

Defining Constitutional Boundaries in the
Presidential Reference to the Supreme Court of India

Report



*A report in the matter of Assent, Withholding, and Reservation of Bills
by the Governor and the President*



AUGUST 2025



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The Centre gratefully acknowledges the contributions of the following researchers from NLU Jodhpur: Aabhas N. Chaturvedi, Gurmehar S. Bedi, Hitanshi Jain, Kairav Shah, Kashish Saxena, Manishka Baweja, Mayank Sinha, Mohak Dua, Riddhiman Chandra Agarwal, Sarah Unhelkar, Suhana, Taniya Garg, Vaibhav Pratap Singh and Vihaan M. N, for their valuable information and analysis, source review and input to this report. Any errors, misrepresentations or inaccuracies remain the responsibility of the Centre, which welcomes feedback.

Design by Jade Lyngdoh, Centre for Policy.



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Summary and Scope

Under Article 143 of India's Constitution, the Hon'ble President of India has asked the Hon'ble Supreme Court of India for its advisory opinion on fourteen questions concerning a state Governor's role when a Bill arrives for assent from the state legislature.

This report offers its own perspective on those questions to assist the Supreme Court in interpreting the Governor's power to withhold assent, return a Bill for reconsideration, reserve it for the President's decision, or act without following the binding advice of a state's Council of Ministers.

It also examines whether and to what extent courts may review or even grant assent when the Governor or President fails to act, and whether the judiciary may exercise its constitutional discretion to prevent injustice in the face of unreasonable delay.

By analysing the Constitutional text, relevant precedents, and established parliamentary conventions, this report seeks to guide the Supreme Court in drawing clear lines between gubernatorial discretion, ministerial responsibility, and judicial oversight, thereby promoting a balanced distribution of authority within India's federal and democratic framework.

Key Issues

- 1** What are the Constitutional powers and limitations of the Governor under Article 200?
- 2** Are the decisions of the Governor and the President under Articles 200 and 201 subject to judicial review?
- 3** Can judicial orders regulate the exercise of Constitutional powers where timelines or procedures are not specified in the Constitution?
- 4** What is the scope of the Supreme Court's advisory and constitutional jurisdiction?
- 5** When does a State bill become law, and can courts intervene before that?
- 6** Can the Supreme Court exercise its discretionary powers under Article 142 to substitute the powers of the Governor or the President?

Introduction

On 13 May 2025, the Hon'ble President of India, Smt. Droupadi Murmu, invoked the advisory jurisdiction of the Supreme Court of India under Article 143 of the Constitution, seeking its opinion in the matter titled *Re: Assent, Withholding or Reservation of Bills by the Governor and the President of India*.

The Presidential Reference raises fourteen questions of significant Constitutional import, centering on the scope and limitations of the Governor's powers in relation to Bills passed by state legislatures. Specifically, the questions pertain to the Constitutional framework governing assent, withholding of assent, and reservation of Bills for the consideration of the President of India. They further engage with the delicate balance between the Governor's discretionary authority, the democratic mandate of the elected state legislature, and the foundational principles of federalism and parliamentary democracy.

Pursuant to the Presidential Reference, on 22 July 2025, the Supreme Court issued notices to the Union of India and all State Governments, inviting their responses on the Constitutional questions posed.

The issues under consideration implicate core Constitutional values, including representative democracy, rule of law, separation of powers, federalism, and the scope of judicial review.

Key Constitutional Provisions

The table below lists the key constitutional provisions relevant to the analysis.

Central Issue	Relevant Constitutional Provisions
The alternatives available when a Bill passed by the state legislature is presented to the Governor	Article 200
Examining the precise contours of gubernatorial discretion in relation to Article 200 of the Constitution of India	Articles 200 and 163
The role of the Council of Ministers and the binding nature of its advise to the Governor	Article 163
The role of the President when a Bill is reserved by the Governor for consideration of the President	Articles 200, 201, 31A, 31C, 254(2), 288(2), 360(4)(a)(ii)
Whether decisions taken by the Governor or President under Articles 200 and 201 are justiciable	Articles 142, 163(3), 361
Whether the absence of a specific timeline allows the Courts to stipulate a timeline within which action is needed	Articles 142, 163(3), 200, 201

Central Issue	Relevant Constitutional Provisions
Can judicial action be initiated directly against the Governor/President for inaction in assenting to Bills?	Article 361
Whether Courts can use Article 142 to substitute powers vested in the Governor/President	Article 142
Whether the requirement under Article 145(3) applies when deciding substantial Constitutional questions	Article 145(3)
Whether a State can invoke Article 32 in disputes involving Union-State relations instead of Article 131	Articles 131, 32
Whether a Bill can be considered “law in force” without Governor’s assent	Article 200
Scope and validity of timelines imposed by the judiciary in relation to Governor’s assent	Articles 142, 200, 201
Extent of Governor/President’s immunity and its impact on judicial remedies	Article 361
Whether concepts like “pocket veto” are consistent with Constitutional principles of representative democracy	Articles 200, 201 (read with basic structure and democratic principles)

Methodology

This Report adopts a systematic and jurisprudentially grounded approach, commencing with an examination of the Presidential Reference dated 13 May 2025 and identifying the pertinent constitutional provisions that frame the scope of inquiry.

