IN THE SUPREME COURT OF INDIA
ADVISORY JURISDICTION

SPECIAL REFERENCE NO. 1 of 2025

IN RE: ASSENT, WITHHOLDING OR RESERVATION OF BILLS BY THE GOVERNOR AND THE PRESIDENT OF INDIA.

OPINION OF THE COURT

For clarity and coherent exposition of the issues under consideration, the opinion of the Court on the Presidential Reference is set out in the following parts:-

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I. Presidential Reference No. 1 of 2025.

1. In exercise of powers conferred under Article 143(1) of the Constitution of India, the President of India has on 13th May, 2025 referred fourteen questions relating to interpretation of powers of the Governor under Articles 200 and 201 along with certain ancillary questions for opinion of the Supreme Court. The context that occasioned the reference, followed by the questions are as follows;

"PRESIDENT
REPUBLIC OF INDIA

> *WHEREAS Article 200 of the Constitution of India prescribes the powers of the Governor and the procedure to be followed while assenting to Bills, withholding assent to Bills and reserving a Bill for the consideration of the President;*
>
> *WHEREAS Article 200 of the Constitution of India does not stipulate any time frame upon the Governor for the exercise of constitutional options under Article 200;*

WHEREAS Article 201 of the Constitution of India prescribes the powers of the President and the procedure to be followed while assenting to Bills or withholding assent therefrom;

WHEREAS Article 201 of the Constitution of India does not stipulate any time frame or procedure to be followed by the President for the exercise of constitutional options under Article 201;

WHEREAS the Constitution of India enlists numerous instances where the assent of the President has to be obtained before a legislation can take effect in the State;

WHEREAS the exercise of constitutional discretion by the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively are essentially governed by polycentric considerations, inter alia being federalism, uniformity of laws, integrity and security of the nation, doctrine of separation of powers;

WHEREAS there are conflicting judgments of the Supreme Court as to whether the assent of the President of India under Article 201 of the Constitution of India is justiciable or, not;

WHEREAS the States are frequently approaching the Supreme Court of India invoking Article 32 [and not Article 131] of the Constitution of India raising issues which by their very nature are federal issues involving interpretation of, inter alia, the Constitution of India;

WHEREAS the contours and scope of provisions contained in Article 142 of the Constitution of India in context of issues which are occupied by either constitutional provisions or statutory provisions also needs an opinion of the Supreme Court of India;

WHEREAS the concept of a deemed assent of the President and the Governor is alien to the constitutional scheme and fundamentally circumscribes the power of the President and the Governor;

WHEREAS in view of what is herein before stated and the present prevailing circumstances, it appears to me that the following questions of the law have arisen and are of such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon,

NOW, THEREFORE, in exercise of the powers conferred upon me by clause (1) of Article 143 of the Constitution of India, I, Droupadi Murmu President of India, hereby refer the following questions to the Supreme Court of India for consideration and to report its opinion thereon, namely:-

1. What are the constitutional options before a Governor when a Bill is presented to him under Article 200 of the Constitution of India?

2. Is the Governor bound by the aid & advice tendered by the Council of Ministers while exercising all the options available with him when a Bill is presented before him under Article 200 of the Constitution of India?

3. Is the exercise of constitutional discretion by the Governor under Article 200 of the Constitution of India justiciable?

4. Is Article 361 of the Constitution of India an absolute bar to the judicial review in relation to the actions of a Governor under Article 200 of the Constitution of India?

5. In the absence of a constitutionally prescribed time limit, and the manner of exercise of powers by the Governor, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of all powers under Article 200 of the Constitution of India by the Governor?

6. Is the exercise of constitutional discretion by the President under Article 201 of the Constitution of India justiciable?

7. In the absence of a constitutionally prescribed timeline and the manner of exercise of powers by the President, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of discretion by the President under Article 201 of the Constitution of India?

8. In light of the constitutional scheme governing the powers of the President, is the President required to seek advice of the Supreme Court by way of a reference under Article 143 of the Constitution of India and take the opinion of the Supreme Court when the Governor reserves a Bill for the President's assent or otherwise?

9. Are the decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, justiciable at a stage anterior into the law coming into force? Is it permissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?

10. Can the exercise of constitutional powers and the orders of/by the President/Governor be substituted in any manner under Article 142 of the Constitution of India?

11. Is a law made by the State legislature a law in force without the assent of the Governor granted under Article 200 of the Constitution of India?

12. In view of the proviso to Article 145(3) of the Constitution of India, is it not mandatory for any bench of this Hon'ble Court to first decide as to whether the question involved in the proceedings before it is of such a nature which involves substantial questions of law as to the interpretation of constitution and to refer it to a bench of minimum five Judges?

13. Do the powers of the Supreme Court under Article 142 of the Constitution of India limited to matters of procedural law or Article 142 of the Constitution of India extends to issuing directions /passing orders which are contrary to or inconsistent with existing substantive or procedural provisions of the Constitution or law in force?

14. Does the Constitution bar any other jurisdiction of the Supreme Court to resolve disputes between the Union Government and the State Governments except by way of a suit under Article 131 of the Constitution of India?"

II. Proceedings Before This Court.

2. As per the orders of the Chief Justice of India, the reference was placed before the Constitution Bench following the procedure prescribed under Order XXXVII of the Supreme Court Rules on 22.07.2025. Learned Solicitor General

appeared for the Union of India, and we requested the Attorney General to assist the Court.

3. Formal notices were issued to States and Union Territories and they were asked to file written submissions. Pursuant to the filing of these submissions, hearing commenced on 19.08.2025 with the Attorney General addressed this Court on the scope of the reference. The Solicitor General who made exhaustive submissions on behalf of the Union of India. He was followed by Mr. Neeraj Kishan Kaul for the State of M.P., Mr. Harish Salve for the State of Maharashtra, Mr. Maninder Singh for the State of Rajasthan, Mr. K.M. Nataraj, ASG for the States of Orissa and Uttar Pradesh, Mr. Vikramjit Banerjee, ASG for the State of Goa, Mr. Vinay Navare for the Union Territory of Puducherry and Mr. Guru Krishna Kumar for the State of Haryana.

4. Dr. Abhishek Manu Singhvi, Sr. Advocate made comprehensive submissions on behalf of the State of Tamil Nadu. He was followed by Mr. K.K. Venugopal for the State of Kerala, Mr. Kapil Sibal for the State of West Bengal, Mr. Gopal Subramanium for the State of Karnataka, Mr. Anand Sharma for the State of Himachal Pradesh, Mr. Arvind Datar for the State of Punjab, and Mr. S. Niranjan Reddy for the State of Telangana. Advocate General for the State of Meghalaya, Mr. Amit Kumar assisted us. Mr. Gopal Sankaranarayanan, Sr. Advocate, Ms. Avani Bansal, Dr. Vivek Sharma, Mr. Sudiep Shrivastava appeared on behalf of the intervenors.

III. Preliminary submissions on the maintainability.

5. Many of the parties opposing the present reference advanced distinct and nuanced submissions on the *substantive* questions referred but were unanimous in their opposition to the maintainability of the present reference itself. It was argued that the reference was not maintainable, and ought to be declined and returned unanswered in *entirety*.

6. The main thrust of the argument on maintainability was that the powers of the President to refer questions under Article 143 is contingent on the fact that a *'question of law or fact has arisen, or is likely to arise*', which is not the case presently, as these issues have been answered conclusively by the Division Bench in *State of Tamil Nadu* v. *Governor of Tamil Nadu*[1] (hereinafter 'State of Tamil Nadu'), which in turn is binding under Article 141 of the Constitution (unlike an opinion tendered under Article 143 in exercise of advisory jurisdiction). Counsel appearing for the parties opposing the reference laboured extensively on the submission that the Presidential Reference was an appeal, or review in disguise. They submitted that the reference seeks to raise such questions which are already decided by this Court in earlier decisions (not limited to *State of Tamil Nadu*) and thus, is an attempt to disturb the findings, and nullify the effect of the judgment already rendered in *State of Tamil Nadu* (supra). It was argued therefore, that this presidential reference was a *malafide* attempt by the Central Government to sidestep the decision of this Court, by

[1] 2025 INSC 481; (2025) 8 SCC 1.

invoking Article 143 jurisdiction to essentially seek an appeal of the *binding* decision already passed, without the Governor in fact filing a review, or curative petition, in relation to the *State of Tamil Nadu* (supra) decision.

7. Extensive reliance was placed on the decision of this Court in *Cauvery Water Disputes Tribunal, in Re:*[2] (hereinafter 'Cauvery (2)'). It was also suggested that in exercise of advisory jurisdiction, earlier decisions of this court cannot be overruled. It was further argued that the present reference seeks formulation of general and omnibus standards for constitutional authorities to follow, in the absence of any factual matrix warranting the same. Reliance was placed on *In Re: Special Courts Bill 1978*[3], wherein this Court had held that a reference must be refused when it is vague, hypothetical, speculative, general and omnibus.

8. In view of these submissions, we find that the preliminary objections on maintainability raised by these parties warrant the careful consideration of this Court before any discussion on the questions referred by the Hon'ble President. In doing so, it is necessary to first lay out the scope of advisory jurisdiction of this Court under Article 143, and the effect of an opinion tendered while exercising such jurisdiction.

[2] 1991 INSC 304; 1993 Supp. (1) SCC 96 (2) [5JB].
[3] 1978 INSC 249; (1979) 1 SCC 380, paragraphs 21-26.

A. Significance of this Reference

9. There have previously been 15 presidential references made under Article 143(1) of the Constitution of India. Each reference was made in a specific factual matrix, that had arisen and necessitated the advice of the Supreme Court. Pertinently, almost each of these references under Article 143(1) was the subject of challenge on the ground of maintainability. However, barring the Special Reference of 1993 which was returned unanswered on the ground that it did not serve any constitutional purpose[4], all references have been duly answered – in part, or in full – by this Court. An illustrative list of the references made so far under Article 143(1), and the subject matter they dealt with, are mentioned below:

(i) *Delhi Laws Act, 1912, In Re*[5] – on the power to delegate legislative power to other organs of the state machinery.

(ii) *Kerala Education Bill, 1957, In Re*[6] – constitutional validity of a Bill in relation to Articles 29 and 30 of the Constitution.

(iii) *Berubari Union (I), In Re*[7] – whether an Act under Article 3 by Parliament was sufficient to implement a bilateral agreement between India and Pakistan concerning cession of some parts of territory.

[4] Natural Resources Allocation, In re, Special Reference No. 1 of 2012, 2012 INSC 428; (2012) 10 SCC 1, paragraph 62.
[5] 1951 INSC 36; 1951 SCC 568.
[6] 1958 INSC 64; 1959 SCR 995.
[7] 1960 INSC 49; (1960) 3 SCR 250.

(iv) *Sea Customs Act, S. 20(2), In Re*[8] – validity of a draft Bill concerning imposition and authorisation of taxes by the Central Government, and whether it was exempted under Article 289.

(v) *Powers, Privileges and Immunities of State Legislatures, In Re*[9] (hereinafter referred to as 'Keshav Singh') – a peculiar situation between the State Legislature in Uttar Pradesh and the High Court of Allahabad, which gave rise to questions relating to the validity of initiation of contempt by the State Legislature against High Court judges.

(vi) *Presidential Poll, In Re*[10] – interpretation of Articles 56, 62, 70, and 71 with regards to the election of the President.

(vii) *Special Courts Bill, 1978, In Re*[11] – consideration of a Bill for constitution of special courts to entertain cases relating to offences committed by individuals holding high political officers, during Emergency.

(viii) Cauvery Water Disputes Tribunal, *In Re*[12] – whether one party could override implementation of an interim order passed by the Water Dispute Tribunal, by way of an ordinance.

(ix) *Special Reference No. 1 of 1993 (Ram Janma Bhumi-Babri Masjid matter)*[13] – advice sought on the factual issue of whether there

[8] 1963 INSC 147; (1964) 3 SCR 787.
[9] 1964 INSC 203; (1965) 1 SCR 413.
[10] 1974 INSC 123; (1974) 2 SCC 33.
[11] 1978 INSC 249; (1979) 1 SCC 380.
[12] 1991 INSC 304; 1993 Supp (1) SCC 96(2).
[13] 1994 INSC 479; (1993) 1 SCC 642.

existed a Hindu temple or Babri Masjid on the disputed land (this was returned unanswered) – see *M. Ismail Faruqui (Dr) v. Union of India*[14].

(x) *Special Reference No. 1 of 1998, Re*[15] – issue of appointment of judges, and the binding effect of the recommendation of the Chief Justice which was not agreeable to the Government, at that time.

(xi) *Jammu and Kashmir Grant of Permit for Resettlement in (or Permanent Return to) the State Bill, 1980, In Re*[16] – relating to return and permanent resettlement of people who left Jammu and Kashmir between 1947-1954, which was returned unanswered due to efflux of time.

(xii) S*pecial Reference No. 1 of 2001, In Re*[17] – validity of a State law regulating use and distribution of natural gas and liquefied petroleum gas, when the subject matter fell within the Union List.

(xiii) *Special Reference No. 1 of 2002, In Re (Gujarat Assembly Election matter)*[18] - obligation of the Election Commission to conduct elections, when the state assembly is dissolved in haste and the interplay of Articles 174 and 324, if any.

(xiv) *Natural Resources Allocation, In Re, Special Reference No. 1 of 2012*[19] – in relation to the judgment in the 2G spectrum case

[14] 1994 INSC 479; (1994) 6 SCC 360.
[15] 1998 INSC 402; (1998) 7 SCC 739.
[16] 2001 SCC OnLine SC 1493.
[17] 2004 INSC 209; (2004) 4 SCC 489.
[18] 2002 INSC 445; (2002) 8 SCC 237.
[19] 2012 INSC 428; (2012) 10 SCC 1.

[*Centre for Public Interest Litigation v. Union of India* (2012) 3 SCC 1].

(xv) *Punjab Termination of Agreement Act, 2004, In Re*[20] – the constitutional validity of the Punjab Termination of Agreement Act, which sought to overcome the judicially directed implementation of sharing of natural resources between Punjab, Haryana and Rajasthan, in light of their water dispute.

10. None of these references have related to constitutional mechanics - the day to day functioning of constitutional functionaries and the interplay between various functionaries (the State Legislature, Governor, and the President), with regards to enactment of legislation. This is, therefore, a '*functional reference*', which is fundamentally of a different nature as compared to the earlier references under Article 143 – as it strikes at the root of the continuation of our republican and democratic way, and the Constitution's federal character. The nature of this reference, therefore, places a duty on this Court, to answer some, if not all, the questions so referred.

11. It is but apparent that the issues raised in the present reference have arisen in the aftermath of the decision rendered by a 2-judge bench of this Court in *State of Tamil Nadu* (supra) on 08.04.2025. A state of doubt, or confusion, has arisen in relation to various issues concluded by this Court in *State of Tamil Nadu* (supra), some of which were considered and decided in other decisions

[20] 2016 INSC 1018; (2017) 1 SCC 121.

prior to it (many of which by benches of larger strength), including: the options before a Governor under Article 200[21], the prescription of time limits under Articles 200 and 201[22], whether the Governor is bound by the aid and advice of the Council of Ministers when exercising such decision under Article 200[23], the justiciability[24] of the decision made by the Governor and President under these Articles, whether Bills can be passed and enacted as law by way of 'deemed assent', to name a few. A perusal of the decision of this Court in *State of Tamil Nadu* (supra), would reveal that at least some of the conclusions are in variance with earlier decisions, although the decision in *State of Tamil Nadu* (supra), seeks to reconcile this departure from earlier precedents. In this context, this Court finds that an authoritative opinion of this Court is mandated since the law on the functions of the Governor and the President under Article 200 and Article 201, cannot be left in a state of confusion, as it would impede smooth functioning of the Constitution. It is clear that in the present circumstances, there exists substantial satisfaction of the Hon'ble President, that these are questions of law that have arisen, or are likely to arise, which are of public importance, which necessitate that an opinion be sought from this Court– as she is empowered to do so, under Article 143(1) of the Constitution. This Court finds

[21] Earlier considered in a catena of judgments, including - *State of Bihar v. Kameshwar Singh*, 1952 INSC 28; (1952) 1 SCC 528 [5-Judge bench]; *Union of India v. Valluri Basavaiah Chowdhary*, 1979 INSC 93; (1979) 3 SCC 324 [5-Judge bench]; *Purushothaman Nambudiri v. State of Kerala,* 1961 INSC 331; 1961 SCC OnLine SC 361 [5-Judge bench]; *Hoechest Pharmaceutricals Ltd. v. State of Bihar,* 1983 INSC 61; (1983) 4 SCC 45 [3-Judge Bench]; *State of Punjab v. Governor of Punjab*, 2023 INSC 1017; (2024) 1 SCC 384 [3-Judge Bench].
[22] *Purushothaman Nambudiri v. State of Kerala,* 1961 INSC 331; 1961 SCC OnLine SC 361 [5JB].
[23] *Nabam Rebia & Bamang Felix* v. *Arunachal Pradesh Legislative Assembly*, 2016 INSC 526; (2016) 8 SCC 1; *Samsher Singh* v. *State of Punjab*, 1974 INSC 154; (1974) 2 SCC 831; etc.
[24] *Hoechest Pharmaceutricals Ltd. v. State of Bihar,* 1983 INSC 61; (1983) 4 SCC 45; *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.,* 2002 INSC 406; (2002) 8 SCC 182.

that it is an *institutional responsibility*, to tender its opinion on this *functional reference* sought by the highest constitutional functionary of the country.

12. The unique nature of the advisory jurisdiction of this Court lies in its *institutional character*. The power to interpret the Constitution, nay, the duty to interpret it for the benefit of the Republic and its constituents, is exclusively vested with the judiciary. This Court is endowed with the institutional capacity and the constitutional duty to answer references that will ensure that the Constitution is nurtured and worked for the benefit of the people. The exercise of this advisory function is a constitutional dialogue between the Executive and the Judiciary. The Court cannot shirk away from its responsibility to iron out constitutional creases, to authoritatively clarify the roles of constitutional institutions, when doubts as to their roles and powers are raised. However, as stated above, this Court is well within its constitutional duty to refuse to answer questions that are purely speculative, over broad, vague, purely political in nature and beyond its institutional capacities.

B. Objections on malafide and form of reference

13. On the preliminary objection on *form* – that the Presidential Reference does not disclose the *State of Tamil Nadu* (supra) decision, which it indirectly seeks to impugn, and which answers 11 of the 14 questions, as per the parties opposing the reference – we find that the law is settled.

14. This Court has held that there is neither a particular format prescribed, nor a specific pattern while framing a reference. A reference is certainly not to

be returned unanswered, on either of these counts, and rather require "*appropriate analysis, understanding and appreciation of the content or the issue on which doubt is expressed, keeping in view the concept of constitutional responsibility, juridical propriety and judicial discretion*"[25].

15. Furthermore, Order XLII of the Supreme Court Rules, 2013 prescribes that the Attorney General, and the parties to whom notice is issued in terms of Rules 1 and 2, are the parties to bring out the relevant facts and law to the attention of this Court. It was also specifically held in *Natural Resources Allocation* (supra) that the written briefs and arguments advanced can be relied on to discern the legal controversies before this Court under Article 143 itself[26]. Admittedly, the decision in *State of Tamil Nadu* (supra) forms the bulk of the submissions advanced before this Court, and there is no question of it having eluded us in our consideration of the matter.

