are amenable to judicial scrutiny. The advisory opinion does not adequately reconcile its broad non-justiciability holding with the 'limited mandamus' remedy it simultaneously preserves. If the Governor's inaction can attract judicial intervention, the principle of non-justiciability is already qualified. A principled account would acknowledge that justiciability operates on a spectrum calibrated to the nature of the function in question not as an all-or-nothing rule.

¹⁶ Constitution of India, art 361.

¹⁷ *B.P. Singhal v Union of India* (2010) 6 SCC 331.

IV. FEDERAL BALANCE AND CONSTITUTIONAL ACCOUNTABILITY

Read as a whole, the advisory opinion produces a constitutional arrangement whose implications for Indian federalism require careful examination. The basic structure doctrine, affirmed in *Kesavananda Bharati*¹⁸ and reinforced in *S.R. Bommai*¹⁹ as encompassing federalism, rests on the premise that the essential domains of both levels of government must be protected against structural encroachment. The advisory opinion, by conferring independent discretion on the Governor an appointee of the Union Executive over the legislative process of State governments, creates precisely the kind of structural asymmetry that the federal principle is designed to prevent. A Governor who need not act on ministerial advice when deciding whether to assent to a State Bill is, in practical terms, a Union-appointed official with the power to delay or obstruct the legislative programme of an elected State government.

The advisory opinion is not unaware of this tension. The Court invokes federalism as a basic feature to support its conclusion that the Governor has only three options under Article 200, thereby preventing an unlimited power to withhold. Yet the same federalism principle, properly applied, would support the view that the Governor's discretion must be exercised on ministerial advice, a conclusion the Court simultaneously rejects. The opinion's invocation of federalism is, in this respect, selective: deployed to limit one dimension of the Governor's power whilst expanding another.

The comparative experience is instructive. In the United Kingdom, where the constitutional monarchy tradition that informs India's Governorship originated, the royal assent has not been withheld since 1708.²⁰ The entire constitutional architecture of parliamentary government, as the Constituent Assembly debates affirm,²¹ rests on the premise that the formal Head of State acts on ministerial advice. To depart from this premise in relation to Article 200 without a compelling textual basis and against the weight of Constituent Assembly debates and settled judicial authority is to unsettle a constitutional arrangement that has, for over seven decades, served as a constraint on gubernatorial overreach.

One aspect of the advisory opinion does merit acknowledgment: its recognition that prolonged, unexplained inaction by a Governor will attract limited judicial scrutiny. The Court's insistence

¹⁸ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

¹⁹ *S.R. Bommai v Union of India* (1994) 3 SCC 1.

²⁰ *R (on the Application of Miller) v The Prime Minister* [2019] UKSC 41.

²¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

that Article 361's immunity does not immunise the constitutional office itself from judicial review preserves a measure of accountability that would otherwise be entirely absent. This is doctrinal progress, however modest. Constitutional courts in India must, as *Madhya Pradesh Special Police Establishment*²² recognised, retain the capacity to ensure that constitutional functionaries discharge their obligations rather than treat ambiguous grants of discretion as licences for indefinite inaction.

V. CONCLUSION

The advisory opinion in *In re: Assent* addresses a genuine constitutional problem the dysfunction caused by gubernatorial inaction but resolves it in a manner that creates fresh difficulties of equal magnitude. By holding that the Governor exercises independent discretion under Article 200, the Court overrides a consistent line of authority stretching back to *Samsher Singh*, contradicts the Constituent Assembly's deliberate choice to remove gubernatorial discretion from the assent process, and creates structural conditions for the Governor to function as a brake on elected State governance. The deemed assent remedy is correctly set aside; the rejection of judicially imposed timelines has arguable textual basis. But the broad non-justiciability holding, inadequately reconciled with the limited mandamus remedy the Court simultaneously endorses, leaves an accountability gap that the Constitution's federal structure cannot comfortably sustain.

The practical consequences are already visible. An advisory opinion, though not binding in the manner of a judgment, carries significant persuasive weight and shapes institutional behaviour. Governors who previously acted under the constraint of *State of Tamil Nadu*'s timelines may now act and delay with greater confidence. The advisory nature of the opinion means it does not operate as *res judicata*; future benches may reconsider. What is needed is not merely reconsideration but the development of a principled, structured framework that distinguishes between legitimate gubernatorial functions requiring independent judgment and functions that, by the logic of parliamentary democracy and federal balance, must be exercised on the advice of the elected government. Until that framework is constructed, the constitutional ambiguity surrounding the Governor's role will remain a reliable source of Centre–State conflict and a continuing challenge to the integrity of Indian constitutional governance.

²² *Madhya Pradesh Special Police Establishment v State of Madhya Pradesh* (2004) 8 SCC 788.