It undertakes a detailed review of relevant judgments of the Supreme Court of India, the Debates of the Indian Constituent Assembly, and the recommendations contained in the Reports of the Sarkaria Commission¹ and the Punchhi Commission², with a view to elucidating the constitutional position on the matters referred in the Presidential Reference.

Each of the fourteen questions posed by the President of India has been meticulously mapped to the applicable constitutional provisions, binding judicial precedents, and established federal principles.

The analysis integrates textual interpretation, doctrinal analysis, and normative reasoning, while also assessing the broader implications for federalism and representative democracy. This multi-dimensional framework seeks to offer a comprehensive, balanced, and constitutionally faithful response to the questions raised in the reference.

Constitutional Analysis of the Questions Framed in the Presidential Reference

QUESTION ONE

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

Summary Statement

Under Article 200 of the Constitution of India, upon the presentation of a Bill duly passed by a state legislature, the Governor is constitutionally required to exercise one of three mutually exclusive options: to assent to the Bill, to withhold assent, or to reserve the Bill for the consideration of the President. The use of the expression “shall declare either” in the constitutional text unequivocally establishes the mandatory and exhaustive nature of these options.³

The constitutional framework does not contemplate any residual discretion beyond these enumerated actions. Inaction, delay, or the adoption of any alternative course of conduct not expressly provided for under Article 200 constitutes a deviation from the constitutional mandate and undermines the legislative process envisaged by the Constitution.

Detailed Analysis

On withholding assent and returning Bills passed by state legislature

While Article 200 empowers the Governor to withhold assent to a Bill, this authority is neither absolute nor temporally unconstrained. Where the Governor is of the view that the Bill merits reconsideration, the Constitution permits its return to the state legislature “as soon as possible.” This phrase, deliberately adopted by the Constituent Assembly in lieu of a fixed temporal mandate, signifies a constitutional expectation of urgency and reasonableness in the exercise of this function.⁴ The Governor’s decision must be informed by sound constitutional convention and exercised in consultation with the Council of Ministers, consistent with the principles of responsible government. Prolonged or indefinite withholding of assent would contravene both the text and spirit of Article 200, and undermine the democratic legitimacy of the legislative process.

Upon the state legislature re-passing the Bill, whether in its original form or with amendments, the Governor is Constitutionally obligated to accord assent.⁵ This mandate is unequivocally articulated in the first proviso to Article 200, which states that the “Governor shall not withhold assent therefrom.” The use of the imperative “shall” reflects a binding Constitutional directive, leaving no scope for discretion once the Legislature has reaffirmed its position. This provision reinforces the primacy of the elected state legislature in the law-making process and ensures that the Governor’s role remains consistent with the principles of Constitutional democracy and responsible governance.

This interpretation is supported by judicial pronouncements. In *Purushothaman Nambudiri v. State of Kerala*, the Supreme Court held that a successor legislature can reconsider a Bill returned by the Governor, implying that withholding assent does not terminate the legislative process.⁶ In *State of Punjab v. Principal Secretary to the Governor of Punjab* the Supreme Court affirmed that the Governor must act on the aid and advice of the Council of Ministers under Article 163.⁷ The Court also held that if a Bill is returned and passed again by the state legislature, the Governor’s assent becomes mandatory. It clarified that the word “may” in the first proviso refers only to the initial discretion to return the Bill for reconsideration, not to any further discretion thereafter.

Accordingly, the Governor’s power to withhold assent is inherently provisional and cannot operate as a veto over the legislative will. It is intended as a facilitative mechanism for reconsideration, not as an instrument of obstruction. Once the state legislature reaffirms its position, the Governor is bound to act in accordance with its decision, thereby preserving the primacy of the democratically elected body and upholding the Constitutional architecture of responsible governance.

On Reserving the Bill for Consideration of the President

Under the third constitutional course available to the Governor, a Bill may be reserved for the consideration of the President. However, this power is circumscribed and may be exercised only on specific Constitutional grounds.⁸

The Governor's discretion to act independently of the Council of Ministers arises solely when, in their considered opinion, the Bill, if enacted, would derogate from the powers of the High Court and thereby imperil the Constitutional status of the judiciary. This exception underscores the constitutional imperative to safeguard judicial independence and ensures that the Governor's discretionary authority is not exercised arbitrarily, but only in defence of foundational Constitutional principles. The contours of this limited discretionary power were authoritatively delineated by the Supreme Court in *Shamsher Singh v. State of Punjab*.⁹ The Court held that, save in narrowly defined circumstances expressly provided for in the Constitution, the Governor is constitutionally bound to act on the aid and advice of the Council of Ministers. Therefore, discretionary authority, where conferred, must be exercised strictly within the confines of Constitutional text and purpose, and cannot be expanded to undermine the principles of responsible government.