16. The allegation that the non-disclosure of the judgment in itself, reflects *mala fides*, is certainly a leap in logic, and one which does not behove this Court to entertain, against the highest constitutional functionary, i.e., the President. Given the constitutional significance of the questions so referred, we deem it appropriate to reject the preliminary objection made in this regard. In any event, a challenge to the maintainability of the reference on the grounds of malafide is

[25] *Natural Resources* Allocation (supra), paragraph 33.
[26] *Natural Resources* Allocation (supra), see paragraph 31.2.

no longer available in view of the pronouncement of this Court in *Natural Resources Allocation* (supra).

17. The questions referred by the Hon'ble President pertain to the very core, and foundational modalities of our constitutional machinery, that ensures the continuation of our republican democracy, and governance by elected representatives. That they are constitutionally significant, cannot by any measure, be overstated. This Court is empowered, and entrusted under Article 143, with the duty to answer such questions in *service* of the Constitution, and the people that have so adopted it. Judicial propriety, and institutional integrity requires that this Court answer the questions referred to it in the present proceedings.

C. Objections on the basis of the Judgment in *Cauvery* (2)

18. The parties opposing the reference rely on *Cauvery (2)* (supra) to argue that the substantial overlap in issues between the questions referred, and the findings of this Court in *State of Tamil Nadu* (supra), result in an *appeal* in disguise. They also argue that it is impermissible to overrule an earlier precedent of this Court while exercising jurisdiction under Article 143.

19. On the latter aspect, we find it appropriate to refer to the opinion of Y.V. Chandrachud, J. in *In Re: Special Courts Bill 1978* (supra) where the binding *effect* of an opinion rendered under Article 143 jurisdiction, is discussed at length:

> *"101. … We are inclined to the view that though it is always open to this Court to re-examine the question already decided by it and to overrule, if necessary, the view earlier taken by it, insofar as all other courts in the territory of India are concerned they ought to be bound by the view expressed by this Court even in the exercise of its advisory jurisdiction under Article 143(1) of the Constitution."*
>
> (emphasis supplied)

20. We find that the reasoning of Chandrachud, J. (speaking for the majority) in the 7-judge bench decision of *In Re: Special Courts Bill* is compelling, insofar as it holds that our opinion may even go so far as to "*overrule, if necessary*", the view taken earlier by this very Court. Pertinently, the Court in *Natural Resources Allocation* (supra), relying on the same paragraph (para 101) reiterated that this Court has the power to overrule a previous view.[27]

21. The argument that this reference amounts to an appeal in disguise, is also sufficiently answered in *Natural Resources Allocation* (supra), in which case this Court was considering a Reference that had been occasioned by an earlier decision of the Court in *Centre for Public Interest Litigation v. Union of India*[28] ["2G case"]. In this case too, maintainability of the Reference was challenged on the ground that it was an "*indirect endeavour to unsettle and overturn the verdict in 2G Case*"[29] and reliance was placed heavily on the decision in *Cauvery (2)* (supra), especially paragraphs 83 and 85 (as was done by parties opposing the present reference as well) which read as follows:

> *"83. … Although this Court by the said decision has kept open the question viz. whether the Tribunal has incidental, ancillary,*

[27] *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*, paragraph 50.
[28] 2012 INSC 68; (2012) 3 SCC 1.
[29] *Natural Resources Allocation, In re, Special Reference No. 1 of 2012,* paragraph 37.

inherent or implied power to grant the interim relief when no reference for grant of such relief is made to it, it has in terms concluded the second part of the question. We cannot, therefore, countenance a situation whereby question 3 and for that matter questions 1 and 2 may be so construed as to invite our opinion on the said decision of this Court. That would obviously be tantamount to our sitting in appeal on the said decision which it is impermissible for us to do even in adjudicatory jurisdiction. Nor is it competent for the President to invest us with an appellate jurisdiction over the said decision through a Reference under Article 143 of the Constitution.

84. Shri Nariman, however, contended that the President can refer any question of law under Article 143 and, therefore, also ask this Court to reconsider any of its decisions. For this purpose, he relied upon the language of clause (1) of Article 143 which is as follows […]

85. In support of his contention he also referred us to the opinion expressed by this Court in The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, Re [1951 SCC 568: 1951 SCR 747: AIR 1951 SC 332]. For the reasons which follow, we are unable to accept this contention. In the first instance, the language of clause (1) of Article 143 far from supporting Shri Nariman's contention is opposed to it. The said clause empowers the President to refer for this Court's opinion a question of law or fact which has arisen or is likely to arise. When this Court in its adjudicatory jurisdiction pronounces its authoritative opinion on a question of law, it cannot be said that there is any doubt about the question of law or the same is res integra so as to require the President to know what the true position of law on the question is. The decision of this Court on a question of law is binding on all courts and authorities. Hence under the said clause the President can refer a question of law only when this Court has not decided it. Secondly, a decision given by this Court can be reviewed only under Article 137 read with Rule 1 of Order 40 of the Supreme Court Rules, 1966 and on the conditions mentioned therein. When, further, this Court overrules the view of law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and productive of public mischief. [See: Bengal Immunity Company Ltd. v. State of Bihar [(1955) 2 SCR 603: AIR 1955 SC 661 : (1955) 6 STC 446]]. Under the Constitution such appellate jurisdiction does not vest in this Court, nor can it be vested in it by the President under

Article 143. To accept Shri Nariman's contention would mean that the advisory jurisdiction under Article 143 is also an appellate jurisdiction of this Court over its own decision between the same parties and the executive has a power to ask this Court to revise its decision. If such power is read in Article 143 it would be a serious inroad into the independence of judiciary."

(emphasis supplied)

22. While extrapolating the true ratio of *Cauvery (2)* (supra), this Court in *Natural Resources Allocation* (supra) held as follows:

"47. Therefore, references in para 85 of Cauvery (2) [1993 Supp (1) SCC 96 (2)] to "decision" and "view of law" must be severed from each other. The learned Judge observes that in case of a decision, the appellate structure is exhausted after a pronouncement by the Supreme Court. Therefore, the only option left to the parties is of review or curative jurisdiction (a remedy carved out in the judgment in Rupa Ashok Hurra v. Ashok Hurra [(2002) 4 SCC 388]. After the exercise of those limited options, the parties concerned have absolutely no relief with regard to the dispute: it is considered settled for eternity in the eye of the law. However, what is not eternal and still malleable in the eye of the law is the opinion or "view of law" pronounced in the course of reaching the decision. Sawant, J. in Cauvery (2) [1993 Supp (1) SCC 96 (2)] clarifies that unlike this Court's appellate power, its power to overrule a previous precedent is an outcome of its inherent power when he says: (SCC p. 145, para 85)"

(emphasis supplied)

23. The Court concluded, as follows:

"48. Therefore, there are two limitations—one jurisdictional and the other self- imposed:
48.1. The first limitation is that a decision of this Court can be reviewed only under Article 137 or a curative petition and in no other way. It was in this context that in para 85 of Cauvery (2) [1993 Supp (1) SCC 96 (2)], this Court had stated that the President can refer a question of law when this Court has not decided it. Mr Harish Salve, learned Senior Counsel, is right when he argues that once a lis between parties is decided, the operative decree can only be opened in review. Overruling the judgment—as a precedent—does not reopen the decree.
48.2. The second limitation, a self-imposed rule of judicial discipline, was that overruling the opinion of the Court on a legal

issue does not constitute sitting in appeal, but is done only in exceptional circumstances, such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and capable of causing public mischief […]".

(emphasis supplied)

24. The Court in *Natural Resources Allocation* (supra) further noted that in various judgments, this Court had either explained, clarified or read down the ratio of previous judgments. Reference was made to this Court's decision in *Keshav Singh* (supra) and the pronouncements it had considered, and clarified by way of the 7-judge opinion rendered under Article 143(1), and it was held:

"56. From the aforesaid decision in Keshav Singh case [AIR 1965 SC 745: (1965) 1 SCR 413] it is clear that while exercising jurisdiction under Article 143(1) of the Constitution this Court can look into an earlier decision for the purpose of whether the contentions urged in the previous decision did raise a general issue or not; whether it was necessary to consider the larger issue that did not arise; and whether a general proposition had been laid down. It has also been stated that where no controversy arose with regard to applicability of a particular facet of constitutional law, the comments made in a decision could be treated as not accurate; and further it could be opined that in an earlier judgment there are certain obiter observations.

57. Thus, in Keshav Singh [AIR 1965 SC 745 : (1965) 1 SCR 413] , a seven-Judge Bench, while entertaining a reference under Article 143(1), dealt with a previous decision in respect of its interpretation involving a constitutional principle in respect of certain articles, and proceeded to opine that the view expressed in Sharma case [AIR 1959 SC 395 : 1959 Supp (1) SCR 806] , in relation to a proposition laid down in Keshavram Reddy case [(1952) 1 SCC 343 : AIR 1954 SC 636 : 1954 Cri LJ 1704] , was inaccurate.

61. From the aforesaid, it is demonstrable that while entertaining the reference under Article 143(1), this Court had analysed the principles enunciated in the earlier judgment and also made certain modifications. The said modifications may be stated as one of the modes or methods of inclusion by way of modification without changing the ratio decidendi. For the purpose of the validity of a reference, suffice it to say, dwelling upon an earlier judgment is permissible..."

(emphasis supplied)

25. Similarly, in *Special Reference No. 1 of 1998, Re,* (supra) too, the reference was decided despite there being two judgments of this Court of larger benches (First and Second Judges cases)[30]. Though, in that case, the Attorney General had specifically submitted that the Union of India was not seeking a review or reconsideration of the previous judgments, which would be considered to be binding.[31]

26. The range of questions referred by the Hon'ble President do not require this Court to sit *in appeal* over the decision in *State of Tamil Nadu* (supra) but may require us to consider the *view of law* expressed, differently. The reference raises pertinent questions of constitutional law, that hold significant public importance, relating to the interpretation of the Articles 200, 201, 142, 143, 145(3) and 361. The questions do not require this Court to vacate, amend, or modify the final relief granted by this Court in *State of Tamil Nadu* (supra), and instead, at the most, seek clarification on the propositions of law laid down in it, which have ramifications for the governance of *all* States, i.e., beyond the parties that were before it in that *lis*.

27. The discussion of the ratio of *Cauvery (2)* (supra) has already clarified that "sitting in appeal" would mean the variation, or vacation of the operative order in a concluded *lis*. It was held that Article 143 cannot be invoked to

[30] *S.P. Gupta v. Union of India*, 1981 INSC 209; 1981 SCC OnLine SC 494 ("the First Judges case"); *Supreme Court Advocates-on- Record Assn. v. Union of India,* (1993) INSC 318; (1993) 4 SCC 441 ("the Second Judges case").
[31] *Special Reference No. 1 of 1998, Re,* 1998 INSC 402; (1998) 7 SCC 739, paragraph 11.

overturn a concluded adjudication inter-se parties, but this cannot be conflated with the authority of this Court to answer general questions of law referred to it by the Hon'ble President, that hold constitutional importance. In this regard, the submission made by the Attorney General, and Solicitor General - that the present reference seeks clarification of constitutional principles for *future* governance, and not the setting aside of an already awarded decree, or the relief granted therein - is hereby, duly accepted.

28. In light of the findings elaborated hereinabove, we find that the preliminary objections made in relation to similarity with the findings, or issues raised in *State of Tamil Nadu* (supra) ought to be dismissed at the threshold, and the various questions of constitutional significance referred by the Hon'ble President merit our comprehensive consideration, *within* the contours and scope of jurisdiction already laid out by this Court in a catena of judgments, in relation to Article 143.

D. *Re*: The Court's power to decline answering a question referred

29. Maintainability of a reference under Article 143 cannot be conflated with the discretion that always lies with this Court, to decline answering a question referred. A reference can be found to be maintainable, yet, this Court, upon analysing the issues and after careful consideration, may still conclude that it would be in the larger interest, to decline to answer a question (or questions). The *discretion* that is exercisable to decline answering a question when it is

over broad, superfluous, political, or not serving any constitutional purpose – undoubtedly remains.

30. Having emphasized the functional nature of the present reference, this Court finds that at least some of the questions do not concern with functional aspects of the institutions of the Governor and the President. Question 12 concerns itself with Article 145(3) and the composition of benches in the Supreme Court which should hear cases concerning substantial questions of law involving the interpretation of the Constitution. Whether a dispute raises such a question or not is within the province of judicial enquiry and it is also within the power and jurisdiction of the Chief Justice of India to determine the strength of a Bench. This query is irrelevant to the functional nature of the reference, and this Court declines to answer this question. Question 14 concerning the jurisdiction of this Court to resolve disputes between the Union and the States is also irrelevant to functional nature of the reference, and this Court declines to answer this question.

31. Question 13 concerning the power of this Court under Article 142 is worded in such broad terms that it is not possible to answer it in a comprehensive and definitive manner. However, Question 10 which also concerns the use of Article 142, but raised in the context of the functions of the Governor and the President, will be answered in the course of this opinion.

IV. Values that should govern and guide Constitutional Interpretation

32. Before this Court proceeds to render its opinion on the queries raised, a few, yet significant prefatory observations on the use of comparative law and precedents are in order. Copious written submissions and extensive arguments have been employed by counsel to underscore the functioning of the Westminster parliamentary model and its workings in the United Kingdom. They sought to draw parallels on the discretionary powers of the Crown and the limitations thereon. On the other hand, arguments were advanced on the Presidential system prevalent in the United States of America, and the strict separation of powers practiced there. This Court believes that our constitutional truth does not lay in either of these extremes but is grounded in the way we have successfully, and if we may add, proudly, worked our Constitution over three quarters of a century. While our Constitutional text may have been inspired by comparative outlook, its interpretation and working, we believe is truly *swadeshi*.

33. Unlike the English experience of an unwritten constitution, we have a written text. English constitutional law did not have to grapple with vital questions of federalism and an inherently diverse country. It did not have to deal with distribution of legislative powers between the Union and the States, questions of shared natural resources, inter State trade, commerce and taxation, Union control over foreign relations and the not so infrequent, yet healthy contestations of constitutional spaces between the Union and States. The American experience is vastly different due to the strict separation of

powers between Executive and Legislature, necessitating the Presidential veto. Indian constitutionalism on the other hand has evolved over years to a parliamentary model where legislative agenda, business and enactment is overwhelmingly executed at the behest of the Executive, and the introduction of the Tenth Schedule to the Constitution has left very little, if no, room for legislation without the support of government in power. The point that is being made is this- the Indian Constitution is not just transformative in its adoption, it has been and continues to be transformative in its practice and interpretation, shedding its colonial vestiges for a vibrant and evolving *swadeshi* foundation.

V. Constitutional options before the Governor upon the presentation of a Bill

A. Role of the Governor under Chapter III, Part VI of the Constitution

34. The focal point of the present Reference is the interpretation of Article 200 of the Constitution of India. This provision is nestled in Chapter III of Part VI of the Constitution of India. Chapter III entitled "the State Legislature", contains some unique provisions concerning the Governor and the State Legislature. It must be recalled here, that unlike the President, the Governor is not elected but is appointed by the President of India under Article 155[32]. The constitutional scheme in Chapter II of Part VI vests the Executive power of the State with the Governor and provides detailed machinery as to how the executive functions shall be discharged. And yet, an unelected Governor is

[32] "**155**. ***Appointment of Governor.—****The Governor of a State shall be appointed by the President by warrant under his hand and seal.*"

constitutionally engrafted as part of the State legislature under Article 168[33]. The Governor's constitutional functions *vis-à-vis* the State legislature are to be found in Chapter III whereas the Governor's legislative powers are situated in Chapter IV of Part VI, which, uniquely, contains only a single provision- Article 213, which is the power of the Governor to promulgate ordinances. The wide variety of legislative functions of the Governor in Chapter III include the power to summon the House (or each House), prorogue, dissolve the House[34], the right of the Governor to address the House[35], the right to send messages to the House[36], special address by the Governor[37], and the duty to give oath to members[38]. In respect of legislative business in the House, the Governor is tasked with the responsibility of laying before the House the annual financial

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[33] "***168. Constitution of Legislatures in States.—****(1) For every State there shall be a Legislature which shall consist of the Governor, and—(a) in the States of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telangana, and Uttar Pradesh, two Houses; (b) in other States, one House. (2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly."*

[34] *"**174. Sessions of the State Legislature, prorogation and dissolution**.—(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. (2) The Governor may from time to time—(a) prorogue the House or either House; (b) dissolve the Legislative Assembly."*

[35] "***175. Right of Governor to address and send messages to the House or Houses.—****(1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members*."

[36] "***175. Right of Governor to address and send messages to the House or Houses.***— […]
(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration."

[37] "***176. Special address by the Governor**.—(1) At the commencement of 2 [the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year], the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons. (2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.*"

[38] *"**188. Oath or affirmation by members**.—Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."*

statement[39] and statement for supplementary, excess and additional grant[40]. The Governor's recommendation is constitutionally made a prerequisite for demand of grant under Article 203(3)[41] and for introducing, moving and passing a Money Bill under Article 207[42]. It can thus be discerned that the Constitution enjoins several legislative functions upon the Governor and crucial legislative functions of the State legislature, including the entire ambit of financial statements, appropriations and money bills are constitutionally triggered only upon the recommendation of the Governor. It is against this backdrop that Article 200 of the Constitution needs to be interpreted.

35. Article 200 reads as follows:

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[39] "***202. Annual financial statement.***—*(1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement*"."

[40] "***205. Supplementary, additional or excess grants.—****(1) The Governor shall—*

(a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be."

[41] "***203. Procedure in Legislature with respect to estimates****.— […]*
(3) No demand for a grant shall be made except on the recommendation of the Governor."

[42] "***207. Special provisions as to financial Bills****.—(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:*

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill."

> *"**200. Assent to Bills.**—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:*
>
> *Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:*
>
> *Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill."*
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> (emphasis supplied)

B. Article 200: the "what" and "how" of Governor's options

36. We note that previous decisions of this Court as well the elaborate submissions addressed before us conflate two important aspects of Article 200. The first aspect is the range of options before the Governor when a Bill is presented to the Governor- which is the "*what*" of the Article 200. The second aspect relates to whether the Governor exercises these options in his discretion or upon the aid and advice of the Council of Ministers - what we describe as the "*how*". Although it is tempting to address these issues together, in our considered opinion, the constitutional options before the Governor under Article 200 stand independently of *how* it is exercised. In other words, the existence of

options is *de-hors* the manner in which they are to be exercised. In this section we intend to only discuss and opine as to the first, and not the second.

37. During the arguments, our attention was drawn to the precursor provisions in the Government of India Act, 1919[43], the Government of India Act, 1935[44] and the various draft provisions in the constitution making process. The drafting process and Constituent Assembly Debates do not provide clear insights as to the exact nature of the different options available and are of limited assistance in this regard. But the aspects regarding the insertion and deletion of the words "*in his discretion*" to the proviso of Article 175 (precursor to Article 200) in the Constituent Assembly Debates merit some consideration, which it will receive in the following section of this opinion.