This foundational principle was reaffirmed in *State of Tamil Nadu v. Governor of Tamil Nadu*, wherein the Supreme Court reiterated the circumscribed nature of the Governor's discretionary powers.¹⁰ The Court underscored that any deviation from ministerial advice must be firmly rooted in express constitutional provisions, and emphasized the imperative of Constitutional discipline in the exercise of gubernatorial functions.

QUESTION TWO

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?

Summary Statement

Under the Constitutional scheme, the Governor occupies a largely ceremonial and advisory office and is ordinarily bound to act on the aid and advice of the Council of Ministers. Article 163(1) provides that the Governor shall, “in the exercise of his functions,” act in accordance with such advice, except where the Constitution expressly confers discretion.¹¹

Article 200 similarly regulates the Governor’s options in relation to Bills passed by the State Legislature. The power to grant assent, to withhold assent, or to return a Bill for reconsideration must be exercised in accordance with ministerial advice, save for the limited exception contained in the second proviso. That proviso permits the Governor, in specified circumstances, to reserve a Bill for the President’s consideration.

Thus, the Constitution does not envisage the Governor wielding broad, unfettered discretion. Rather, it designates him as the formal head of the state executive, whose decisions under Article 200 must conform to the collective responsibility of the Council of Ministers, except where a clear textual exception applies.

Detailed Analysis

Constituent Assembly debates illustrate that the framers intended the Governor’s discretionary authority to be narrowly confined, particularly in areas where the Constitution prescribes a specific course of action. They conceived the Governor’s office as a Constitutional intermediary between the Union and the State, not as an independent power centre or a parallel executive within the state administration.

Accordingly, the Constituent Assembly provided for a Governor appointed by the President rather than elected by popular vote.¹² This choice expressly rejected the Government of India Act, 1935 model, under which Governors exercised broad discretionary powers.¹³

Moreover, in adapting Section 75 of the Government of India Act, 1935¹⁴ into Article 200, the Constituent Assembly deliberately omitted the words “in his discretion.” This omission manifests the framers’ clear intent to subject the Governor’s functions under Article 200 to the aid and advice of the Council of Ministers, in accordance with Article 163(1). The Governor was thus conceived as a Constitutional adviser and guide, rather than as an instrument of Union interference in State governance.

This interpretation has been judicially affirmed. In *Shamsher Singh*, Justice Krishna Iyer held that, “save in the tiny strips covered by Articles 163(2), 371-A(1)(b) and (d), 371-A(2)(b) and (f), VI Schedule, para 9(2) [and VI Schedule, para 18(3), until omitted recently with effect from January 21, 1972], the Governor has no other discretionary power under the Constitution.” He further observed that even these narrowly defined powers are not left to the Governor’s “sweet will” but are “remote-controlled by the Union Ministry which is answerable to Parliament for those actions.”¹⁵

This position found reinforcement in *Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*¹⁶ and *M.P. Special Police Establishment v. State of Madhya Pradesh*¹⁷, where the Supreme Court unequivocally held that, in discharging all Constitutional functions, the Governor is bound by the aid and advice of the Council of Ministers. These rulings affirm that no discretion lies with the Governor under Article 200 except insofar as it is expressly conferred by the Constitution.

The only express exception under Article 200 is contained in its second proviso. Under that proviso, the Governor may, in his discretion, reserve a Bill for the President’s consideration if he is of the opinion that its enactment would so derogate from the High Court’s powers as to jeopardize the Constitutional role of the judiciary. In such circumstances, the Governor is not bound by the aid and advice of the Council of Ministers.

Beyond this textual exception, any exercise of discretion must be drawn by necessary implication from provisions that make Presidential assent a precondition for the validity of legislation or for the law to enjoy Constitutional immunity. Notable examples include Articles 31A and 31C (safeguarding land-reform and directive-principle legislation)¹⁸, Article 254(2) (resolving repugnancy with Union laws)¹⁹, Article 288(2) (granting taxation exemptions)²⁰, and Article 360(4)(a)(ii) (financial emergency measures)²¹. Although Article 200 itself does not expressly confer discretion in these cases, the Governor's referral of the Bill to the President is warranted to fulfill such Constitutional requirements.

In *M.P. Special Police Establishment*, the Supreme Court recognised that in rare and extraordinary circumstances, such as a complete breakdown of Constitutional machinery, the Governor's actions may fall outside the general rule of acting on the Council of Ministers' advice.²² These instances, however, are exceptional and do not form part of the ordinary operation of Article 200. Thereafter, in the *Tamil Nadu Governor* case, the Court affirmed that the Governor possesses no discretion in the exercise of his functions under Article 200 and must invariably act on ministerial advice.²³ It identified only three narrow exceptions:

1. Where the Bill falls within the second proviso to Article 200, permitting reservation for the President's consideration;
2. Where Presidential assent is a precondition for the Bill's validity or constitutional immunity—for example, under Articles 31A, 31C, 254(2), 288(2), or 360(4)(a)(ii); and
3. Where enactment of the Bill would so undermine constitutional governance or democratic governance, such as in extreme constitutional crises, as discussed in *M.P. Special Police Establishment*.

QUESTION THREE

Is the exercise of Constitutional discretion by the Governor under Article 200 of the Constitution of India justiciable?

Summary Statement

Under Article 200 of the Constitution, the Governor's discretion is severely curtailed and principally confined to the second proviso. As a general rule, the Governor must act on the aid and advice of the Council of Ministers when deciding whether to assent to a Bill, to withhold assent, or to return it for reconsideration. This reflects the Constitutional design, which treats the Governor as a nominal head rather than an independent authority. The sole explicit exception is the Governor's power to reserve a Bill for the President's consideration if, in the Governor's opinion, the Bill would derogate from the High Court's powers and thereby threaten the judiciary's Constitutional role. Outside this express provision, any discretionary authority may arise only by necessary implication in exceptional circumstances, such as under Articles 31A, 31C, 254(2), 288(2), and 360(4)(a)(ii), where Presidential assent is Constitutionally mandated. Even in these contexts, the Governor's discretion remains subject to the overarching requirement to act in accordance with ministerial advice, except where the Constitution explicitly provides otherwise.

Although the scope of discretion under Article 200 is narrow, it is not immune from judicial review. Courts retain the authority to examine whether the Governor has acted within the Constitutional framework and to ensure that any exercise of discretion is neither arbitrary nor irrational, nor inconsistent with Constitutional principles. Accordingly, while the Governor's margin of discretion is modest, its exercise must withstand scrutiny in accordance with the principles of constitutionalism and the rule of law.

Detailed Analysis

Whether this limited sphere of gubernatorial discretion is amenable to judicial review must be answered in the affirmative. Indian Constitutional jurisprudence uniformly affirms that all public power, including Constitutional prerogatives, remains subject to judicial scrutiny.

In *Shamsher Singh*, this Court emphasised that the discretionary powers of the President and the Governor are “only formal or constitutional heads” and must ordinarily be exercised on ministerial advice, their ambit being exceptionally narrow. In *Maru Ram v. Union of India*, Justice Krishna Iyer observed that Constitutional powers, including those under Articles 72 and 161, cannot be wielded arbitrarily but must conform to the “finer canons of Constitutionalism.”²⁵ Similarly, in *Indra Sawhney v. Union of India*, the Court held that even decisions bearing political overtones remain justiciable where they implicate fundamental rights or core Constitutional principles.²⁶

In Indian Constitutional jurisprudence, the proposition that discretionary actions by Constitutional authorities enjoy immunity from judicial review under the so-called “political question doctrine” has been emphatically rejected. Unlike the strict separation of powers that characterises the American system, India follows a model of functional separation, in which every branch and office derives its authority from, and remains accountable to, the Constitution.

In *State of Rajasthan v. Union of India*, this Court held that “merely because a question has a political complexion” does not render it non-justiciable so long as a Constitutional determination is required.²⁷ Similarly, in *Minerva Mills Ltd. v. Union of India*, the Court affirmed that the judiciary must not abdicate its role wherever a genuine Constitutional issue is engaged, irrespective of any political overtones.²⁸ Finally, in *B.P. Singhal v. Union of India*, it was categorically declared that the powers vested in the President and Governors are Constitutional, not prerogative, and are therefore fully amenable to judicial scrutiny.²⁹

Nonetheless, the Constitution recognises that the scope of judicial review is not boundless. Judicial review serves as a doctrinal and structural safeguard empowering courts to examine the legality of state action. By contrast, justiciability constitutes a functional threshold inquiry, assessing whether a particular dispute is appropriate for adjudication in view of factors such as the availability of evidence, the existence of judicially manageable standards, and potential institutional conflicts. Consequently, while all exercises of public power may, in principle, fall within the ambit of judicial review, not every exercise is justiciable.

In *A.K. Kaul v. Union of India*, this Court clarified that judicial review, though entrenched in the Constitution's basic structure, may not extend to dimensions of Constitutional power bereft of judicially manageable standards.³⁰ The Court emphasised that justiciability concerns the propriety of judicial intervention in a given matter, rather than the political nature of the question.

This reasoning finds parallel in the U.S. Supreme Court's landmark decision in *Baker v. Carr*, where six overlapping factors indicative of non-justiciability were identified³¹:

1. A textually demonstrable constitutional commitment of the issue to another political branch;
2. The absence of judicially manageable standards;
3. A need for non-judicial policy determinations;
4. The potential for disrespect to coordinate branches;
5. An unusual need for adherence to a political decision already made; and
6. The risk of embarrassment from conflicting pronouncements.