C. Competing arguments on the options available to the Governor under Articles 200 and 201

38. The submission made on behalf of the Union of India, and some of the States that have supported the reference, is that the text of Article 200 is explicit-

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[43] Section 12, Government of India Act, 1919, which reads as follows:
"***12. Return and reservation of Bills.*** *(1) Where a Bill has been passed by a local Legislative council, the Governor, Lieutenant-Governor or Chief Commissioner may instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the Council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the Principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General. […]*"

[44] Section 75, Government of India Act, 1935, which reads as follows:
"***75. Assent to Bills***. *A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor in his discretion shall declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor-General:*

Provided that the Governor may in his discretion return the Bill together with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly."

upon presentation of the Bill, the Governor can assent to the Bill, or he can withhold assent therefrom or he can reserve the Bill for the consideration of the President. The first proviso to Article 200 regarding return of a Bill to the Legislature, according to these submissions, is an additional option available to the Governor, making it a total of four alternatives that the Governor can choose from. They place reliance on the decisions in *State of Bihar v. Kameshwar Singh*[45] *(hereinafter Kameshwar)*, *Union of India v. Valluri Basavaiah Chowdhary*[46] *(hereinafter Valluri)*, and *Hoechst Pharmaceuticals Ltd. v. State of Bihar*[47] *(hereinafter Hoechst)*.

39. In opposition, it has been argued that Article 200 provides the Governor with three options *only* - assent to the Bill, reserve it for the consideration of the

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[45] 1952 INSC 28; (1952) 1 SCC 528 [5JB]. Reference to paragraph 235:
"***235**. […] The procedure to be followed after a Bill is passed by the State Assembly is laid down in Article 200. Under that article the Governor can do one of three things, namely, he may declare that he assents to it, in which case the Bill becomes a law, or he may declare that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed, or he may declare that he reserves the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. Under that article the President shall declare either that he assents to the Bill in which case the Bill will become law or that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed. […]*"

[46] 1979 INSC 93; (1979) 3 SCC 324 [5JB]. Reference to paragraph 19:
"***19**. The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State legislature has to be reserved for the assent under Article 200. Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may, except in the case of a "Money Bill", withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201*. […]"

[47] 1983 INSC 61; (1983) 4 SCC 45 [3JB]. Reference to paragraph 85:
"***85**. The constitutional position of a Governor is clearly defined. The Governor is made a component part of the legislature of a State under Article 168 because every Bill passed by the State legislature has to be reserved for the assent of the Governor under Article 200. Under that Article, the Governor can adopt one of the three courses, namely: (1) He may give his assent to it, in which case the Bill becomes a law; or (2) He may except in the case of a 'Money Bill' withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for consideration with a message; or (3) He may "on the advice of the Council of Ministers" reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. […]*"

President or return the Bill with message to the House requesting it to reconsider the Bill or a part of it, and after such reconsideration, if the House passes the Bill again, with or without amendment, the Governor is bound to give assent. Reliance in this regard is placed on the decisions in in *State of Punjab v. Governor of Punjab*[48] *(hereinafter State of Punjab)* and *State of Tamil Nadu* (supra)[49].

D. Analysis of the decisions of this Court in *State of Punjab*, *Kameshwar*, *Valluri* and *Hoechst*

40. Before analyzing the text of Article 200, a note on the precedents cited above is necessary. The decision in *State of Punjab* (supra), does not cite the decisions *Kameshwar* (supra), *Valluri* (supra), and *Hoechst* (supra). On that count it fails to engage with the logic in those judgments, and since each one of them was rendered by larger Benches, it is our considered opinion that the precedential value of *State of Punjab* (supra) is dented on this count. The Court in *State of Tamil Nadu* (supra), engages with the logic of these larger Bench decisions but pits that logic against the decision in *State of Punjab* (supra). Both the decisions in *State of Punjab* (supra) and *State of Tamil Nadu* (supra), with due respect, could not have deviated from the binding precedents of larger Bench decisions.

41. Be that as it may, none of the factual scenarios in *Kameshwar* (supra), *Valluri* (supra), and *Hoechst* (supra), called for an analysis of the powers and

[48] 2023 INSC 1017; (2024) 1 SCC 384 [3JB]. See paragraphs 19, 20, 22, 24 and 25.
[49] 2025 INSC 481; (2025) 8 SCC 1 [2JB]. See paragraphs 194, 198, 199, 203 and 204.

options of the Governor under Article 200. The context in which *Kameshwar* (supra), was delivered, was a challenge to land reform enactments and compliance with Article 31(3) of the Constitution as it then existed. Article 31(3) mandated that certain laws referred to clause (2) of Article 31 shall not have effect until they are reserved for the assent of the President and received it. The Court was called upon to decide whether the assent of the Governor was a perquisite for the reservation of the 'law' for the assent of the President. The mechanics of Article 200 and options before the Governor were never in issue. In *Valluri* (supra), yet again, the question posed was far stranger to the substance of Article 200. The Court therein was engaged with the question as to whether a resolution passed under Article 252 by the State legislature must also contain the signatures of the Governor and whether the Governor was part of the legislature for the purpose of Article 252. *Hoechst* (supra) pertained to challenge to certain provisions of the Bihar Finance Act, 1981 on the ground that it was repugnant to laws made by the Union. The Court had no occasion to consider the options before the Governor under Article 200.

E. Construction of the plain text of the Constitution to determine the options available for the Governor under Article 200

42. The foregoing discussion brings us to the plain text of Article 200. A literal reading of the substantive provision of Article 200, a simple and attractive method, presents to the Governor three options – each distinct and separated using the word "*or*". The President shall declare either, (i) that he assents to the Bill, or (ii) that he withholds assent therefrom, or (iii) that he reserves the Bill for

the consideration of the President. In this suggested reading of Article 200, the first proviso carves out an exception and permits the fourth option where he can return the Bill to the House with comments, unless it is a Money Bill. In this suggested interpretation, there is an independent power to withhold the Bill *simpliciter*, in which case the Bill falls through. The proviso provides an additional option, a fourth option, to return the Bill to the House(s) with a message for its reconsideration.

43. The second interpretative choice on Article 200, is to bind the first proviso to the substantive part of Article 200, to qualify the power of the Governor to withhold the Bill, in which case the Governor is provided with a total of three options between the substantive part of Article 200 and the first proviso thereto. First, the Governor may assent to the Bill. Second, he may reserve the Bill for the consideration of the President. Third, he may withhold assent therefrom *and* return the Bill to the legislature with comments, and if it is passed with or without amendment, he shall not withhold assent therefrom. The third option, in such a reading of Article 200 can be exercised only if the Bill is not a Money Bill.

44. For the reasons indicated hereinbelow, this Court is of the opinion that the latter interpretation of Article 200 is aligned with the constitutional ethos, constitutional structure and is to be preferred over an interpretation that empowers the Governor to withhold a Bill simpliciter.

45. The substantive part of Article 200 employs three verbs that indicate the options of the Governor- *assent*, *withhold,* and *reserve*. Each of these actions

are qualitatively different from one another. However, the first proviso which repeats the verb '*withhold'* indicates that the word "*withholds*" in the substantive part is not without qualification. The first proviso in our considered opinion qualifies the verb "*withholds*" in the substantive part and obliges the Governor to *"return"* the Bill in accordance with the first proviso, ***except***, in case of a Money Bill. In that sense, the first proviso is not an exception that creates a fourth option, it is rather a qualification to the substantive part of Article 200, limiting the full play of the word "*withholds*" employed therein.

46. The manner in which the phrase "*shall not withhold assent therefrom*" is employed in the first proviso to Article 200 and conspicuously absent from a similarly worded proviso to Article 201, is a clear indication that the first proviso was indeed limiting the full import of the term "*withholds*" in the substantive part of Article 200.

47. Such a reading of the first proviso is also consistent with the constitutional import of the second proviso to Article 200. The second proviso mandates that a Governor shall not assent to, but reserve for the consideration of the President, any Bill which, in the opinion of the Governor, derogates from the powers conferred on the High Court by the Constitution. Akin to the first proviso, the second proviso too does not create an exception, but qualifies the full width of the verb - "*assent*" and limits its operation upon satisfaction of the conditions specified therein. It impliedly limits the option of the Governor to even withhold and return the Bill but obliges the Governor to mandatorily reserve the

Bill for consideration of the President in case the Bill derogates from the power of the High Court. Both the provisos in Article 200 are to be read as restricting the options of the Governor and not creating a further option. The provisos, in our opinion, do not create additional options, but restrict existing ones. In other words, the provisos do not create exceptions but only limit the options before the Governor in the substantive part of Article 200.

48. There is significant reason why there cannot exist a simpliciter power of withholding, dehors the mandate to return the Bill to the House with comments. The first proviso disentitles the Governor from returning the Bill to the House in case it is a Money Bill. Therefore, in case of a Money Bill the Governor's option is limited to either assenting to the Bill or reserving it to the President. However, if the option to withhold a Bill simpliciter is read into the substantive part of Article 200, then, even a Money Bill can be withheld simpliciter, which reading, in our opinion, defies constitutional logic.

49. The Constitution employs a certain grammar, a different structure and has devised a specific procedure for the introduction and passing of a Money Bill. The framers were cautious enough to provide a detailed and exhaustive definition of a Money Bill in Article 199[50]. A Money Bill cannot be introduced or

[50] "***199. Definition of "Money Bills***".—
(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—
(a) the imposition, abolition, remission, alteration or regulation of any tax;
(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;
(d) the appropriation of moneys out of the Consolidated Fund of the State;

moved except on the recommendation of the Governor, and it cannot be introduced in the Legislative Council in case the State has a bicameral legislature, in terms of Article 198(1)[51] read with Article 207[52]. The Constitution framers also took care to ensure that a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council, is returned by the Legislative Council with its recommendations within 14 days, or else the Bill is deemed to have been passed by both the Houses on the expiration on the said period[53]. A reading of Article 198(3) and 198(4) also reveals that the

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(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill."

[51] "***198. Special procedure in respect of Money Bills**.— (1) A Money Bill shall not be introduced in a Legislative Council.* […]"

[52] "***207. Special provisions as to financial Bills**.—*

(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill." (emphasis supplied)

[53] In terms of **(2)** and **(5)** of **Article 198**, which reads as follows:

"***198. Special procedure in respect of Money Bills.—***

(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the

recommendations suggested by the Legislative Council are not binding on the Legislative Assembly in the case of a Money Bill.[54] In such circumstances, in our opinion, it would be contrary to the structure of Constitution, that the Governor has the option to simpliciter withhold even a Money Bill when the Legislative Council, an elected body, cannot mandate changes to a Money Bill. Though Mr. Salve submitted that even a Money Bill could be withheld simpliciter, we find that such submission ought to be squarely rejected.

50. Even in the case of a Bill, which is not a Money Bill, the first proviso disempowers the Governor from withholding the Bill when it is presented again to the Governor. What is impermissible to withhold through a dialogic process in the first proviso, cannot be permitted to be withheld abruptly or simpliciter by the Governor alone, employing the "*withholds*" option in the substantive part. This fortifies our reasoning that term "*withholds"* in the substantive part of Article 200 is conditioned and qualified by the first proviso.

51. We are of the firm opinion that if two interpretations are possible, then an interpretation that favors a dialogic process, which encourages institutional

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Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly."

[54] *Ibid.*

comity and deliberation between constitutional institutions – in this case that of the Governor and the House(s) – must be preferred over an interpretation that limits or eschews such a dialogue. Such an interpretation prevents institutional redundancy. We observe a deliberate constitutional design in incorporating the Governor within the definition of Legislature in Article 168. The institution of the Governor and the House(s) are ***coupled*** together in this process under Article 201. One institution sends a message (suggestions) initiating this dialogic process and the other deliberates upon this message. We find that this dialogic process is in consonance with the functional roles assigned to both these institutions.

52. It is this very same dialogic process that prompted the framers of the Constitution to engrave Article 201 and the proviso thereto. Upon reservation under Article 200, the President is empowered to exercise his options under Article 201, and the proviso also provides for an option to return the Bill to the House with a message. What is important is that the words "*shall not withhold therefrom*" which is present in the first proviso to Article 200 is conspicuously absent from the proviso to Article 201. Since the Presidential reference has not sought our opinion as regards the options under Article 201, we say no further.

53. As an additional reason, we take a textual cue from Section 12 of the Government of India Act, 1919, the first sub-section of which reads as under:

> *"Sec. 12. (1) Where a Bill has been passed by a local Legislative council, the Governor, Lieutenant-Governor or Chief Commissioner may instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the Council for reconsideration, either in whole or in part, together with any amendments which he may*

recommend, or, in cases prescribed by rules under the Principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General" .

(emphasis supplied)

The deployment of the phrase "***instead of***" in relation of assent and withhold, clearly postulates that the succeeding option of returning the Bill was an option divorced from the option of withhold and a completely different option. Such a phraseology was available and not put to deliberate use in the text of the Constitution. This adds an additional reason to our interpretative choice of Article 200.

54. Submissions were also advanced that the language of Article 200 is consistent with Section 75 of the Government of India Act, 1935 and that the Governor thereunder, was empowered to withhold a Bill simpliciter. This argument must be noted only to be rejected. A colonial appointee's (the office of the Governor then) power to withhold a Bill passed by a legislature (which was not elected based on universal adult suffrage), cannot and must not inform the interpretation of a democratic, republican, and an emancipatory Constitution like ours.

55. It was also urged by the counsel supporting the reference that the term "*may*" employed in the first proviso to Article 200 indicates the power to withhold and the power to return the Bill to the House(s) are divorced, and the Governor "*may"* exercise the option to return the Bill only in some cases. We are of the opinion, that the use of the phrase "*may"* (and not "shall") in the first proviso is only to indicate that the Governor need not return every Bill to the House(s),

and that he still can exercise the option of assenting to the Bill, or to reserve it for the consideration of the President.

F. Interpretation and Construction of Article 200 in the context of Federalism as a basic feature of the Constitution

56. At this stage, it is apposite to refer to the federal nature of our Constitution. We are quite conscious that our law reports are replete with enough judgments on this count and our opinion in a Presidential reference is not the ideal occasion for an exhaustive analysis. There is no gainsaying that federalism is part of the basic structure or that it is a basic feature of the Constitution of India.[55] As to the nature of Indian federalism, judicial pronouncements of this Court have employed divergent yardsticks and deployed varying terminology to distill the true nature of the federalism. We do not have any hesitation in recalling the observations made by this Court in *State of Rajasthan v. Union of India*[56], while categorizing our constitution as '*amphibian':*

> *"60. Although Dr Ambedkar thought that our Constitution is federal "inasmuch as it establishes what may be called a Dual Polity", he also said, in the Constituent Assembly, that our Constitution-makers had avoided the 'tight mould of federalism' in which the American Constitution was forged. Dr Ambedkar, one of the principal architects of our Constitution, considered our Constitution to be "both unitary as well as federal according to the requirements of time and circumstances".*
> *61. If then our Constitution creates a Central Government which is "amphibian", in the sense that it can move either on the federal or unitary plane, according to the needs of the situation and circumstances of a case, the question which we are driven back to consider is whether an assessment of the "situation" in which the Union Government should move either on the federal or unitary*

[55] *S. R. Bommai v. Union of India,* 1994 INSC 111; (1994) 3 SCC 1 [9JB], see paragraphs 96, 106 (P B Sawant J., for Kuldip Singh J. and himself), paragraph 247 (K. Ramaswami, J.).
[56] 1977 INSC 143; (1977) 3 SCC 592 [7JB].

> *plane are matters for the Union Government itself or for this Court to consider and determine. Each organ of the Republic is expected to know the limits of its own powers. The Judiciary comes in generally only when any question of ultra vires action is involved, because questions relating to vires appertain to its domain."*

57. In *State of West Bengal v. Union of India*[57], the Court opined that our Constitution adopted a federal structure with a strong bias towards the Centre and the Centre remains strong to prevent fissiparous tendencies.[58] The Court stated that "*The exercise of powers, legislative and executive, in the allotted fields is hedged in by the numerous restrictions, so that the powers of the States are not co-ordinate with the Union and are not in many respects independent.*"[59]

58. In *S. R. Bommai v. Union of India*[60], this Court described the nature of the Indian polity as that of pragmatic federalism and cautioned against an approach that affixes a theoretical label to the Constitution. After an exhaustive survey of the constitutional provisions and case law, the Court concluded that (*B.P. Jeevan Reddy,* J.*)* –

> *"276. The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not*

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[57] 1962 INSC 391; (1964) 1 SCR 371 [6JB]

[58] *Ibid.,* paragraph 82, which reads as follows:

"**82**. […] *A federal structure is mainly conceived to harmonize existing conflicting interests and to provide against future conflicts. India is a vast country: indeed, it is described as a sub-continent. Historically, before the advent of the Constitution, there were different Provinces enjoying in practice a fair amount of autonomy and there were innumerable States with varying forms of government ranging from pure autocracy to guided democracy. There were also differences in language, race, religion etc. There were also foreign pockets expected sooner or later to be incorporated with the main country. In those circumstances our Constitution adopted a federal structure, with a strong bias towards the Centre. Under such a structure, while the Centre remains strong to prevent the development of fissiparous tendencies, the States are made practically autonomous in ordinary times within the spheres allotted to them.*"

[59] *Ibid.*, paragraph 25.

[60] 1994 INSC 111; (1994) 3 SCC 1 [9JB].

adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States. … must put the court on guard against any conscious whittling down of the powers of the States. Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle — the outcome of our own historical process and a recognition of the ground realities. … It is enough to note that our Constitution has certainly a bias towards Centre vis-à-vis the States (Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan [(1963) 1 SCR 491: AIR 1962 SC 1406], SCR at p. 540). It is equally necessary to emphasise that courts should be careful not to upset the delicately crafted constitutional scheme by a process of interpretation."

(emphasis supplied)

Whereas *Sawant*, J. opined:

"99. […] the States have an independent constitutional existence and they have as important a role to play in the political, social, educational and cultural life of the people as the Union. They are neither satellites nor agents of the Centre. The fact that during emergency and in certain other eventualities their powers are overridden or invaded by the Centre is not destructive of the essential federal nature of our Constitution. The invasion of power in such circumstances is not a normal feature of the Constitution. They are exceptions and have to be resorted to only occasionally to meet the exigencies of the special situations. The exceptions are not a rule."

(emphasis supplied)

59. In the context of State legislations, this Court in *ITC Ltd. v. Agricultural Produce Market Committee*[61] held:

"58. True, the parliamentary legislation has supremacy as provided under Articles 246(1) and (2). This is of relevance when the field of legislation is on the Concurrent List. While maintaining parliamentary supremacy, one cannot give a go-by to the federalism which has been held to be a basic feature of the Constitution (see S.R. Bommai v. Union of India [(1994) 3 SCC 1]).

59. The Constitution of India deserves to be interpreted, language permitting, in a manner that it does not whittle down the powers of the State Legislature and preserves the federalism while also upholding the Central supremacy as contemplated by some of its articles."

[61] 2022 INSC 44; (2002) 9 SCC 232 [5JB].