Indian courts, however, have uniformly rejected any blanket application of the so-called political question doctrine, affirming that the interpretation and enforcement of the Constitution remain exclusively within the judiciary's domain.

In the *Tamil Nadu Governor* case, the Supreme Court drew a clear distinction between judicial review and justiciability. Judicial review denotes the authority of courts to assess the constitutionality and legality of executive or legislative action, whereas justiciability addresses whether a given issue is capable of, or appropriate for, adjudication by the judiciary at all. At paragraph 358, the Court observed that the Governor's grant of assent to a Bill may lie beyond judicial determination, not because the act is immune from scrutiny, but because, in the absence of any stated reasons or recorded rationale, courts lack the factual or legal foundation necessary to conduct meaningful review.

By contrast, the withholding of assent or reservation of a Bill presents a different scenario. Such decisions must be accompanied by reasons, thereby supplying a concrete basis upon which courts can evaluate whether the Governor has complied with constitutional requirements. The presence of a reasoned record thus renders these actions plainly justiciable.

In paragraphs 360 and 361, the Court reinforced this analysis by reference to foreign authorities, such as *Galati v. Governor-General of Canada*³² and *Republic of Vanuatu v. Carcasses*³³, and to scholarly commentary from Anne Twomey and Justice Millhouse.³⁴ The Court underscored that, in a written Constitution, it is the substance and content of the decision, not the formal identity of the decision-maker, that determines justiciability. Accordingly, where Constitutional mandates are breached, the judiciary retains both the authority and the duty to intervene, even when the action under review involves high Constitutional functionaries such as the Governor.

QUESTION FOUR

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?

Summary Statement

Article 361 of the Constitution confers personal immunity on the Governor, declaring that the Governor shall not be answerable to any Court for the exercise and performance of the powers and duties of the Governor's office.³⁵ This immunity, however, is strictly personal and does not extend to shield the functional validity of the Governor's Constitutional acts under Article 200. Consequently, the Courts retain the power to subject gubernatorial decisions, whether granting, withholding, or reserving assent, to judicial review to ensure they are not arbitrary, mala fide, or in breach of Constitutional mandates. Personal immunity under Article 361 cannot be construed as a licence to frustrate legislative intent or violate Constitutional obligations. Judicial review, being integral to the basic structure of the Constitution, serves as an essential check on Constitutional supremacy, accountability, and democratic governance.

Detailed Analysis

Constitutional Position and Judicial Interpretation

The Governor's authority under Article 200 is Constitutional rather than prerogative. Unlike the Crown in the United Kingdom, whose prerogative powers are largely ceremonial and beyond judicial scrutiny³⁶, the Governor of an Indian state derives all powers from a written Constitution and remains firmly subject to its limitations. Any exercise of the Governor's functions under Article 200 must be supported by relevant material and conform to Constitutional mandates. Such actions cannot be arbitrary or mala fide, nor may they contravene the express injunctions of the Constitution.

In *B.P. Singhal v. Union of India*, the Supreme Court unequivocally held that the President and the Governors do not exercise prerogative powers but discharge Constitutional duties subject to judicial review.³⁷ In *A.G. Perarivalan v. State of Tamil Nadu*, the Court reaffirmed that inaction or unreasonable delay by a Governor in performing Constitutional functions cannot escape judicial scrutiny, and that such powers cannot be wielded in a manner impervious to review.³⁸ In *Maru Ram*, the Court emphasised that all public power must conform to Constitutional principles of rationality and non-arbitrariness.³⁹ Finally, in *A.K. Kaul v. Union of India*, the Court clarified that, absent an express exclusion, every exercise of Constitutional authority, including by the Governor, is amenable to judicial review.⁴⁰ Accordingly, any failure by the Governor to act “as soon as possible” under Article 200, or any unjustified withholding or reservation of assent, may be examined by the Courts to ensure compliance with Constitutional mandates.

Judicial Review and the Basic Structure Doctrine

Judicial review forms part of the Constitution’s basic structure and cannot be ousted merely because a matter carries political overtones. Courts are empowered to examine whether a Governor’s actions under Article 200, whether granting, withholding or reserving assent, have been exercised arbitrarily, mala fide, or in breach of Constitutional mandates.

In *Minerva Mills*, the Supreme Court reaffirmed that the “political colour” of an action does not oust the jurisdiction of the judiciary.⁴¹ Likewise, in *Indra Sawhney*, the Court held that the political-questions doctrine has only a narrow field of application in India and that courts retain the power to intervene when Constitutional interpretation is required.⁴² In *State of Rajasthan*, the Court emphasized that even measures of a political character must conform to Constitutional limits and remain subject to judicial scrutiny.⁴³ Finally, in *S.R. Bommai v. Union of India*, the Court declared justiciable those actions, such as the imposition of President’s Rule, that engage judicially manageable standards.⁴⁴ By parity of reasoning, gubernatorial actions under Article 200 must likewise lie open to judicial review wherever they disregard or distort Constitutional duties. Judicial review thus ensures accountability and guards against the misuse, delay or non-exercise of the Governor’s powers.