(emphasis supplied)

60. This Court in *Kuldip Nayar v. Union of India*[62] held as follows:

> *"63. True, the federal principle is dominant in our Constitution and that principle is one of its basic features, but, it is also equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism. […]*
> *65. The concept of federalism in our Constitution, it has been held, is vis-à-vis the legislative power as would be evident by various articles of the Constitution. In fact, it has come into focus in the context of distribution of legislative powers under Article 246*[63]*."*

(emphasis supplied)

61. In *Government (NCT of Delhi) v. Union of India*[64] this Court characterized federalism in India, to be 'collaborative' or 'cooperative' federalism [taking forward the description in *State of Rajasthan* (supra) – this is where the term cooperative federalism from Austin's work,[65] is recognized by this Court]:

> "*111. The aforesaid idea, in turn, calls for coordination amongst the Union and the State Governments. The Union and the States need to embrace a collaborative/cooperative federal architecture for achieving this coordination.*
> *[…]*
> *116. Thus, the Union and the State Governments should always work in harmony avoiding constitutional discord. In such a collaboration, the national vision as set out in the Preamble to our Constitution gets realised. The methods and approach for the Governments of the Union and the States may sometimes be different but the ultimate goal and objective always remain the same and the governments at different levels should not lose sight of the ultimate objective. This constitutional objective as enshrined in the Constitution should be the guiding star to them to move on the path of harmonious coexistence and interdependence. They are the*

[62] 2006 INSC 532; (2006) 7 SCC 1 [5JB].
[63] ITC Ltd. v. Agricultural Produce Market Committee, 2022 INSC 44; (2002) 9 SCC 232.
[64] 2019 INSC 194; (2018) 8 SCC 501 [5JB].
[65] 2019 INSC 194; (2018) 8 SCC 501, paragraph 121.

basic tenets of collaborative federalism to sustain the strength of constitutional functionalism in a Welfare State.

[…]

119. Thus, the idea behind the concept of collaborative federalism is negotiation and coordination so as to iron out the differences which may arise between the Union and the State Governments in their respective pursuits of development. The Union Government and the State Governments should endeavour to address the common problems with the intention to arrive at a solution by showing statesmanship, combined action and sincere cooperation. In collaborative federalism, the Union and the State Governments should express their readiness to achieve the common objective and work together for achieving it. In a functional Constitution, the authorities should exhibit sincere concern to avoid any conflict. This concept has to be borne in mind when both intend to rely on the constitutional provision as the source of authority. We are absolutely unequivocal that both the Centre and the States must work within their spheres and not think of any encroachment. But in the context of exercise of authority within their spheres, there should be perception of mature statesmanship so that the constitutionally bestowed responsibilities are shared by them. Such an approach requires continuous and seamless interaction between the Union and the State Governments. […]"

(emphasis supplied)

62. While considering the abrogation of Article 370, this Court in *Article 370 of the Constitution, In Re*[66], held that the said Article, was an instance of feature of 'asymmetric federalism'. This was explained as follows:

"167. […] The Constitution accommodates concerns specific to a particular State by providing for arrangements which are specific to that State. Articles 371-A to 371-J are examples of special arrangements for different States. This is nothing but a feature of asymmetric federalism, [State (NCT of Delhi) v. Union of India, (2023) 9 SCC 1] which Jammu and Kashmir too benefits from by virtue of Article 370. The State of Jammu and Kashmir does not have "internal sovereignty" which is distinguishable from the powers and privileges enjoyed by other States in the country. In asymmetric federalism, a particular State may enjoy a degree of autonomy which another State does not. The difference, however, remains one of degree and not of kind. Different States may enjoy different benefits under the federal set-up but the common thread is federalism."

[66] 2023 INSC 1058; (2024) 11 SCC 1 [5JB].

(emphasis supplied)

63. What then emerges from this brief discussion on the nature of Indian federalism, is that the States are entitled to determine the legislative policy within the legislative spheres constitutionally allotted to them subject to the constitutional provisions and framework. What can be observed is that this Court's understanding of the nature of Indian federalism is not unidimensional. Rather, the court has consciously adapted its view of the nature of federalism under the Constitution and tailored its judgments to suit the organic needs of the Constitution. It would be an error to conclude that the Court has shifted away from earlier approaches on federalism and adopted new ones. It has only analyzed the varied constitutional questions posed before it from different perspectives and commented on aspects of Indian federalism. No one description - federal, quasi federal, federalism with unitary bias, pragmatic federalism, cooperative federalism or asymmetrical federalism, captures the nature of Indian federalism in its entirety, but each contributes to a unique perspective of understanding the nature of Indian federalism.

64. Whatever be the description of Indian federalism, we think that it would be against the principle of federalism and a derogation of the powers of the State legislatures, to permit the Governor to withhold a Bill without following the dialogic process in the first proviso to Article 200. In our opinion, the first proviso initiating a constitutional conversation between the institution of the Governor and the House (or Houses), and the option to reserve the Bill for the

consideration of the President under the substantive part of Article 200, exemplify the cooperative spirit of Indian federalism, and also bring out different facets of the checks-and-balances model that the Constitution has envisaged. We are accustomed to the traditional view of checks-and-balances, where the decision taken by one institution or branch is set at naught by the other. In our considered opinion, this understanding must give way to a more nuanced one. A dialogic process, which has the potential to understand and reflect on conflicting or opposing perspectives, to reconcile and to move forward in a constructive manner, is an equally potent check-and-balance system that the Constitution has prescribed. Once this perspective is grasped, the persons who occupy various constitutional offices or institutions will also do well to ingrain in themselves that dialogue, reconciliation and balance, and not obstructionism is the essence of constitutionalism that we practice in this Republic.

VI. Whether the Governor is bound by the aid and advice tendered by the Council of Ministers while exercising all the options available with him when a Bill is presented before him under Article 200 of the Constitution of India

65. Parties supporting the reference submitted that Article 200(1) was an instance of the exception to the general rule of 'aid and advice' as under Article 163, and consequently, to limit the Governor's power of exercising discretion, would be to render Article 163(2) redundant. It was further argued that the deletion of "*in his discretion*" from the proviso to Article 175 (precursor of Article 200) during the Constituent Assembly Debates, only related to the option of

returning a Bill with comments to the Legislature under the first proviso, and not to the substantive provision, wherein the Governor still retained discretion.

66. Parties opposing the reference argued that the Governor is a formal head, and the sole repository of executive power but is incapable of acting, except on, and according to the advice of their Council of Ministers. Reference was made to Section 75 of the Government of India Act, 1935 and the Constituent Assembly Debates, to submit that all residual discretion contemplated under Section 75, had been intentionally eliminated in draft Article 175 (i.e., Article 200), by dropping "in his discretion" from the substantive part and first proviso. It was their submission that the constitutional scheme evolved beyond the Government of India Act, and that discretion, was only retained by the use of "*in the opinion of the Governor*" in the second proviso (i.e., to refer a Bill that could amount to derogation of the authority of the High Court, to the President). Pointing to a mandatory obligation upon the Governor to grant assent when a Bill has been passed a second time as per the second half of the first proviso to Article 200, it was argued that the same proviso could not be construed to confer discretion upon the Governor, in the first half.

67. The text of Article 163 is of relevance to note:

> *"**163. Council of Ministers to aid and advise Governor**.—*
> *(1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*
> *(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the*

> *Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.*
> *(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court."*
>
> (emphasis supplied)

68. Before we opine on this aspect on whether the Governor is bound by the aid and advice of the Council of Ministers in exercise of his functions under Article 200, it is relevant to note the judgments of this Court that have taken a view on the discretion of the Governor and Article 200. Peculiarly, both sides rely on the same judgments but offer differing readings, or interpretations of them: (i) *Samsher Singh v. State of Punjab and Anr.*[67], and (ii) *MP Special Police Establishment v. State of M.P. & Ors.*[68], and (iii) *Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly and Ors*[69]. Though the aforementioned three judgments arose from facts not relating to the discretion of the Governor vis-à-vis Article 200, their observations as Constitution Benches of this Court, are still of relevance in interpreting the provisions.

69. The judgment in *Samsher Singh* (supra) arose from appeals relating to the appointment of persons other than district judges to the State Judicial Services under Article 234. On the discretion exercised by the Governor, it was held that:

> *"54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in articles to which reference has been made. To illustrate, Article*

[67] 1974 INSC 154; (1974) 2 SCC 831 [7JB], paragraph 54-57.
[68] 2004 INSC 642; (2004) 8 SCC 788 [5JB].
[69] 2016 INSC 526; (2016) 8 SCC 1 [5JB], paragraph 143, 147-151, 155, 257, 300.

239(2) states that where a Governor is appointed an administrator of an adjoining Union territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the Sixth Schedule and Articles 371-A(1)(b), 371-A(1)(d) and 371-A(2)(b) and 371-A(2)(f). The discretion conferred on the Governor means that as the constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution. Again Article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution.

55. In making a report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President who, however, must act on the advice of his Council of Ministers in all matters. In this context Article 163(2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.

56. Similarly Article 200 indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers. In such matters where the Governor is to exercise his discretion he must discharge his duties to the best of his judgment. The Governor is required to pursue such courses which are not detrimental to the State.

57. For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vests in the Executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally. The present appeals concern the appointment of persons other than District Judges to the Judicial Services of the State which is to be made by the Governor as contemplated in Article 234 of the Constitution after consultation with the State Public Service Commission and the High Court.

Appointment or dismissal or removal of persons belonging to the Judicial Service of the State is not a personal function but is an executive function of the Governor exercised in accordance with the rules in that behalf under the Constitution."

(emphasis supplied)

70. In *M.P. Special Police Establishment* (supra), this Court was considering the legality of grant of sanction by the Governor under Section 197 of the Criminal Procedure Code, for the prosecution of two ministers accused under the Prevention of Corruption Act, 1988, after the Council of Ministers had refused sanction on the ground that no prima facie case had been made out in the Lokayukta report. On the discretion that is exercisable by the Governor under the Constitution, this Court held that:

"*11. Mr Sorabjee submits that even though normally the Governor acts on the aid and advice of the Council of Ministers, but there can be cases where the Governor is, by or under the Constitution, required to exercise his function or any of them in his discretion. The Constitution of India expressly provides for contingencies/cases where the Governor is to act in his discretion. Articles 239(2), 371-A(1)(b), 371-A(2)(b), 371-A(2)(f) and paras 9(2) and 18(3) of the Sixth Schedule are some of the provisions. However, merely because the Constitution of India expressly provides, in some cases, for the Governor to act in his discretion, can it be inferred that the Governor can so act only where the Constitution expressly so provides? If that were so then sub-clause (2) of Article 163 would be redundant. A question whether a matter is or is not a matter in which the Governor is required to act in his discretion can only arise in cases where the Constitution has not expressly provided that the Governor can act in his discretion. Such a question cannot arise in respect of a matter where the Constitution expressly provides that the Governor is to act in his discretion. Article 163(2), therefore, postulates that there can be matters where the Governor can act in his discretion even though the Constitution has not expressly so provided.*

12. […] Thus, as rightly pointed out by Mr Sorabjee, a seven-Judge Bench of this Court has already held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is, however, clarified

> *that the exceptions mentioned in the judgment are not exhaustive. It is also recognised that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognised that there may be situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to Ministerial advice. Such a situation may be where bias is inherent and/or manifest in the advice of the Council of Ministers.*"
>
> (emphasis supplied)

71. In *Nabam Rebia* (supra), this Court referred, and adopted, the observations of the Report of the Commission on Centre-State Relations (Punchhi Commission[70]) relating to the Governor's discretionary power. Parties on both sides before us, referred to various paragraphs[71] in *Nabam Rebia*. In that case, the majority (through Khehar, J.) opined on the dual nature of legislative and executive functions of the Governor, with specific reference to Article 154, 161, 163, and 166 on the executive nature of power, and Article 168, 158, 200, 201, 213 and 174 in relation to the legislative role. Though the case was particularly on the responsibility under Article 163, this Court undertook a comprehensive review of the Governor's role and powers under the Constitution. On the issue of Article 200, and the discretion of the Governor, the majority opinion extracted the Justice M.M. Punchhi Commission Report on "Constitutional Governance and the Management of Centre-State Relations" and specifically affirmed:

> "151. The important observations in the Justice M.M. Punchhi Commission Report, with reference to Article 163(2), are contained in Para 4.5. Relevant extract of the same is reproduced below:

[70] Report of the Commission on Centre-State Relations (March 2010) <https://interstatecouncil.gov.in/report-of-the-commission-on-centre-state-relations/>.
[71] Nabam Rebia (supra), paragraphs 147-154, 257, and 300.

> "4.5. … *Article 163(2) gives an impression that the Governor has a wide, undefined area of discretionary powers even outside situations where the Constitution has expressly provided for it. Such an impression needs to be dispelled. The Commission is of the view that the scope of discretionary powers under Article 163(2) has to be narrowly construed, effectively dispelling the apprehension, if any, that the so-called discretionary powers extends to all the functions that the Governor is empowered under the Constitution. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution*.
>
> *The Governor's discretionary powers are the following : to give assent or withhold or refer a Bill for Presidential assent under Article 200; the appointment of the Chief Minister under Article 164; dismissal of a Government which has lost confidence but refuses to quit, since the Chief Minister holds office during the pleasure of the Governor; dissolution of the House under Article 174; Governor's report under Article 356; Governor's responsibility for certain regions under Articles 371-A, 371-C, 371-E, 371-H, etc. These aspects are now considered below*:"
>
> (emphasis supplied)

> *152. We are of the considered view that the inferences drawn in the Justice M.M. Punchhi Commission Report extracted hereinabove, are in consonance with the scheme of the functions and powers assigned to the Governor, with reference to the executive and legislative functioning of the State, and more particularly with reference to the interpretation of Article 163. We endorse and adopt the same, as a correct expression of the constitutional interpretation, with reference to the issue under consideration."*
>
> (emphasis supplied)

72. The Court went on to conclude:

> *"154. We are, therefore, of the considered view that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited to situations, wherein a constitutional provision expressly so provides that the Governor should act in his own discretion. Additionally, a Governor can exercise his functions*

> *in his own discretion, in situations where an interpretation of the constitutional provision concerned, could not be construed otherwise. […]*
>
> (emphasis supplied)

73. *Madan Lokur, J.*, in his concurring opinion recognises that the Governor has powers that are either specifically delineated, or implied in the Constitution:

> *"375. […] The Governor is expected to function in accordance with the provisions of the Constitution (and the history behind the enactment of its provisions), the law and the rules regulating his functions. It is easy to forget that the Governor is a constitutional or formal head—nevertheless like everybody else, he has to play the game in accordance with the rules of the game—whether it is in relation to the Executive (aid and advice of the Council of Ministers) or the Legislature (Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly). This is not to say that the Governor has no powers—he does, but these too are delineated by the Constitution either specifically or by necessary implication. Failure to adhere to these basic principles is an invitation to enter the highway to the danger zone."*
>
> (emphasis supplied)

We are of in agreement with the view affirmed in *Nabam Rebia* that Article 200 of the Constitution confers discretionary powers on the Governor. We find no compelling reason to deviate from this position.

74. The view expressed in this judgment has been duly followed by this Court, thereafter, in *B.K. Pavitra v. Union of India*[72]. Having noted these precedents, we need to analyze as to how these precedents inform the present debate and also as to how the judgment in *State of Tamil Nadu* (supra) reflects on these precedents.

[72] 2019 INSC 671; (2019) 16 SCC 129, see paragraphs 66, 67, 71.

75. In *State of Tamil Nadu* (supra), this Court appears to notice paragraph 54 to 56 from the opinion of Ray, J. speaking for the majority in *Samsher Singh* (supra), and reads it as follows:

> *"307. It is pertinent to observe the observations made by the Court in paras 54, 55 and 56 of Samsher Singh [Samsher Singh v. State of Punjab, (1974) 2 SCC 831: 1974 SCC (L&S) 550] which are reproduced above. In para 54, while giving illustrations of the provisions where the Governor is expressly required by the Constitution to act in his discretion, the Court made reference to Articles 356 and 200, respectively. In the context of Article 200, the Court observed that the limited area where express discretion has been conferred upon the Governor falls under the second proviso. Thereafter, in para 55, the Court elaborated upon the exercise of discretion by the Governor under Article 356. In para 56, the Court elaborated upon the exercise of discretion under Article 200 and observed that Article 200 "indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers". It is important to read the observations made in para 56 along with para 54 of the judgment. A conjoint reading of these two paragraphs, it becomes clear, without a cavil of doubt, that the second proviso to Article 200 is an instance under the Constitution where the Governor has been conferred with the power to act in his discretion and even against the advice of the Council of Ministers. However, the logical sequitur to this is that under Article 200, there is no scope for the Governor acting in his discretion other than the second proviso."*

76. The judgment further heavily relies on paragraphs 100, 113, 139 and 154 from the opinion of Iyer, J. (speaking for himself and Bhagwati, J.), where it was observed:

> "139. […] *These discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor but are remote-controlled by the Union Ministry which is answerable to Parliament for those actions.* […]"[73]

[73] *State of Tamil Nadu* (supra), paragraph 308.

77. The Court in *State of Tamil Nadu* (supra), cites this view on the "*limited nature of the scope of exercise of discretion by the President and the Governor*"[74] with approval. Pertinently, the view propounded by Iyer, J, does not form the majority in *Samsher Singh* (supra), and is in fact contrary to the provisions discussed in the majority opinion. In light of this Court's judgment in *Nabam Rebia* (supra) – specifically the majority opinion authored by Khehar, J., and Lokur, J.'s concurring opinion, such a view cannot be held to be the correct position of law.

78. Therefore, the conclusion[75] arrived at in *State of Tamil Nadu* (supra) that the 7-judge bench in *Samsher Singh* (supra) held that the second proviso to Article 200, is the *only* instance that contemplates discretion of the Governor, cannot be relied upon as good law. We are respectfully unable to countenance

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[74] Paragraph 309.

[75] "**456.16.3.** The decision in *Samsher Singh* [*Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831: 1974 SCC (L&S) 550] illustrated certain provisions of the Constitution which expressly required the Governor to exercise his powers in his discretion. The second proviso to Article 200 was one such illustration. Thus, it is amply clear from the dictum in *Samsher Singh* [*Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] that the seven-Judge Bench, after taking into consideration the scheme of Article 200, observed that the second proviso to Article 200 was the only instance where the Governor had been entrusted with the power to act in his own discretion. Subsequent Constitution Bench decisions in *M.P. Special Police* [*M.P. Special Police Establishment* v. *State of M.P.*, (2004) 8 SCC 788 : 2005 SCC (Cri) 1] and *Nabam Rebia* [*Nabam Rebia & Bamang Felix* v. *Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1] clarified that besides the instances where the Governor has been expressly conferred with discretionary powers, there may still be certain exceptional circumstances wherein it would be legitimate for him to act in his own discretion as indicated by us in paras 312 to 314. However, the general rule remains that the Governor acts upon the aid and advice of the State Council of Ministers.
456.16.5. The observations made in *B.K. Pavitra* [*B.K. Pavitra* v. *Union of India*, (2019) 16 SCC 129 : (2022) 2 SCC (L&S) 768] that "*a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200*" do not take into consideration the decision of *Samsher Singh* [*Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] and is for this reason per incuriam. It failed to consider that Article 200 which had been duly considered by *Samsher Singh* [*Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] was found to contain only one instance where the exercise of discretion was expressly provided, that being the second proviso thereto. Besides this, as already aforestated, it failed to notice the removal of the expression "*in his discretion*" from Section 75 of the GoI Act, 1935 which ultimately culminated into Article 200."

such a reading of *Samsher Singh* (supra) and find that the decision in *State of Tamil Nadu* (supra) is based on a partial reading of these three judgments.