Interpretation of Article 361

Article 361 of the Constitution was not intended to serve as a refuge for unconstitutional conduct. Rather, it confers only limited personal immunity upon the President and Governors from civil or criminal proceedings in respect of acts done in their official capacity. Such immunity shields their personal answerability but does not insulate the validity of those acts from judicial scrutiny. Accordingly, any action undertaken under Article 361 remains challengeable, and the Union or State Government must defend its legality in the courts.

In *Rameshwar Prasad v. Union of India*, the Supreme Court emphatically confirmed that Article 361 does not bar courts from examining the validity of official acts, even if challenged on grounds of mala fide or Constitutional violation.⁴⁵ As the Court observed: “The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions... 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.”

High Court Precedent

In *S. Ramakrishnan v. State of Tamil Nadu*, the Madras High Court addressed a Bill that had lain pending with the Governor for over two months.⁴⁶ Rejecting the Advocate General’s reliance on Article 361 to justify the delay, the Court held that personal immunity cannot shelter inaction or procrastination that thwarts Constitutional obligations. The Court stated: “When situation changes and present kind of situation arises, a different approach has to be taken by the Courts in the interest of the Public... When public interest requires, this Court has to do its Constitutional duties and to address the situation.” This ruling underscores that Article 361 may not be invoked to create a Constitutional vacuum or to postpone the legislative process indefinitely.

QUESTIONS FIVE AND SEVEN

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?

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?

In light of the intrinsic interconnection between the two foregoing questions, this Brief proceeds to consider one overarching issue: whether judicial orders may validly prescribe procedures or impose timeframes on the exercise of Constitutional powers in circumstances where neither the Constitution nor any statute specifies such requirements.

Summary Statement

The Supreme Court possesses the authority to prescribe definitive timelines for the exercise of functions under Articles 200 and 201.

In relation to the Governor, the Constitution's imperative "shall," read alongside the proviso's requirement that assent be given "as soon as possible," precludes the operation of a pocket veto and imposes a clear duty of expeditious decision-making. Prolonged inaction by the Governor thus frustrates the legislature's will and warrants judicial intervention to uphold Constitutional integrity. Such judicially imposed deadlines do not amend the text of Article 200 but rather interpret and enforce its express mandate. In relation to the President and Article 201, the Constitution's imperative "shall", in prescribing that the President either assent to, withhold assent from, or return a Bill reserved under Article 200, imposes a clear and mandatory duty of timely decision-making. In the absence of any statutorily prescribed timeline, indefinite presidential inaction amounts to a de facto "pocket veto," frustrating the legislature's will and undermining the constitutional scheme. Accordingly, judicial intervention to impose reasonable deadlines for the President's action does not amend or enlarge Article 201 but simply gives effect to its unqualified command.

As a Constitutional functionary, the Governor must render a decision within a reasonable period and in accordance with the aid and advice of the Council of Ministers, except in those exceptional circumstances expressly contemplated by the Constitution. Similarly, the President, as a Constitutional functionary under Article 201, must discharge the duty to “assent to,” “withhold assent from,” or “return” any Bill reserved by a Governor within a reasonable period. The unqualified imperative “shall” in Article 201 admits no de facto “pocket veto,” and indefinite presidential inaction frustrates the legislature’s will and the Constitution’s design.

By articulating judicially manageable benchmarks for what constitutes a “reasonable period,” without altering the text of Articles 200 and 201 or intruding upon the substantive discretion of the Governor and President, the Supreme Court merely gives effect to the Constitutional mandate and prevents executive inertia from subverting democratic governance.

Detailed Analysis

Recent jurisprudence confirms that, even in the absence of an express temporal provision, courts have imposed definitive deadlines on Constitutional functionaries, most notably in *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly*⁴⁷, and the *Tamil Nadu Governor* case. In each of these seminal decisions, the constitutional functionaries neglected to discharge their duties within a reasonable period and offered no cogent justification for the delay. In *Keisham Meghachandra Singh*, the Court imposed a three-month deadline on the Speaker to decide a disqualification petition under the Tenth Schedule.

Similarly, in the *Tamil Nadu Governor* case, the Court directed the Governor to grant or withhold assent under Article 200 within three months. In both instances, the judiciary exercised its power of judicial review to remedy unexplained inaction and prescribed directory timelines consistent with the Constitution’s underlying mandates.