79. We must also take cognisance of the fact that the Constitution does not explicitly state in *which* provisions, discretion is contemplated for the Governor to exercise. In fact, in the Constitution as it originally stood, the word 'discretion' is conspicuously absent in relation to the Governor. Any provision that contemplates discretion explicitly in the Constitution as on date, is a result of subsequent amendment to the Constitution. These amended or newly inserted provisions do not relate to matters of power to be exercised across the country, but rather in special circumstances in relation to specific States and Areas – namely, Articles 239(2), 371-A(1)(b), 371-A(2)(b), 371-A(2)(f) and paras 9(2) and 18(3) of the Sixth Schedule.

80. This Court has read discretion into the *function* of the Governor under the Constitution by way of its judgments[76]. Our usage of the word 'function' is done so deliberately, in contradistinction to 'power' because a *function* carries with it, implicitly, a constitutional obligation. Thus, we are of the considered opinion that the Constitution ***requires*** the Governor, in exercise of his 'function' use 'discretion' in certain circumstances, given the manner in which our constitutionalism is practiced, or worked. This has been influenced by numerous instances. In *M.P. Special Police Establishment* (supra), this Court in fact, held

[76] Governor's power call for a floor test when the Council of Ministers has lost the confidence of the House as held in Shivraj Singh Chouhan v. M.P. Legislative Assembly, 2020 INSC 335, (2020) 17 SCC 1; Nabam Rebia, MP Establishments, Samsher Singh (supra).

that the Governor is entitled to use his discretion, in a situation beyond what is explicitly mentioned in the text of the Constitution itself, because of the context in which the Governor's function to grant sanction for prosecution arises.

81. We are of the opinion that from the above discussion, the following position of law clearly emerges: *Firstly*, ordinarily, the Governor exercises his functions in accordance with the aid and advice tendered by the Council of Ministers. *Secondly*, the Constitution itself provides that the Governor may discharge certain functions upon his discretion, and without being bound by the aid and advice tendered by the Council of Ministers. *Thirdly*, the circumstances or occasions where the Governor is to discharge his functions without being bound by the aid and advice of the Council of Ministers, are either expressly provided, or through necessary implication where the constitutional context requires exercise of this discretion.

82. In such circumstances, it is for this Court to determine from the spirit and text of the Constitution, and from the manner in which the Constitution has been practiced, to see whether the Governor requires to be conferred discretion in exercise of his function under Article 200. We are of the firm view, that the Governor must be given this constitutional option, i.e., to exercise his discretion under Article 200, for the reasons enumerated herein.

83. The Constitution itself provides in as many as five provisions – on law-making relating to acquisition of estates[77], giving effect to certain directive

[77] First proviso to Article 31A.

principles[78], where there is inconsistency between law made by Parliament and State Legislatures[79], exemption from taxation by States in respect of water or electricity in certain cases[80], and during financial emergency[81] – that such law, having been reserved for the assent of the President, will not take effect until such assent is granted (as prescribed under Article 201). The act of '*having been reserved*'[82], is a function that can be performed by the Governor alone, to the exclusion of others. It is neither in the hands of the Legislature nor the Executive. The Governor is the sole authority to reserve a Bill for the consideration of the President under Article 200. For a moment, if it is assumed that there is no discretion, then even if advice is tendered contrary to the written text of the Constitution, the Governor will be bound by such advice. If that be so, the Governor and the President ultimately fail in their duty[83] to protect and defend the Constitution because the President's power of assent is hinged on the Governor's power to reserve the Bill for the consideration of the President.

[78] Proviso to Article 31C.
[79] Article 254 (2).
[80] Article 288 (2).
[81] Article 360.
[82] These provisions contain similar phrasing in their proviso as indicated supra. See for instance, the first proviso to Article 31A: "*Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent*:"
[83] The Governor under Article 159 affirms on oath as follows:

> "*I, A. B., do swear in the name of God that I will faithfully execute the solemnly affirm office of Governor (or discharge the functions of the Governor) of …….(name of the State) and* ***will to the best of my ability preserve, protect and defend the Constitution and the law*** *and that I will devote myself to the service and well-being of the people of ……..(name of the State)."*

Similarly, the President under Article 60, affirms on oath as follows:

> "*I, A.B., do swear in the name of God/solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and* ***will to the best of my ability preserve, protect and defend the Constitution and the law*** *and that I will devote myself to the service and well-being of the people of India.*".

Viewed from both angles, the Constitution must be read as conferring on the Governor this discretion.

84. The Indian Constitution is replete with examples that demonstrate the carefully balancing of functions and powers between constitutional functionaries, to preserve India's federal character. Consider, for instance, the proviso to Article 304[84] which stipulates that no Bill or amendment imposing reasonable restrictions on the freedom of trade, commerce or intercourse, with or within a State, can be introduced or moved in the said State Legislature, without the "*previous sanction of the President*". This provision, thus, contemplates presidential approval by way of intervention, before the law is introduced in the State Legislature and demonstrates the unique manner in which Indian federalism plays out, and is preserved, in our Constitutional scheme. Yet another provision which can demonstrate the federal feature of the Indian Constitution qua the President's functions and the Legislature (both Union and States), is Article 364[85] which preserves a specific power with the

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[84] "**304**. **Restrictions on trade, commerce and intercourse among States**. –
Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—
(a) impose on goods imported from other States [or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:
Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

[85] **364**. **Special provisions as to major ports and aerodromes**. –
(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—
(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

President to exempt major ports and aerodromes from the application of a law (whether made by the Parliament, or State Legislature), or be subject to certain modifications or exceptions as notified by the President.

85. The provisions which make the law subject to the President's assent, if so reserved for his consideration, are in no manner an exhaustive list. Given the manner in which our Constitution functions and must be read in our federal system, there are numerous other circumstances involving sharing of resources, taxation, etc. where a Governor may seek the President's consideration. As pointed out earlier in this opinion as well, it is reiterated that the Indian Constitution is unique, insofar as it must deal with distribution of legislative powers between the Union and the State on various counts, including natural resources, trade, commerce, and taxation. Our constitutional history itself contains examples wherein the State government has passed a law, contrary to decisions of this Court, and further impinging on the rights of other States, in the sharing of natural resources. Reference may be made to the case in *Punjab Termination of Agreement Act, 2004, In Re*[86] and *Cauvery Water Disputes Tribunal, In Re*[87].

86. In such a context, the role of the President in protecting and defending the Constitution – in binding the Union as a cohesive unit – is crucial. It is

(2) In this article—
(a) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;
(b) "aerodrome" means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.

[86] 2016 INSC 1018; (2017) 1 SCC 121 [5JB].
[87] 1991 INSC 304; 1993 Supp. (1) SCC 96 (2) [5JB].

reiterated, that the President will be unable to exercise his functions, until the Governor *a priori* reserves the Bill for his assent. It is unlikely that the Council of Ministers – without whose support the Bill could not have been passed by the Legislature – will advise the Governor, to return a Bill to the Legislature, or refer it to the President, under Article 200, thus frustrating the operation of numerous provisions of this Constitution, including the President's powers. In such a scenario, it is unfathomable to hold that the Governor is not conferred with discretion, under Article 200.

87. We are also of the considered opinion that the inclusion of the phrase "*in the opinion of the Governor*" in the second proviso to Article 200 is but a definitive expression of the fact that Governor does enjoy discretion in discharging his functions under Article 200. Either the Governor enjoys discretion, or he does not. There is no interpretative space for discretion while exercising some options of Article 200, and no discretion in others. A limited application of this phrase to only the second proviso is neither logical, nor in accord with the Constitutional scheme. We find it difficult to agree with the submission canvassed by the parties opposing the reference that a limited interpretation must be placed on the aforesaid phrase. This second proviso is clearly a qualification, or condition of, and ***not*** an exception to the exercise of discretion contemplated under the substantive part of Article 200.

88. For these same reasons, the conclusion in *State of Tamil Nadu* (supra) at paragraph 334.1[88] where it was held that the *only* situation in which discretion has been *explicitly* laid down in the second proviso to Article 200, is erroneous. Further, in paragraph 334.2 and sub-paragraph (i)[89], the characterisation that the Governor's act of reserving a Bill pertaining to the Articles identified above [namely, Article 31A, 31C, 254(2), 288(2), etc.] is one where exercise of discretion is by "*necessary implication*", is on the face of it, textually untenable.

89. It is but obvious, that *any* Bill that has been reserved by the Governor for the consideration of the President, cannot become law until such assent is given. Therefore, the deliberate inclusion of the phrasing "*provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent*" in Articles 31A proviso, 31C proviso, Article 254(2), Article 288(2) and Article 360, is significant. The framers of the Constitution *cannot* be presumed to have employed this wording superfluously, to simply mean that the President's assent was a precondition only *if and when* the Bill is reserved for his consideration. Rather, the deliberate

[88] "334.1. Where the Governor is by or under the Constitution required to act in his discretion. The only situation in which such exercise of discretion has been explicitly laid down in the Constitution is the second proviso to Article 200, that is, where, in the opinion of the Governor, the Bill, if assented to, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill by the Constitution;"

[89] "334.2. Where the Governor is by necessary implication required to act in his own discretion. This would include:

(*i*) Where a Bill attracts such a provision of the Constitution which requires the mandatory assent of the President for securing immunity or making the law enforceable. Exercise of discretion is permissible in these cases. For instance, Article(s) 31-A, 31-C, 254(2), 288(2), 360(4)(*a*)(*ii*), etc.

(*ii*) Situations where the exceptional conditions as described in *M.P. Special Police* [*M.P. Special Police Establishment* v. *State of M.P.*, (2004) 8 SCC 788 : 2005 SCC (Cri) 1] and *Nabam Rebia* [*Nabam Rebia & Bamang Felix* v. *Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1] are applicable i.e. the State Council of Ministers has disabled or disentitled itself; possibility of complete breakdown of the rule of law or by reason of peril to democracy/democratic principles, respectively, as a consequence of which an action may be compelled which, by its nature is not amenable to ministerial advice."

use of this phrasing indicates that these are instances where the Governor must reserve the Bill for the President's consideration, and without whose assent, these Bills cannot become law. The clear intent behind the explicit phrasing in these provisions, is to demonstrate that the Governor is obliged to exercise his discretion and reserve such Bills for the assent of the President.

90. In light of the reasoning elaborated hereinabove, we are of the considered opinion that contrary to the articulation in *State of Tamil Nadu* (supra) (that of 'necessary implication') these provisions are instances where the Governor, is *explicitly*, obligated and required to discharge his function of reserving the said Bill for the consideration of the President, without whose assent, such Bill cannot become law.

91. On the issue of discretion of the Governor, it is also relevant to point out that prior to the insertion of the Tenth Schedule to the Constitution, it was a realistic possibility that Bills could be passed without the support of the Council of Ministers. Such a situation is virtually impossible now. Thus, a scenario wherein the Council of Ministers would tender aid and advice to the effect that the Governor must return a Bill for reconsideration, or reserve it for the President's assent, is not conceivable; rather, the converse, is inevitable, i.e., if the Governor was bound by the aid and advice of the Council of Minister, all Bills would be granted assent, rendering the option of referring to the President, or returning with comments, nugatory.

92. We are acutely aware, that in the Constituent Assembly Debates on 30.07.1949, Dr. B.R. Ambedkar, while introducing an amendment to the proviso to Article 175 (now Article 200) made the remark that:

> "*it was felt then that in a responsible government there can be no room for the Governor acting on discretion. Therefore, the new proviso deletes the word 'in his discretion"*.[90]

Shri T. T. Krishnamachari also responded stating that the Governor should not be conferred any discretionary power.[91]

93. It is noteworthy that merely days prior, on 01.06.1949, B. R. Ambedkar while discussing the draft Article 143 (precursor to Article 163 now) stated that responsible government in no way deviates from conferral of discretion on the Governor:

> *"Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this discretionary power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143, "that except as provided in articles so and so specifically mentioned— article 175, 188, 200 or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion."*[92]
>
> (emphasis supplied)

[90] Volume IX, 30th July 1949.
[91] Volume IX, 30th July 1949.
[92] Constituent Assembly Debates dt. 01.06.1949 (Vol. VIII, p. 501).

It was recognised that an illustrative list was not possible at that stage, since discussion on various articles (including Article 200) that contemplated discretion of the Governor, had not yet transpired. In any event, the Constituent Assembly Debates in relation to Article 200 (draft Article 175) do not reflect the crucial aspect that the President, under the text of the Constitution, exercises powers over granting assent to Bills passed by the State Legislature, at least in certain situations enumerated above[93]. We do not think that the observations in the Constituent Assembly Debates can bind us to the interpretation suggested by the parties opposing the reference.

94. We are conscious that a government run within the four corners of a written Constitution, must be responsible. Having already held that the Governor does not have powers simpliciter to withhold, we find that the Governor has discretion in the context of referring a Bill for the consideration of the President, or for returning the Bill to the Legislature with his comments. We do not think that this interpretation confers any unfettered powers on the Governor. In fact, it does not in any way deviate from the concept of a responsible constitutional government.

95. We have already held that the dialogic process either contemplated under Article 200, or the act of referral under Article 201, are both parts of the federal scheme of the Constitution, and also a part of the system of checks and balances. In that view of the matter, the conferral of discretion on the Governor

[93] Article 31A first proviso, Article 31C proviso, Article 254(2), Article 288(2), Article 360 of the Constitution.

to not be bound by the aid and advice of the Council of Ministers, and to reserve the matter for the consideration of the President, or return it to the Legislature with comments, is in no way antithetical to the fundamental premise of the Constitution.

96. Much has been argued on the role of Governors and the President, and the Cabinet form of governance that 'Parliamentary democracy' consists of, by parties opposing the reference. They argue that this system of governance abhors conferral of discretion on the Governor. We are in agreement that it is the elected government (the Cabinet) that should be in the driver's seat, and that there cannot be two executive power centres in the State, as held in *Ram Jawaya Kapur & Ors. v. State of Punjab*[94]. However, we find that these arguments relegating the Governor and President to a perfunctory role, i.e., merely the formal head comparable to the Crown in England, oversimplifies the complex scheme of our written Constitution. The constitutional vision is of a responsible government which is not merely synonymous with the Cabinet but is one where the Governors and the President have been bound by specific functions and roles in our written Constitution, unlike the Crown.

97. We clarify, as we have already held, that the Governor has no option to withhold a Bill simpliciter. Therefore, it is not that the discretion so conferred, allows a situation wherein the Governor could frustrate a Bill in perpetuity. The three clear options that he has, is to grant assent, withhold assent and return

[94] 1955 INSC 27; (1955) 1 SCC 553 [5JB].

the Bill to the legislature for reconsideration, or reserve the Bill for consideration of the President, and he *can exercise his discretion* in choosing any of these three options, having given due regard to the aid and advice tendered by the Council of Ministers, and keeping in mind his duty – to protect and defend, the Constitution.

VII. Options of the Governor under Article 200 after the Legislative Assembly presents the Bill to the Governor after reconsideration under the first proviso

98. As we have reasoned earlier, as per the substantive provision, and first proviso of Article 200, the Governor at the first instance has three options – to assent, reserve the Bill for the consideration of the President, or withhold and return the Bill with a message for reconsideration of the State Legislature. The exercise of discretion in discharging his function at this first stage, is essential to initiate the dialogic process between the constitutional functionaries. The second proviso reaffirms this exercise of discretion, and specifically lays out a situation wherein if "*in his opinion*" the Governor finds that the Bill proposed may derogate from the powers of the High Court or endanger its position as per the Constitutional scheme, assent should not be granted, and the same shall be reserved for the President's consideration. However, another aspect of interpretation of Article 200 that arises for our consideration, is the options that are available to the Governor *after* he has, at the first instance, exercised his discretion and chosen to withhold a Bill and return it to the State Legislature

with a message, as prescribed under the first half of the first proviso to Article 200. We find that a discussion on this aspect, is warranted.

99. The text of the first proviso to Article 200 through its phrasing "*shall not withhold assent therefrom*" clearly indicates that what was sought to be curtailed among the three options, was only the option to 'withhold'. We have already held that the first proviso conditions the verb 'withhold', to mean withhold and return to the Legislature. The first proviso cannot be read in a manner so as to condition the option of the Governor to reserve the Bill for President's consideration as well. Therefore, when the Bill is returned to the Governor, he is still left with two options – either to grant his assent, or to refer it to the President for his consideration. This power to reserve a Bill for the President's consideration, is irrespective of whether the Bill is returned by the Legislature in its amended or unamended form.

100. An additional reason for deliberately providing this play in the joints in Article 200 is to safeguard against the tagging of amendments, or material changes, that the Legislature may insert, upon receiving a Bill back from the Governor with comments. Since it is the Governor who considers the Bill in its amended form, and is able to compare it to the earlier version passed by the Legislature, it is his constitutional function to decide whether the Bill ought to be assented to, or if its amended form affects such inter-state, or federal aspect of the country, requiring the attention of the President. Such a reading is fortified by the second proviso, and the various provisions referred to earlier [Article 31A,

31C, Article 228(2), etc.], which require the Governor to reserve the Bill for the President's consideration. This is irrespective of whether the Governor finds these provisions are attracted when the Bill is presented for the first time, or when it is returned from the Legislature after having considered his comments, for the second time.

101. The reading of the first proviso as canvassed by parties opposing the reference – that the Governor is left with only one option, i.e., to grant assent, upon receiving a Bill back from the Legislature the second time is textually untenable. This would further militate against the content of the second proviso, which contemplates the President's consideration specifically when a Bill may potentially affect the powers of the High Court, and its position or function, within the constitutional scheme. Therefore, we are of the firm opinion that the reading of Article 200, which recognises both options – to grant assent, or reserve the Bill for the President – further strengthens, and increases the potential for the dialogic and consultative process that our Constitution values at its core, rather than retracting from it.

102. As per parties opposing the reference, a Bill can be returned only once at the option of the Governor, or the President (under the first provisos to Articles 200 and 201, respectively). This would imply that the first proviso to Article 200 is of the same nature as the proviso to Article 201. This is textually incorrect for two reasons: (1) "*shall not withhold therefrom*" is absent in Article 201; and (2) the stipulation of six months period on the Legislature to reconsider

the Bill, is absent in Article 200. This demonstrates that although the return of the Bill by the President under the first proviso of Article 201 is routed through the Governor, the return of the Bill by the two constitutional functionaries are qualitatively distinct. This difference is not just in the institutions involved in the dialogic process, but also in the response of the Legislature, and the effect thereupon.

VIII. *Re*: Questions 5, 7, 10 and 11 relating to the prescription of time limits on the Governor and the President for exercising their discretion under Articles 200 and 201, and the issue of deemed assent

103. Question 5 and Question 7 in the Presidential Reference, pertain to prescription of timelines for the Governor (under Article 200), and the President (under Article 201) to exercise their functions. A natural consequence of the reasoning pertaining to those questions, will be the answer to Question 10 on 'deemed assent'. Hence, we find it appropriate to take up these three questions together.

104. Parties in favour of the reference argued that, in the absence of any explicitly prescribed time limit in the provision, it would not be open to the Court to impliedly read in a timeline. Reliance was placed primarily on the decision in *Purushothaman Nambudiri v. State of Kerala*[95]. A distinction was made between the various provisions[96] of the Constitution which do in fact prescribe

[95] 1961 INSC 331; 1961 SCC OnLine SC 361 [5JB]
[96] Articles 22, 62, 68, 75, 83, 85, 101, 108, 109, 123, 164, 172, 174, 190, 197, 198, 210, 224, 213, 239B, 240, 243E, 243U, 243ZF, 243ZL, 243ZM, 243ZN, 243ZQ, 243ZT, 249, 250, 279A, 280, 336, 337, 340, 343, 344, 349, 352, 354, 356, 360, 369, 372, 372A, 373, 392, Sixth Schedule-paragraph 15, Sixth Schedule-Paragraph 16, Tenth Schedule-Paragraph 2.

a timeline on one hand, and Articles 200 and 201 on the other, to submit that the absence of timelines in the latter was by way of deliberate constitutional design. Counsel laboured extensively to establish that the prescription of timelines in *State of Tamil Nadu* (supra) was erroneous in light of earlier case law.

105. On the other hand, the parties opposing the reference submitted that this was no longer an issue that required consideration, given the reasoning and decision in *State of Tamil Nadu* (supra). They argued that this Court in *State of Telangana v. Governor of Telangana*[97]*, and State of Punjab* (supra) had interpreted "*as soon as possible*" in Article 200 to convey a constitutional imperative of expedition, which necessarily had to mean that a Bill could not be kept pending indefinitely without any action – which the prescription of timelines, suitably addressed. They extensively argued that such timelines were not akin to amending the text of the Constitution, because no consequences emanate on the non-compliance of these timelines by the Governor – such as automatic assent, and rather, it only opens the door for judicial review. Reliance was placed on the findings of the Sarkaria Commission (Chapter V), and Punchhi Committee Report which prescribed a maximum period of six months after a Bill was presented, as a time limit on the Governor under Article 200.

106. The consideration of prescribing timelines to actions by the President under Article 111 (draft Article 91), fell before the Constituent Assembly as well.

[97] (2024) 1 SCC 405 [2JB].

The Assembly specifically rejected the concept of a timeline wherein Dr. B.R. Ambedkar's amendment to delete "six weeks" from the draft clause of Article 91, was accepted[98]. Despite H.V. Kamath's remarks in support of a fixed timeline to encourage prompt action, there is conspicuous absence of any timeline in Article 111 of the Constitution, as adopted in 1950[99]. A similar logic would apply to Article 200, in relation to the Governor's function.

107. A reading of the text of Articles 200 and 201 clarifies that the only *temporal* aspect tied to the constitutional functionaries so referred, in these provisions are as follows: *firstly*, that if the Governor finds reason to withhold and therefore, return the Bill with his comments for the consideration of the State Legislature, he is required to do so "*as soon as possible*"[100] as per the first proviso to Article 200; *secondly*, that once the President instructs the Governor to return a Bill to the State Legislature with the former's comments, it is incumbent upon the Legislature, in fact, to "*reconsider it accordingly within a period of six months from the date of receipt of such message*"[101].

108. We have already held that the proviso to Article 200 – which contains the phrase "*as soon as possible*" – is a *condition*, or a *qualification*, on the substantive part of the Article 200, which relates to the Governor's option to withhold. Consequently, the afore-stated phrase cannot condition or qualify the

98 Constituent Assembly Debates dated 20.05.1949 (Vol. VIII, p. 192), discussion on Article 111 (draft Article 91).
99 *Ibid*. at p. 194.
100 First proviso to Article 200.
101 Proviso to Article 201.

other two options. In any event, the said phrase cannot translate into the strict imposition of timelines on the Governor, for the exercise of his discretion and carrying out his functions, under Article 200.

109. That the Constituent Assembly chose, at one place (i.e., the proviso to Article 201) to explicitly impose a definite timeline (for the Legislature to reconsider the Bill so returned), but no such imposition is made on the other functionaries of the Governor or the President, is significant. Implicit in this distinction, is also the institutional respect that the Constitution contemplates, and affords, to the constitutional functionaries of the Governor, and President.

110. Furthermore, judicial precedent on the aspect of timelines is clear, and merits reference. In *Nambudiri* (supra), a Constitution Bench of this Court held the absence of an explicit timeline in Articles 200 and 201 for the Governor and President to exercise their function to be significant:

> *"15. It is clear that if a Bill pending the assent of the Governor or the President is held to lapse on the dissolution of the Assembly it is not unlikely that a fair number of Bills which may have been passed by the Assembly, say during the last six months of its existence, may be exposed to the risk of lapse consequent on the dissolution of the Assembly, unless assent is either withheld or granted before the date of the dissolution. If we look at the relevant provisions of Articles 200 and 201 from this point of view it would be significant that neither Article provides for a time limit within which the Governor or the President, should come to a decision on the Bill referred to him for his assent. Where it appeared necessary and expedient to prescribe a time limit the Constitution has made appropriate provisions in that behalf (vide : Article 197(1)(b) and (2)(b)). In fact the proviso to Article 201 requires that the House to which the Bill is remitted with a message from the President shall reconsider it accordingly within a period of six months from the date of the receipt of such message. Therefore, the failure to make any provision as to the time within which the Governor or the President should reach a decision may suggest that the Constitution-makers knew that a Bill which was pending the assent of the Governor or*

the President did not stand the risk of lapse on the dissolution of the Assembly. That is why no time limit was prescribed by Articles 200 and 201. Therefore, in our opinion, the scheme of Articles 200 and 201 supports the conclusion that a Bill pending the assent of the Governor or the President does not lapse as a result of the dissolution of the Assembly, and that incidentally shows that the provisions of Article 196(5) are exhaustive."

(emphasis supplied)

111. In *State of Tamil Nadu* (supra), the Court arrived at certain timelines for the Governor and President, wherein failure to comply with them, would render the Governor's inaction, amenable to judicial review:

> *"260. Keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, the following timelines are being prescribed. Failure to comply with these timelines would make the inaction of the Governors subject to judicial review by the courts:*
>
> *260.1. In case of either withholding of assent or reservation of the Bill for the consideration of the President upon the aid and advice of the State Council of Ministers, the Governor is expected to take such an action forthwith subject to a maximum period of one month;*
>
> *260.2. In case of withholding of assent contrary to the advice of the State Council of Ministers, the Governor must return the Bill together with a message within a maximum period of three months;*
>
> *260.3. In case of reservation of Bills for the consideration of the President contrary to the advice of the State Council of Ministers, the Governor shall make such reservation within a maximum period of three months;*
>
> *260.4. In case of presentation of Bill after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one month."*

Reliance was placed on certain decisions of this Court, to arrive at its conclusion, which are necessary to address. The decision in *Nambudiri* (supra), is considered and read such that this Court's observation (in *Purushothaman Nambudiri*) where no timeline was prescribed in Article 200, would not be reason in itself, to conclude that the exercise of power by the Governor under Article 200 was not urgent or of expedient character, and thus could be

exercised even beyond a reasonable time.[102] While such a reading of *Nambudiri* (supra) is on the face of it justified, it must be pointed out that the Court in *State of Tamil Nadu* (supra) erroneously translated this reasoning to justify the prescription of absolute, universal time limits on the Governor and President, on the expiry of which their action, or inaction, would be amenable to judicial review.

112. The Court in *State of Tamil Nadu* (supra), also relied on *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly*[103]. In that case, the Court was considering whether the Speaker could be directed to decide disqualification petitions within a 'reasonable period' of time. The prescription of reasonable timeline in that case, was in the context of the Speaker's quasi-judicial function, of taking a decision on disqualification petitions, as under the Tenth Schedule. The prescription of a reasonable period of time for a quasi-judicial function, wherein the Speaker acts as a Tribunal, cannot be equated with the gubernatorial function and the Governor's exercise of discretion in that regard under Article 200. Thus, this precedent too offers no assistance. Reliance on *State of Telangana* (supra), wherein this Court merely held that the phrase "*as soon as possible*" in the first proviso to Article 200, carried "*significant constitutional content and must be borne in mind by constitutional authorities*"[104], too, offers no assistance. The decision in *Durga*

[102] State of Tamil Nadu (supra), paragraphs 245 and 246.
[103] 2020 INSC 65; (2021) 16 SCC 503 [3JB]
[104] *State of Telangana* (supra), paragraph 2.

Pada Ghosh v. State of W.B.[105] was also referred to - where the Court interpreted "*as soon as may be*" in Article 22(5) of the Constitution, while dealing with a habeas corpus petition. By no means, can these judgments be contemplated as translating to a judicial prescription of a timeline, on the text of Constitution, binding constitutional functionaries.

113. The Court further relied on Circulars issued by the Ministry of Home Affairs, to hold that there were applicable timelines on both the Governor under Article 200, and the President under Article 201.[106] We are of the considered view that the Ministry's circulars cannot be incorporated by way of judicial interpretation in such a manner, so as to apply as a constitutional fetter, on the Governor and the President. Such an exercise of judicial construction would not be appropriate.

114. In view of the above reasoning, we are required to clarify that the paragraphs 260-261 of the judgment in *State of Tamil Nadu* (supra), pertaining to the imposition of timelines on the Governor under Article 200 are erroneous.[107] It must also be pointed out that there was no occasion for the issue of setting a timeline for disposal of Bills referred to the President under Article 201, to arise before this Court, while considering *State of Tamil Nadu* (supra). Thus, it is clarified that any observations[108] on the aspect of timelines

[105] (1972) 2 SCC 656 [3JB].
[106] *State of Tamil Nadu* (supra), paragraphs 404-408, and 417.
[107] *State of Tamil Nadu* (supra), corresponding conclusions at paragraphs 456.10 to 456.14.4 as well.
[108] *State of Tamil Nadu* (supra), paragraphs 389-447.

applicable to the President under Article 201, or conclusions[109] thereof on this aspect, are merely obiter, and ought to be treated as such.

115. The text of Articles 200 and 201, has been framed in such a manner, so as to provide a sense of elasticity, for constitutional authorities to perform their functions, keeping in mind the diverse contexts and situations, and by consequence the need for balancing that might arise in the process of law-making in a federal, and democratic country like ours. The imposition of timelines would be strictly contrary to this elasticity that the Constitution so carefully preserves.

116. A logical corollary of this reasoning is that if there are no prescribed timelines under Articles 200 and 201, then expiry of them too, cannot amount to 'deemed consent'. Though, in the background of the aforesaid findings on timelines, the issue of 'deemed assent' has been rendered almost academic, we deem it appropriate to briefly state certain observations, given that Question 10 specifically enquires regarding the scope of Article 142 in the context of 'deemed consent' and is of some constitutional importance.

117. We find that the Constitution framers were categorical as to when deeming provisions were to operate in the context of legislative functions. Article 109(4) and 109(5), deem a Money Bill to be passed by Council of States either when the House of the People do not accept the suggestions given by the Council of States or if the Council of States does not return the Money Bill to

[109] *State of Tamil Nadu* (supra), paragraph 456.19.

the House within fourteen days. Similar provisions can be found in Article 198(4) and (5). Similarly, Articles 107, 108, 196, 197, 213 and 239B also contemplate a form of deeming, as a consequence. Such deeming clauses are absent in the case of Articles 200 and 201, therefore, we find that by judicial intervention such assent cannot be deemed.

118. The concept of 'deemed assent' in the context of Articles 200 and 201 presupposes that one constitutional authority (herein, the Court), could play a 'substitutional role' for another constitutional functionary (herein, the Governor, or President). Such a usurpation of the gubernatorial function of the Governor, and similarly of the President's functions, is antithetical not only to the spirit of the Constitution, but also specifically, the doctrine of separation of powers – which is a part of the basic structure[110] of the Indian Constitution. The Constitution Bench of this Court in *Bhim Singh v. Union of India*[111] explains the distinction between overlap, and wresting away a function, within the separation of powers doctrine:

> *"77. [..] The concept of separation of powers, even though not found in any particular constitutional provision, is inherent in the polity the Constitution has adopted. The aim of separation of powers is to achieve the maximum extent of accountability of each branch of the Government.*
>
> *78. While understanding this concept, two aspects must be borne in mind. One, that separation of powers is an essential feature of the Constitution. Two, that in modern governance, a strict separation is neither possible, nor desirable. Nevertheless, till this principle of accountability is preserved, there is no violation of separation of powers. We arrive at the same conclusion when we assess the position within the constitutional text. The Constitution*

[110] *Kesavananda Bharati v. State of Kerala*, 1973 INSC 91; (1973) 4 SCC 225 [13JB], see paragraph 577 (Shelat & Grover, JJ.).
[111] 2010 INSC 276; (2010) 5 SCC 538 [5JB]

does not prohibit overlap of functions, but in fact provides for some overlap as a parliamentary democracy. But what it prohibits is such exercise of function of the other branch which results in wresting away of the regime of constitutional accountability."

(emphasis supplied)

We have no hesitation in concluding that the concept of deemed assent of pending Bills by the Court in exercise of jurisdiction under Article 142, is virtually a takeover of the role, and function, of a separate constitutional authority. The reliance on Article 142, cannot lead to supplanting constitutional provisions itself.

119. The judicial creation of specific timelines and the effect of the expiry of those timelines on the actions of the Governor and the President, as prescribed in *State of Tamil Nadu* (supra), does not employ Article 142 to merely fill the gaps. We have already held that the effect of this judgment insofar as 'deemed assent' is concerned is that it undertakes a *substitutional* role. The constitutional effect is such that it is not merely a gap-filling exercise, or a procedural exercise that the Court undertook, but a substantive one which finds no basis in the text of the Constitution. In this view of the matter, we are of the considered opinion that Article 142 cannot be employed to arrive at a conclusion contrary to the express provisions of the Constitution.

120. We find that the summation of case law on Article 142 is uncalled for, but we only refer to the observations made by this Court in the following judgments, which fortify our conclusions. It is a matter of settled law, that jurisdiction under

Article 142[112] cannot be invoked to achieve results that are contrary to the Constitution, or statutory provisions. Dealing with the powers of this Court under Article 142, in *Prem Chand Garg* v. *Excise Commissioner, U.P.*[113], a Constitution Bench of this Court held:

> "*14*. […] *we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions[*…]"[114]
>
> (emphasis supplied)

121. In *Supreme Court Bar Assn. v. Union of India*[115], a Constitution Bench of this Court held that a contemnor advocate cannot be punished by invoking Article 142, while dealing with a contempt of court case, when such power is statutorily available with the Bar Council of India. On the scope of Article 142, it was held:

> *"47. […] This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly […]. The construction of Article 142 must be functionally informed by the*

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[112] Article 142 reads as follows: "**142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.—(**1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe."

[113] 1962 INSC 311; AIR 1963 SC 996 [5JB]

[114] This decision was further considered in *Union Carbide Corpn. v. Union of India* [1991 INSC 250; (1991) 4 SCC 584], a Constitution Bench of this Court dealing with the ambit and scope of the powers of this Court under Article 142, wherein it was clarified that ordinary law did not limit the powers under Article 142(1) regardless of the public policy it was founded on, but that the violation of constitutional provisions and constitutional rights was significant and limited the scope of Article 142.

[115] 1998 INSC 183; (1998) 4 SCC 409 [5JB].

> *salutary purposes of the article viz. to do complete justice between the parties. […]*
>
> (emphasis supplied)

122. This Court in a recent Constitution Bench decision *Shilpa Sailesh v. Varun Sreenivasan*[116], concluded the position of law on Article 142 as follows:

> *"**(i) The scope and ambit of power and jurisdiction of this Court under Article 142(1) of the Constitution of India***
>
> *74. This question as to the power and jurisdiction of this Court under Article 142(1) of the Constitution of India is answered in terms of paras 9 to 21, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'."*
>
> (emphasis supplied)

123. Much emphasis has been placed on *A.G. Perarivalan v. State of T.N.*[117] in the judgment of *State of Tamil Nadu* (supra) to arrive at the conclusion that inexplicable delay on the count of the Governor in exercising his function under Article 200, is both justiciable and that on account of such unexplained delay, the power under Article 142 can be deployed to substitute the Governor's actions with a judicial order. This line of reasoning has also been adopted by the Counsel opposing the reference. We find this approach to be erroneous for the following reasons: *Firstly*, the decision in *A.G. Perarivalan* (supra) was tendered in the context of Article 161 of the Constitution, dealing with the executive power of pardon. *Secondly,* this Court came to the conclusion that

[116] 2023 INSC 468; (2023) 14 SCC 231 [5JB].
[117] 2022 INSC 588; (2023) 8 SCC 257 [3JB].

the Governor is bound by the aid and advice of the Council of Ministers in this regard, and advice having been so tendered after an inexplicable delay of over 2 years, is subject to judicial review. The conclusions of this Court in *A.G. Perarivalan* (supra) at paragraphs 38.1 to 38.3, and 38.6 are to be noticed in this regard:

> *"38.1. The law laid down by a catena of judgments of this Court is well settled that the advice of the State Cabinet is binding on the Governor in the exercise of his powers under Article 161 of the Constitution.*
>
> *38.2. Non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review by this Court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Governor to this effect.*
>
> *38.3. The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two-and-a-half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, whereby "the Governor is but a shorthand expression for the State Government" as observed by this Court [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112] .*
>
> *[…]*
>
> *38.6. Taking into account the appellant's prolonged period of incarceration, his satisfactory conduct in jail as well as during parole, chronic ailments from his medical records, his educational qualifications acquired during incarceration and the pendency of his petition under Article 161 for two-and-a-half years after the recommendation of the State Cabinet, we do not consider it fit to remand the matter for the Governor's consideration. In exercise of our power under Article 142 of the Constitution, we direct that the appellant is deemed to have served the sentence in connection with Crime No. 329 of 1991. The appellant, who is already on bail, is set at liberty forthwith. His bail bonds are cancelled."*

The relief that the Court in effect moulded is evident from the conclusion in paragraph 38.6 where it neither deemed a pardon, nor did it direct a pardon. It did, however, deem that the appellant had served his sentence towards Crime

No. 329/1991. What is significant is that this Court did not deem to pardon at the expiry of a timeline, nor did it fix any uniform, rigid and absolute timelines.

124. In our consideration, it is quite a leap of constitutional logic to use the decision in *A.G. Perarivalan* (supra), as a springboard for prescribing universal and absolute timelines on Governors and the President for the exercise of their functions under Articles 200 and 201 respectively. Even more so given that the expiry of such timelines, was used as the path that paved the way to judicial review of functions under Articles 200 and 201.