The following discussion addresses Article 200 and explains our agreement with the reasoning of the Supreme Court in the *Tamil Nadu Governor* case:

The Court emphasized that Article 200 does not grant the Governor a power of indefinite silence. The use of the imperative “shall” together with the proviso’s requirement that assent be given “as soon as possible” precludes any form of pocket veto. The Court further held that prolonged inaction on a Bill constitutes a gross violation of the Constitution’s scheme of expediency and, if permitted to continue, would vest the Governor with an impermissible authority.

In the *Tamil Nadu Governor* case, the Supreme Court, drawing upon *Durga Pada Ghosh v. State of West Bengal*⁴⁸, reaffirmed that Constitutional obligations cannot be disregarded on the basis of administrative delay. Delay may only be excused if it is shown that adequate arrangements were made to address the underlying circumstances and that the matter was accorded due priority. The Court also cited the repeated recommendations of the Sarkaria Commission and the Punchhi Commission, both of which urged the establishment of clear timelines for presidential and gubernatorial action.⁴⁹

To guard against executive overreach, the Court reasoned that prescribing timelines is essential. It observed that failure to act for an unreasonable and prolonged period effectively confers a pocket veto on the Governor. Any reluctance or lethargy in assenting to Bills, the Court warned, undermines the legislature’s mandate and frustrates the government’s ability to deliver on its electoral promise.

Significantly, the Court rejected the contention that prescribing a time limit effects a constitutional amendment. It observed: “The prescription of a general time-limit by this Court ... is not the same thing as amending the text of the Constitution to read in a time-limit.” The Court explained that its intervention does not alter Article 200’s language but gives full effect to its intended purpose. Judicially imposed timelines constitute manageable standards essential to effective review and do not rest on any deeming fiction. Moreover, the Court clarified that the deadline is not inflexible: the Governor may justify any delay by demonstrating reasonable grounds.

This reasoning upholds the principle of reasonableness in administrative law, reflecting earlier Constitutional jurisprudence. The Court cited *Periyammal v. Rajamani*³⁶ and *Keisham Meghachandra Singh* as illustrative precedents in which comparable deadlines were imposed to secure the prompt discharge of Constitutionally mandated functions. Moreover, the Court's ultimate timeline framework is both practicable and flexible. It affords the Governor one month to act when he follows the advice of the Council of Ministers, three months when he departs from that advice, and one month after reconsideration. This scheme safeguards the federal balance, upholds legislative supremacy, and forestalls Constitutional paralysis.

In recognition of Article 200's pivotal role in maintaining India's federal structure, the Court prescribed the following deadlines, failure of which renders the Governor's inaction amenable to judicial review:

1. When the Governor acts on the advice of the Council of Ministers, either by withholding assent or reserving the Bill for the President, the Governor must do so immediately, and in any event within one month.
2. When the Governor withholds assent contrary to the Council's advice, the Governor must return the Bill with reasons within three months.
3. When the Governor reserves the Bill for the President against the Council's recommendation, the Governor must do so within three months.
4. When a Bill, having been returned for reconsideration under the first proviso to Article 200, is presented again, the Governor must grant assent immediately, and in any event within one month.

Should the Governor fail to observe these timelines, the State Government may invoke judicial review and seek a Writ of Mandamus compelling him to decide the bill. That remedy may, however, be resisted if the Governor adduces sufficient and reasonable grounds for the delay. In prescribing these time limits, the Supreme Court has adhered to interpretive Constitutionalism, enforcing Article 200's text and purpose rather than rewriting it. By establishing manageable, non-absolute benchmarks, the Court aims to prevent arbitrary or malicious exercise of gubernatorial power, thereby preserving the rule of law and ensuring the effective operation of representative democracy.

In this context, the imposition of a temporal limit pursuant to Article 200 and Article 201 is entirely consonant with the Constitutional scheme and does not amount to a judicial amendment of the text. Rather, it reflects the exercise of judicial power to prescribe a definitive time-frame, thereby preventing the Governor and the President from perpetuating indecision. By establishing such a benchmark, the Court equips itself to assess gubernatorial inaction and to give effect to the true purposes of Articles 200 and 201, authorities squarely rooted in its power of judicial review under Article 142.

The prescribed deadlines remain flexible. If the Governor or the President fail to act within the stipulated period, they may nonetheless proffer reasonable grounds for the delay. This approach preserves essential discretion and avoids the rigidity of a strict deadline. In the absence of adequate justification, however, the delay acquires a justiciable character, empowering courts to determine whether the Governor or President's belated exercise of power under Articles 200 and 201 were founded on bona fide and reasonable grounds.

QUESTION SIX

Is the exercise of Constitutional discretion by the President under Article 201 of the Constitution of India justiciable?

Summary Statement

It is well-settled that the President's discretion under Article 201 of the Constitution is not immune from judicial review; however, the scope of such review is inherently context-specific and is circumscribed by both the nature and substance of the discretion exercised.