125. Moreover, when we have already held that the Governor is not bound by the aid and advice of the Council of Ministers in exercise of his functions under Article 200, the prescription of the timelines as is delineated in paragraphs 260-261 of *State of Tamil Nadu* (supra) apart from being a functional and absolute restraint on the Governor and President, also suffers from legal infirmities. Firstly, it prescribes a one-size-fits-all timeline, dehors the nature of the Bill and complexity of the issue. *Secondly*, at the expiry of this one-size-fits all timeline, it creates a right for judicial redressal, *prima facie* rendering the act of the Governor or President suspect upon the expiry of such timeline. Both these consequences, in our considered view, were uncalled for as they were neither envisioned when we adopted the Constitution, nor they are borne out of our constitutional practice.

126. The judgment in *State of Tamil Nadu* (supra), arrives at the conclusion that the timelines devised by it are not being incorporated into the Constitution,

but are only tools[118] of judicial review for evaluating the exercise or non-exercise of functions of the Governor and the President. In other words, the Court comes to the conclusion that these specific timelines will only be used as a yardstick for judicial review and no further. It draws a distinction between incorporation of timelines into the Constitution, at the expiry of which, the natural consequence would have been 'deemed assent'. However, the Court in *State of Tamil Nadu* (supra), stated that the usage of timelines devised by it as merely tools of judicial review, would not result in 'deemed assent'. The following paragraphs from *State of Tamil Nadu* (supra), demonstrate how the Court sought to bring about this difference:

> *"250. Thus, it is important to take note of this very fine but pertinent distinction that the prescription of a time-limit by this Court into Article 200 of the Constitution does not fundamentally change the procedure which has been envisaged. While the reading in of a time-limit under Article 200 would have meant that there would be deemed assent upon failure of the Governor to comply with the said timeline, the prescription of a reasonable time period does not introduce any such mechanism or deeming fiction in Article 200.*
>
> *251. What emerges from the above is that the fine but pertinent distinction between the time-limits that are expressly prescribed and those that are judicially evolved is only that in the former the consequence of deemed assent emanates from the provision itself whereas in the latter there could be no such consequence except to the extent that the courts judicially reviewing the action or inaction can direct a decision to be taken within a time-bound manner, or in*

[118] "***249***. *Any time-limit in the exercise of powers in terms of Article 200 of the Constitution should not be construed as timelines laid within the edifice of the provision, rather should be understood as timelines that would serve as a lodestar for the purpose of exercise of judicial review by the courts, a benchmark tool to aid and enable the courts in ascertaining if any inaction or malfeasance has occasioned in the exercise of such powers. These timelines no doubt demand the earnest adherence by the Governor, however, these being nothing more than tools upon which scrutiny by judicial review is to be premised, remain as prescriptions within the realm of judicial review alone and do not transgress into the legislative bounds or amount to alteration of the text or authority of Article 200 of the Constitution. The reason why these timelines do not immolate the very fabric of Article 200 is because the said provision even with the infusion of these time-limits still remains markedly different from its counterpart provisions where such time-limits are legislatively prescribed. For instance, Article 75 of the Constitution of the Islamic Republic of Pakistan or Article I, Section 7 of the US Constitution, where if no decision is taken within the stipulated time-limit by the President then the Bills are deemed to have been assented to*."

exceptional cases like the one at hand, deem the assent to have been granted under Article 142 of the Constitution, which we shall again discuss in the later parts of this judgment."

127. We are of the considered opinion that this is an artificial distinction without a difference. Although the Court attempted to draw a distinction between the two methods quoted above, what the Court in fact went ahead and did by invoking Article 142 of the Constitution, was to grant deemed assent, upon the expiry of the timelines so prescribed by it. In effect, this has erroneously opened the doors to a judicial remedy, purportedly under Article 142, that is contrary to the text of the Constitution.

128. We have no hesitation in concluding that deemed consent of the Governor, or President, under Article 200 or 201 at the expiry of a judicially set timeline, is virtually a takeover, and substitution, of the executive functions by the Judiciary, through judicial pronouncement, which is impermissible within the contours of our written Constitution.

IX. Justiciability of the functions exercised by the Governor and the President under Article 200 and Article 201 respectively

129. The present reference seeks categorical opinions as to the justiciability of the functions exercised by the Governor under Article 200 and that of the President under Article 201.

130. The judgment of this Court in *State of Tamil Nadu* (supra) is the first to hold that the exercise of functions under Articles 200 and 201 are justiciable. It,

thereafter, prescribes an elaborate regime delineating the nature and grounds for justiciability[119], which are not being extracted herein for the sake of brevity.

131. *State of Tamil Nadu* (supra) discusses the cases of *Kameshwar* (supra), *Hoechst* (supra), *Bharat Sevashram Sangh v. State of Gujarat*[120], *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*[121], and *B.K. Pavitra* (supra) wherein specific arguments were raised on the question of whether the assent of the President and/or Governor, was justiciable. Despite the explicit ratio in these cases (discussed further below), the Court in *State of Tamil Nadu* (supra) distinguished their findings or explained them on different counts[122], to conclude that the assent of the Governor or President, is, in fact, justiciable. Holding the grant or withholding of such assent to be legislative procedure, and a part of the legislative process, it was held to be amenable to judicial scrutiny.[123] We find that an interpretive exercise and discussion of these precedents is warranted.

132. In *Kameshwar* (supra), a Constitution Bench concluded that the assent of the President on a Bill reserved for his consideration in the context of Article 31-A, was not justiciable (M.C. Mahajan, J.):

> *"266. […] The difference is that persons whose properties fall within the definition of the expression "estate" in Article 31-A are deprived of their remedy under Article 32 of the Constitution and the President has been constituted the sole judge of deciding whether*

[119] Discussion from paragraph 361 onwards, with conclusions at paragraphs 386-387.
[120] 1986 INSC 174; (1986) 4 SCC 51 [2JB].
[121] 2002 INSC 406; (2002) 8 SCC 182 [5JB].
[122] See paragraphs 381-382, and specifically for each judgment – paragraphs 361 (*Kameshwar Singh*), 363 (*Hoechst*), 364 (*Bharat Sevashram Sangh*), 367-368 (*B.K. Pavitra*), 373-374, 378 and 381 (*Kaiser-i-Hind*) in *State of Tamil Nadu* (supra).
[123] *State of Tamil Nadu* (supra), see paragraphs 381-383 (Article 200), and 384-385 (on Article 201).

a State law acquiring estates under compulsory power has or has not complied with the provisions of Article 31(2). The validity of the law in those cases depends on the subjective opinion of the President and is not justiciable. Once the assent is given, the law is taken to have complied with the provisions of Article 31(2)."

(emphasis supplied)

133. In *Hoechst* (supra), a 3-Judge Bench of this Court was considering a challenge to a legislation on the ground that despite its subject matter being in List II, the Governor had no opportunity to reserve the said Bill for the President's consideration. In this context, the President's assent granted had been challenged, and this Court held:

"86. There is no provision in the Constitution which lays down that a Bill which has been assented to by the President would be ineffective as an Act if there was no compelling necessity for the Governor to reserve it for the assent of the President. A Bill which attracts Article 254(2) or Article 304(b) where it is introduced or moved in the Legislative Assembly of a State without the previous sanction of the President or which attracted Article 31(3) as it was then in force, or falling under the second proviso to Article 200 has necessarily to be reserved for the consideration of the President. There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts. In the instant case, the Finance Bill which ultimately became the Act in question was a consolidating Act relating to different subjects and perhaps the Governor felt that it was necessary to reserve it for the assent of the President. We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent."

(emphasis supplied)

134. In *Bharat Sevashram Sangh* (supra), this Court faced a challenge to the validity of a legislation on the ground that the President had tendered partial or conditional assent, and for this purpose, the material on record before the President was also looked into. The Court observed as follows:

> *"6. The contention relating to the alleged invalidity of the assent given by the President is formulated by the learned counsel for the petitioners/appellants thus. The Bill was passed by the legislature of the State on February 15, 1973 and it was immediately thereafter forwarded to the Governor for his assent. The Governor reserved the Bill for the consideration of the President under Article 200 of the Constitution and the subsequent events according to the learned counsel showed that the President did not either give his assent or withhold his assent as contemplated under Article 201 of the Constitution but he gave a qualified or conditional assent which was not contemplated under Article 201 of the Constitution. It is argued that since the President did not give absolute assent but only a qualified or conditional assent the Bill in question had not become a law. In reply to these averments in the petitions the Under Secretary to the Government of Gujarat, Education Department has stated in his counter-affidavit that the Bill was presented to the Governor of Gujarat after it was passed by the Assembly. The Governor of Gujarat reserved the Bill for the consideration of the President under Article 200 of the Constitution since he felt that in view of clause 33 of the Bill which provided for taking over of the management of a school for a limited period in public interest it was necessary to reserve the Bill for the consideration of the President. Accordingly the Bill was referred to the President. At the meeting held in the Ministry of Home Affairs, Government of India on August 3, 1973 to discuss the Bill it was suggested by the representatives of the Central Government that the provisions of the Bill which did not exclude institutions established or administered by the minorities from their scope were repugnant to Article 30 of the Constitution and therefore the Bill should be suitably amended. It was also suggested to the representatives of the State Government that it would be better to carry out the requisite amendments by promulgating an ordinance. Accordingly the draft of the ordinance which was ultimately promulgated as Ordinance 6 of 1973 was forwarded for the instructions of the President under Article 213(1) of the Constitution. Thereafter the draft of the Ordinance and the Bill were both considered by the President and he assented to the said Bill and issued instructions as required by the proviso to Article 213 of the Constitution for the promulgation of the said Ordinance on September 28, 1973. Accordingly the said Bill became law on its publication on the very same day. The Ordinance was issued on September 29, 1973. In the circumstances it cannot be said that the*

> *assent which was given by the President was conditional. The records relating to the above proceedings were also made available to the court. On going through the material placed before us we are satisfied that the President had given assent to the Act and it is not correct to say that it was a qualified assent. The Act which was duly published in the official Gazette contains the recital that the said Act had received the assent of the President on September 28, 1973.[…] Moreover questions relating to the fact whether assent is given by the Governor or the President cannot be agitated also in this manner. In Hoechst Pharmaceuticals Ltd. v. State of Bihar [(1983) 4 SCC 45: 1983 SCC (Tax) 248 : AIR 1983 SC 1019 : (1983) 3 SCR 130] this Court has observed at page 194 thus : (SCC p. 101, para 86)*
>
> *"We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent."*
>
> *The above contention relating to the assent given by the President is, therefore, rejected."*
>
> (emphasis supplied)

It is significant to point out that this Court in *State of Tamil Nadu* (supra) read the same extract of the judgment in *Bharat Sevashram Sangh* (supra) and observed that the case in *Bharat Sevashram Sangh* (supra) had not arrived at its conclusions on account of non-justiciability, but rather had been decided on the facts and circumstances of that case, based on the material on record.[124] We are unable to read this precedent in the manner so indicated. The reference to and approval of the extract from *Hoechst* (supra) (emphasis supplied above) clearly demonstrates that there was no deviation from its reasoning. Conspicuously, the cross-reference to *Hoechst* (supra) at the end of paragraph 6 of *Bharat Sevashram Sangh* (supra), does not form a part of the extract included in *State of Tamil Nadu* (supra).[125]

[124] *State of Tamil Nadu* (supra), paragraph 364 and 365.
[125] *State of Tamil Nadu* (supra), paragraph 365.

135. In *B. K. Pavitra* (supra), a Bill[126] had been reserved for the consideration of the President, who had thereafter granted assent. It was held that this assent granted by the President, was not justiciable as the requirements of Article 201 had been met. Following the decision in *Hoechst* (supra), it was held by a Division Bench of this Court that judicial scrutiny over the Governor's discharge of his function under Article 200, was not justiciable:

> *"71. […] By its very nature, it would not be possible for this Court to reflect upon the situations in which the power under Article 200 can be exercised. This was noticed in the judgment of this Court in Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] . Excluding it from judicial scrutiny, the Court held: (SCC pp. 100-101, para 86)*
>
> *[…]*
>
> *72.Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] is an authority for the proposition that the assent of the President is non-justiciable. Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] also lays down that even if, as it turns out, it was not necessary for the Governor to reserve a Bill for the consideration of the President, yet if it was reserved for and received the assent of the President, the law as enacted cannot be regarded as unconstitutional for want of "proper" assent.*
>
> *73. The above decisions essentially answer the submissions which were urged by Dr Dhavan. The law as propounded in the line of precedents adverted to above must negate the submissions which were urged on behalf of the petitioners. Once the Bill (which led to the Reservation Act, 2018) was reserved by the Governor for the consideration of the President, it was for the President to either grant or withhold assent to the Bill. The President having assented to the Bill, the requirements of Article 201 were fulfilled. The validity of the assent by the President is non-justiciable.[…]"*
>
> (emphasis supplied)

136. In *Kaiser-e-Hind* (supra), a Constitution Bench of this Court considered the scope of Presidential assent to a Bill that was reserved for his consideration

[126] Which led to the Reservation Act, 2018.

under Article 254(2) on the ground of repugnancy. Concluding that such assent was limited to the aspect as proposed by the State Government, and not a blanket assent for all earlier laws, the Court still held that the merits or correctness of such assent granted, could not be subjected to judicial review:

> *"25. In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by Parliament, there is no question of deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the record, for which assent was sought, would not mean that the Court is deciding whether the assent is rightly, wrongly or erroneously granted. The consideration by the Court is limited to the extent that whether the State has sought assent qua particular earlier law or laws made by Parliament prevailing in the State or it has sought general assent. In such case, the Court is not required to decide the validity of the "assent" granted by the President. In the present case, the assent was given after considering the extent and nature of repugnancy between the Bombay Rent Act and the Transfer of Property Act as well as the Presidency Small Cause Courts Act. Therefore, it would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by Parliament for which no assent was sought for nor which was reserved for the consideration of the President.*
>
> *27. In this case, we have made it clear that we are not considering the question that the assent of the President was rightly or wrongly given. We are also not considering the question that — whether "assent" given without considering the extent and the nature of the repugnancy should be taken as no assent at all[…]*
>
> *29. We further make it clear that granting of assent under Article 254(2) is not exercise of legislative power of the President such as contemplated under Article 123 but is part of the legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court."*
>
> (emphasis supplied)

Notably, paragraph 27 of *Kaiser-i-Hind* (supra) does not find mention in the reasoning of *State of Tamil Nadu* (supra).

137. The decisions in *Hoechst Pharmaceuticals* (supra), and *B.K. Pavitra* (supra) both arose from a situation wherein grant of assent was specifically challenged, unlike the case in *State of Tamil Nadu* (supra) where in fact, this question did not arise. Pertinently, the various decisions discussed in the foregoing paragraphs were of larger bench strength (*B.K. Pavitra* being a coordinate bench) as compared to in *State of Tamil Nadu* (supra) and explicitly held that a merits-review or the correctness of the assent granted by the President was not within the purview of permissible judicial scrutiny. The decision in *Kaiser-i-Hind* (supra), holds that the President must be informed of the grounds on which the Governor is reserving the Bill for his consideration on the issue of repugnancy. It further comes to a definite conclusion in paragraphs 25 and 27, that this was not to mean that the discharge of powers of the President under Article 201 is justiciable. The ratio in this case has been turned on its head in *State of Tamil Nadu* (supra) to arrive at its conclusion. We are of the considered opinion that the Court in *State of Tamil Nadu* (supra) was bound by these earlier decisions, and the discharge of function by the Governor and President under Articles 200 and 201 respectively is thus, non-justiciable.

138. Beyond judicial precedent as well, we are unable to endorse the view advanced in *State of Tamil Nadu* (supra). In light of the opinion that we have tendered in the other questions above, since the Governor cannot withhold assent simpliciter, the only options he has are to initiate the dialogic process under Article 200 – either through returning the Bill to the Legislature for reconsideration or reserving it for the President's assent, who in turn under

Article 201, may choose to return the Bill with a message to the Legislature as well. The initiation of a dialogic process where other constitutional functionaries are consulted before the Governor or President takes a decision on whether the Bill must be assented to or not, is not a justiciable act in itself.

139. We have emphasized that the dialogic process is a part of the system of checks and balances, and the federal system that our Constitution envisages. The nature of the dialogic process contemplated under Articles 200 and 201 is such that it is *advisory, persuasive, deliberative, mediative,* and *consultative*. It stands at a markedly different position from the discharge of an adjudicatory function, or a definitive exercise of executive power – both of which are subject to judicial review. The discharge of functions under Articles 200 and 201, however, is simply the initiation of a dialogic process, which cannot be the subject of judicial review.

140. Under the Court's formulation in *State of Tamil Nadu* (supra), each of the three options - assent, reservation and return of the Bill – become justiciable. We find that such a conclusion belies logic. Taking this line of reasoning further, if the reservation of a Bill, or withholding and returning it to the Legislature, is justiciable, then the grant of assent too, would necessarily have to be subject to judicial review. This opens another front to challenge a Bill, and the resulting legislation. Suppose for instance, that the Legislature passes a Bill, and the Governor accords assent under Article 200. Apart from the grounds taken to impugn the validity of the resulting Act, the grant of assent by the Governor

itself, can become a ground for challenge. Those who bring such a challenge to Court, can effectively challenge the substantive grant of the Governor's assent on merits, arguing instead that it ought to have been reserved for the President's consideration, or sent back with certain comments. This also throws up the question of *who* can make such a challenge to the assent granted by the Governor.

141. The most drastic consequence of accepting that assent, reservation or return can be challenged, is that in any of the formulations of this Court in *State of Tamil Nadu* (supra), it is not the enactment which will be brought for review of the Court, but the Bill which will be subjected to judicial review. In other words, to determine whether a Bill has been correctly accorded assent or not, the primary document brought before the Court's consideration will be the text of the Bill, anterior to the stage of it becoming a law.

142. To appreciate this line of logic, few illustrative examples will provide clarity. Consider for instance, if the Bill has been reserved for the President's consideration on account of repugnancy, the Court will have to tender a finding specifically on whether the Bill is repugnant to any law so indicated by the Governor, and consequently whether the Governor had rightly reserved the same. Similarly, in a situation where the Governor was to reserve a Bill under the second proviso of Article 200, and such action of the Governor is challenged in Court – the said Court will have to scrutinize specific provisions of the Bill to ascertain whether they affect the powers of the High Court, and therefore,

whether such reservation of the Bill for the President's consideration is justified. In this manner, the Court's jurisdiction would be invoked to render a finding and specifically adjudicate upon whether various provisions of Bills in question merit consideration of the President, or reconsideration by the Legislature.

143. The People's will expressed through the Legislative Branch is only definitive and conclusive, upon receiving the assent of the Governor, or President, as the case may be. This is not an empty formality. It is only such a definitive expression of legislative will, that is subject to judicial review. When Article 13, 245, and 246 employ the word 'law' – in all these cases *law* means legislation that is enacted in accordance with the Constitution.

144. Therefore, the judicial review of a Bill, that is anterior to its enactment as law, is unheard of and unfathomable in our constitutional practice and history. Judicial review of a legislation is premised on the fact that it will be considered by the Court, only after it has been made into law – i.e., assented by the Governor or President as the case may be, and brought into force. It is this judicial review over legislation that our constitutionalism envisages, and this particular form is an essential feature of our basic structure.

145. The Court in sub-para (1) and (2) of paragraph 456.24 of *State of Tamil Nadu* (supra) lays out five categories of instances wherein the Governor's act of reserving a Bill for consideration of the President can be assailed by the State Government before the High Court, and three grounds wherein the President's choice to withhold assent, can be similarly challenged before this Court. These

grounds include – when a Bill is reserved under the second proviso to Article 200, when the Bill attracts any provision that requires the President's assent as a pre-requisite for proper enactment and enforcement of the law, where the Bill imperils democracy or democratic principles, when the Governor is personally dissatisfied or for political expediency, or to challenge the Governor's inaction upon being presented a Bill under Article 200. With regards to the President, the grounds identified include withholding assent in an arbitrary or mala fide manner, when the Bill is reserved as being patently unconstitutional, or challenging the President's inaction. As per the framework contained in the judgment, specific redressal is possible through court intervention in each of these scenarios.

146. The fundamental flaw in this line of reasoning that culminates in these categories of 'permissible grounds' for challenge, is the erroneous presumption that the Courts may sit in review over Bills, that are not yet enacted as law. This would have the effect of Courts supplanting the wisdom, and considerations of the Governor and President - who are constitutional authorities vested with constitutional obligations, in exercise of the court's power of judicial review. We are of the considered opinion that to permit such a reading of the Constitution, would be to destroy the doctrine of separation of powers – which as elaborated above in our discussion on 'deemed assent'– is an essential feature of our Constitution. Designed with a system of checks and balances at its core, the constitutional text equally preserves against overreach and supplanting of the powers and functions that are carefully distributed across the three organs – the

Executive, Legislature and Judiciary. There is no denying, that judicial review too, is a part of the basic structure of the Constitution of India. This judicial review, however, is not an unbridled scope that can negate or destroy the separation of powers doctrine. Allowing the judiciary to meddle in the legislative procedure (as so termed in *Kaiser-i-Hind*), at the stage of the Governor initiating a dialogic process as contained in Articles 200 and 201, would be to shatter the permeable walls that maintain this separation of powers.

147. Looked at from another perspective, the sanctity of the legislative process afforded by the Constitution must be protected and allowed to operate in its entirety. The Court cannot interfere, in the midst of that process before it is even concluded, and especially at the stage where the Governor is empowered to initiate a dialogic process. The provisions of Articles 200 and 201 offer a complete Code, for how Bills are to be dealt with, upon being passed by the House(s). The way we practice our constitutionalism does not allow for judicial consideration of Bills at this preliminary stage. It is reiterated that to allow this would be to effectively supplant the role of the Legislature, and the checks and balances placed squarely within its responsibility.

148. In view of the above discussion, we find no reason to deviate from the binding decisions of this Court and for the additional reasoning stated above, are of the considered view that the discharge of the Governor's or President's functions under Articles 200 and 201 respectively, is not justiciable.

149. Further, we are of the firm view that judicial review scrutiny and the jurisdiction of courts can be invoked only once the Bill becomes law. It is unfathomable, keeping in mind the way in which we practice our constitutionalism in India, to suggest that Bills can be brought to Court and adjudicated upon (rather than opined upon under Article 143). The only limited scope and known constitutional route through which the Judiciary can look into a Bill, is if the President, in exercise of Article 143, referred such a Bill to the Supreme Court to opine on, in discharge of its advisory jurisdiction. Under Article 143, it is the Executive through the President, that seeks an opinion of this Court. This is markedly different from examining a challenge *on merits* whether the Governor has reserved or withheld and returned the said Bill justifiably so.

150. The same logic applies to the President's assent under Article 201 as well. Consider for instance, a Bill that is reserved for the President's consideration, which is thereafter assented to by him. Grounds for challenge of such an Act, would effectively include whether the President had rightly considered the entire conspectus of issues or concerns involved, thus allowing the judiciary to supplant the wisdom, and functions of the President.

151. For the above reasons, the second part of Question 9[127] of the present Presidential Reference, is answered accordingly, in the negative, i.e., it is

[127] Are the decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, justiciable at a stage anterior into the law coming into force? Is it permissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?

impermissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law – wherein discharge of its role under Article 143, is not 'judicial adjudication'.

152. It is also clarified that the President is not required to seek advice of this Court by way of reference under Article 143 on every occasion that a Bill is reserved for his consideration by the Governor, under Article 200. The President's subjective satisfaction is sufficient under Article 201. If for any extraneous reasons, the President so requires this Court to tender an opinion on a Bill, or specific aspects of it, a reference invoking the advisory jurisdiction under Article 143 always lies. The judgment in *State of Tamil Nadu* (supra) does not mandate reference under Article 143 but suggests it as a mechanism that the President can employ and must be read as so. It is clarified, however, that no such pre-requisite exists, when considering Bills reserved for the President's assent, whose subjective satisfaction is the only requirement. This in turn, should answer Question 8 of this Presidential Reference.

A. Limits of judicial intervention

153. The Courts cannot interfere in the procedure of a Bill's passage and embark on its merit review, as already observed earlier in this opinion. However, the consequent question that arises – as it did before this Court in *State of Tamil Nadu* (supra) – is what redressal lies, when no decision is forthcoming from the Governor, under Article 200? In other words, what relief is constitutionally permissible, when faced with inaction of the Governor under Article 200, thus

frustrating the legislative process and the will of the people, expressed through such a Bill that is left pending?

154. We have given the submissions on such a situation, our anxious consideration. To permit a reading of the Constitution that enables or even allows, unchecked discretion to potentially bring Bills passed in furtherance of the peoples' will, to a procedural impasse and frustrate lawmaking would be antithetical to the values and spirit of the Constitution. That the Governor enjoys discretion under various provisions, is no longer res integra. However, the question we are confronted with is whether the constitutional breadth of discretion extends to protecting an indefinite or prolonged inaction of the Governor under Article 200. We are of the considered opinion that while the merits of action taken by the Governor under Article 200 cannot be looked into by Courts – *inaction* that is prolonged, unexplained and indefinite, will certainly invite limited judicial scrutiny.

155. Each constitutional organ, or authority, cannot function by itself. The working of our constitutional scheme is premised on constitutional authorities – who are each assigned specific but inter-dependent roles – performing their duties, akin to cogs that keep a clock ticking. They depend on each other, to keep the Constitution humming, and thus, working. They are also constitutionally obligated, to offer checks-and-balances, for the other. Such a constitutional scheme, thus, abhors *inaction*. In other words, our constitutional scheme works, only if it is *worked*. It is one thing to say that one constitutional

organ will not substitute or supplant the wisdom or role of another constitutional authority, but completely another – to shy away from checks and balances on this pretext, when there is deliberate *inaction*.

156. The concept of accountability, and checks and balances, courses through the provisions of the Constitution. Thus, the Legislature which represents the people's will, is only effective, if the Governor *acts*, under Article 200. This is not to say that the Governor is merely a rubber stamp, between a Bill becoming an Act. There is value, in his consideration, and thus, choice exercised between the three options before him under Article 200. Thus, it is correct that the Court cannot supplant the wisdom of the Governor and enter a merits-review of this decision so taken. However, where the Governor chooses to *not act* under Article 200, resulting in prolonged pendency in Bills without initiating the dialogic process that the Constitution envisions, thus frustrating the outcome of the Legislature's functions and efforts – Constitutional Courts can exercise limited judicial review.

157. In *Aeltemesh Rein v. Union of India*[128], this Court was considering a writ petition that alleged inaction by the Union Government in bringing into force Section 30 of the Advocates Act, 1961, despite 25 years having elapsed since the Act had been passed. The principal defense of the Union was based on the decision in *A.K. Roy v. Union of India*[129], which held that no mandamus could

[128] 1988 INSC 203; (1988) 4 SCC 54 [2JB].
[129] 1981 INSC 210; (1982) 1 SCC 271 [5JB].

be issued to bring into force a Constitutional amendment. In that context, the Court observed as follows:

> *"6. […] But, we are of the view that this decision does not come in the way of this Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing Section 30 of the Act into force has arrived or not. Every discretionary power vested in the executive should be exercised in a just, reasonable and fair way. That is the essence of the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India. In several conferences and meetings of lawyers resolutions have been passed in the past requesting the Central Government to bring into force Section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether Section 30 of the Act should be brought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring Section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing circumstances are such that Section 30 of the Act should not be brought into force immediately it is a different matter. But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under Section 30 [sic Section 1(3)] of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney-General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above.*
>
> *7. We, therefore, issue a writ in the nature of mandamus to the Central Government to consider within a period of six months whether Section 30 of the Act should be brought into force or not…"*
>
> (emphasis supplied)

We find that this approach, to mitigate inaction within the Constitutional scheme, is fair and balanced.

158. The Courts are empowered to grant a form of a limited direction, to the Governor, to *take action*. The Court can after being satisfied from a perusal of

records on what has transpired can issue a limited direction to the Governor to *act* under Article 200, within a reasonable time limit, without making any observations on the merits of the exercise of discretion. It would thus, serve the purpose of asking the Governor to exercise his function under Article 200, rather than substituting his role.

159. The complexity of the Bill presented, emergent nature of the enactment, nature of consultative process undertaken, are a few illustrative factors that the Court will take into consideration while issuing a limited mandamus to take an appropriate step under Article 200. We clarify that this does not extend to the Court directing that one particular course of action will be employed by the Governor. There is no formulaic manner, or timeline, that the Courts by judicial order can establish. Not every case would lead the Court to issue an automatic direction to 'act', rather this limited direction would have to be measured based on appropriate circumstances. In this manner, this limited direction that the Court can issue, serves as a form of institutional accountability.

X. Article 361 and its interplay with judicial review of actions under Article 200

160. Another question specifically referred to this Court for opinion, is whether Article 361[130] serves as an absolute bar to judicial review in relation to the actions of a Governor under Article 200 of the Constitution.

[130] "***361. Protection of President and Governors and Rajpramukhs***
(1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

161. Counsels appearing in support of the reference, argued that Article 361 was already a narrower version of Section 306[131] of the Government of India Act, 1935, as the former only applies to the President and Governor, while they remain in office. Counsel submitted that the Governor's decision to exercise options under Article 200 was an official act of a high constitutional functionary who enjoys absolute personal immunity from being "*answerable to any court*" for acts "*done or purported to be done*" in the exercise of office. Article 361 was characterized as a 'constitutional insulation' against judicial intervention of *any* kind – manner, reasons, or timing of the choice so exercised under Article 200, thus precluding coercive relief or process that would require the Governor to explain or modify any such choice made. Heavy reliance was placed on this

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Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:
Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.
(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.
(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.
(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims."

[131] "***306. Protection of Governor-General, Governor or Secretary of State***
(1) No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General, against the Governor of a Province, or against the Secretary of State, whether in a personal capacity or otherwise, and, except with the sanction of His Majesty in Council, no proceedings whatsoever shall lie in any court in India against any person who has been the Governor-General, the Governor of a Province, or the Secretary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof:
Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Federation, a Province, or the Secretary of State such proceedings as are mentioned in chapter III of Part VII of this Act.
(2) The provisions of the preceding subsection shall apply in relation to His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States as they apply in relation to the Governor-General."

Court's Constitution Bench decision in *Rameshwar Prasad (VI) v. Union of India*[132]. Counsel also referred to *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly* (order[133] dated 01.02.2016), *B. R. Kapur v. State of T.N.*[134] and *Anindita v. Pranab Kumar Mukherjee*[135].

162. Counsel opposing the reference, too, relied on the decision in *Rameshwar Prasad (VI)* (supra) and submitted that the President and Governor, are both personally immune and the Courts are restrained from issuing any direction for even filing an affidavit, to assist the Court. This immunity under Article 361, however, does not preclude the Court from examining the validity of actions (as most are done under aid and advice of the Council of Ministers), including on the ground of mala fides. Further, even where personal mala fides are alleged and established, it was argued that the Government could not shield itself from answering, on account of immunity under Article 361. Reference was also made to *State of Tamil Nadu* (supra) where it was held that the decision in *Rameshwar Prasad* (supra) clarified that "*the immunity enshrined in Article 361 of the Constitution does not preclude or prohibit the courts in any manner from looking into the actions of the Governor which by necessary implication would include his actions under Article 200 as well*".

[132] 2006 INSC 42; (2006) 2 SCC 1 [5JB].
[133] 2016 SCC OnLine SC 94.
[134] 2001 INSC 453; (2001) 7 SCC 231 [5JB].
[135] (2018) 15 SCC 628 [2JB].

163. We have considered these submissions and are of the firm view that the Constitution Bench in *Rameshwar Prasad* (supra) offers a complete answer to the question referred to this Court. In that case, it was held that Article 361 affords to the Governor complete immunity, such that on the one hand is not answerable to any court for exercise and performance of powers and duties of his office, or for any act done or purporting to be done in exercise of his powers and duties, but on the other hand does not preclude the Court from examining the *validity* of the action, including on the ground of mala fides.[136] The relevant extracts are as follows:

> *"**What is the scope of Article 361 granting immunity to the Governor**?*
>
> *170. […] We accepted the submissions made on behalf of the respondents that in view of this article, notice could not be issued to the Governor, at the same time, further noticing that the immunity granted does not affect the power of this Court to judicially scrutinise attack made on the proclamation issued under Article 356(1) of the Constitution on the ground of mala fides or it being ultra vires and that it would be for the Government to satisfy the Court and adequately meet such ground of challenge. A mala fide act is wholly outside the scope of the power and has no existence in the eye of the law. We further held that the expression "purported to be done" in Article 361 does not cover acts which are mala fide or ultra vires and thus, the Government supporting the proclamation under Article 356(1) shall have to meet the challenge. The immunity granted under Article 361 does not mean that in the absence of the Governor, the grounds of mala fide or being ultra vires would not be examined by the Court. […].*
>
> *173. A plain reading of the aforesaid article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any court for the exercise and performance of their powers and duties. Most of the actions are taken on the aid and advice of the Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions. Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by the Union of India or the State, as*

[136] *Rameshwar Prasad* (supra), paragraph 179.

> *the case may be. Even in cases where personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made. Article 361 does not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to the President or the Governor for even filing of affidavit to assist the Court. Filing of an affidavit on one's own volition is one thing than the issue of direction by the Court to file an affidavit. The personal immunity under Article 361(1) is complete and, therefore, there is no question of the President or the Governor being made answerable to the Court in respect of even charges of mala fides.*
>
> *[…]*
>
> *179. The position in law, therefore, is that the Governor enjoys complete immunity. The Governor is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. The immunity granted by Article 361(1) does not, however, take away the power of the Court to examine the validity of the action including on the ground of mala fides."*
>
> (emphasis supplied)

164. The decision in *Rameshwar Prasad* (supra) was in the context of invocation of Presidential Rule, which was held to be a justiciable act. In the context of Article 200, however, the constitutional choice made by the Governor is not justiciable and a merit review is unavailable in judicial proceedings. However, as we have held above, this Court can always take cognizance of inaction and for that limited purpose, a direction can be issued asking the Governor to exercise his constitutional choice within a reasonable period of time. This limited judicial review, cannot be overcome on the pretext of Article 361, which offers personal immunity to the Governor. The constitutional office

of the Governor is definitely subject to the jurisdiction of the court, to prevent prolonged and evasive constitutional inaction.

XI. Opinion of the Court on the Presidential Reference.

165. In light of our findings and observations above, we deem it appropriate to summarise our conclusions on this Presidential Reference:

165.1 The Governor has three constitutional options before him, under Article 200, namely - to assent, reserve the Bill for the consideration of the President, or withhold assent *and* return the Bill to the Legislature with comments. The first proviso to Article 200 is bound to the substantive part of the provision, and restricts the existing options, rather than offering a fourth option. Pertinently, the third option – to withhold assent and return with comments – is only available to the Governor when it is not a Money Bill.

165.2 The Governor enjoys discretion in choosing from these three constitutional options and is not bound by the aid and advice of the Council of Ministers, while exercising his function under Article 200.

165.3 The discharge of the Governor's function under Article 200, is not justiciable. The Court cannot enter into a merits review of the decision so taken. However, in glaring circumstances of inaction that is prolonged, unexplained, and indefinite – the Court can issue a limited mandamus for the Governor to discharge his function

under Article 200 within a reasonable time period, without making any observations on the merits of the exercise of his discretion.

165.4 Article 361 of the Constitution is an absolute bar on judicial review in relation to personally subjecting the Governor to judicial proceedings. However, it cannot be relied upon to negate the limited scope of judicial review that this Court is empowered to exercise in situations of prolonged inaction by the Governor under Article 200. It is clarified that while the Governor continues to enjoy personal immunity, the constitutional office of the Governor is subject to the jurisdiction of this court.

165.5 In the absence of constitutionally prescribed time limits, and the manner of exercise of power by the Governor, it would not be appropriate for this Court to judicially prescribe timelines for the exercise of powers under Article 200.

165.6 For similar reasoning as held with respect to the Governor, the President's assent under Article 201 too, is not justiciable.

165.7 For the same reasons as indicated in the context of the Governor under Article 200, it is clarified that the President, too, cannot be bound by judicially prescribed timelines in the discharge of functions under Article 201.

165.8 In our constitutional scheme, the President is not required to seek advice of this Court by way of reference under Article 143, every time a Governor reserves a Bill for the President's assent. The

subjective satisfaction of the President is sufficient. If there is a lack of clarity, or the President so requires advice of this Court on a Bill, it may be referred under Article 143, as it has been done on numerous previous occasions.

165.9 The decisions of the Governor and President under Articles 200 and 201 respectively, are not justiciable at a stage anterior into the law coming into force. It is impermissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law. Pertinently, discharge of its role under Article 143, does not constitute 'judicial adjudication'.

165.10 The exercise of constitutional powers and the orders of the President/Governor cannot be substituted in any manner under Article 142, and we hereby clarify that the Constitution, specifically Article 142 even, does not allow for the concept of 'deemed assent' of Bills.

165.11 Question 11 is answered in accordance with our opinion tendered on Question 10, i.e., there is no question of a law made by the State Legislature coming into force without assent of the Governor under Article 200. The Governor's legislative role under Article 200 cannot be supplanted by another constitutional authority.

165.12 We have already indicated in our opinion, that Question 12 relating to the Article 145(3) and the composition of benches in this Court

that hear cases of constitutional importance is irrelevant to the functional nature of this reference, and is returned unanswered.

165.13 We have also indicated in our opinion that Question 13 concerning the power under Article 142 is overly broad, and not possible to answer in a definitive manner. Our opinion on the scope of Article 142 in the context of the functions of the Governor and President has already been answered as a part of Question 10.

165.14 Question 14 – pertaining to this Court's jurisdiction to resolve disputes between the Union and State Governments outside of Article 131 – is also found to be irrelevant to the functional nature of the reference and hence returned unanswered.

……....CJI
[B.R. GAVAI]

……....J.
[SURYA KANT]

……....J.
[VIKRAM NATH]

……....J.
[PAMIDIGHANTAM SRI NARASIMHA]

……....J.
[ATUL S. CHANDURKAR]

NEW DELHI;
NOVEMBER 20, 2025