Detailed Analysis

In *Kaiser-i-Hind Pvt. Ltd. v. National Textile Corp.*, the Supreme Court characterised the President's power under Article 201 as *sui generis*, reflecting its unique place within India's quasi-federal framework. While affirming that presidential assent constitutes an indispensable formality in the legislative process, the Court held that such formality does not confer immunity from judicial scrutiny where Constitutional procedures have not been observed. Accordingly, *Kaiser-i-Hind* made clear that compliance with the legislative steps antecedent to the grant or refusal of assent remains subject to review by the Courts.

This foundational principle was reaffirmed in the *Tamil Nadu Governor* case, wherein the Court further elaborated the parameters of judicial review under Articles 200 and 201 of the Constitution. Here, the Supreme Court reaffirmed the principle of *Kaiser-i-Hind*, holding that Presidential Assent constitutes a legislative act only to the extent necessary to give effect to a Bill and does not confer immunity from Constitutional scrutiny when procedural impropriety or mala fides are alleged. The Court emphasised that earlier dicta suggesting the non-justiciability of assent under Article 201 must be confined to their narrow context. It clarified that such limited non-justiciability applies solely where assent is grounded in Union policy, most notably in cases of repugnancy under Article 254(2) or where the Constitution accords paramountcy to Union legislation. In those circumstances, when the President acts on the advice of the Union Council of Ministers and the decision embodies broader national policy, the absence of judicially manageable standards justifies a more constrained scope of review.

Nonetheless, such limited non-justiciability does not confer blanket immunity. Where the President withholds assent to a Bill that lies within the exclusive legislative competence of a state, or where the requisites for reservation under Article 200 remain unmet, the decision must be accompanied by reasons and remains subject to judicial review. This Court emphasised that, in instances where a Bill falls outside the sphere of Union primacy, the President is obliged to disclose the grounds for withholding assent, thereby enabling the judiciary to assess whether Constitutional procedures have been duly followed. Furthermore, the Court observed that, in cases of Constitutional intricacy, the President may, in advance of decision-making, seek an Advisory Opinion from the Supreme Court under Article 143. Accordingly, the Court held that decisions under Article 201 are subject to judicial review on the following grounds:

- Arbitrariness
- Mala fides
- Constitutional or procedural impropriety
- Withholding of assent in respect of Bills falling outside the sphere of Union legislative primacy
- Failure to disclose reasons where disclosure is required

This principle is consistent with long-standing constitutional doctrine. In *Shamsher Singh*, *Maru Ram*, and *Indra Sawhney*, the Supreme Court repeatedly affirmed that no Constitutional power is beyond judicial review, and that even the highest constitutional functionaries must act within Constitutional bounds. In addition, in *State of Rajasthan* and *Minerva Mills Ltd.*, the Supreme Court categorically rejected the proposition that questions involving political considerations are inherently non-justiciable. It reaffirmed that Indian Constitutional jurisprudence does not adopt the American “political question” doctrine in its entirety, a principle reiterated in *B.P. Singhal*.

In summary, *Kaiser-i-Hind* establishes the foundational principle that compliance with Article 201 is subject to judicial examination. The *Tamil Nadu Governor* case refines this principle by holding that the President's discretion under Article 201 admits of limited, yet meaningful, judicial review, particularly in circumstances where:

- the Bill concerns matters falling exclusively within the legislative competence of the state;
- the President's decision to reserve or withhold assent is Constitutionally infirm; or
- assent is withheld without Constitutionally valid grounds.

QUESTION EIGHT

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?

Summary Statement

Under the prevailing Constitutional framework and the express terms of the unamended statutes, Courts lacks authority to compel the President to invoke Presidential Advisory jurisdiction under Article 143 when a Governor, acting under Article 200, reserves a Bill for Presidential consideration. Such recourse remains a matter of executive discretion and cannot be transformed into a mandatory obligation by judicial decree.⁵² Article 143, read with Articles 200 and 201 of the Constitution, vests absolute discretion in the President both to determine whether to seek the Supreme Court's advice and to grant or withhold assent to any Bill reserved by a Governor. Such Constitutionally conferred discretion cannot be abridged by imposing a mandatory requirement to refer every reserved Bill to the Court for its opinion.

Detailed Analysis

Article 143 of the Constitution vests in the President absolute discretion to decide if and when to seek the Supreme Court's Advisory Opinion. Its language contains no mandate obliging the President to refer any matter; instead, it empowers the President to determine whether a particular question of law or fact is of such public importance and gravity that the Supreme Court's guidance is warranted.

Consequently, any rule or practice that pre-empts this judgment by imposing a compulsory referral requirement would undermine a prerogative expressly conferred by Article 143. Such encroachments on the President's Constitutionally vested discretion cannot be squared with the express terms of the Constitution.

Article 200, read alongside Article 201, sets out the Governor's complementary powers in the legislative process. Under Article 200, if the Governor is of the opinion that a Bill, upon enactment, would substantially curtail the jurisdiction or powers of the High Court as established by the Constitution, the Governor must withhold assent and reserve the Bill for the President's consideration.

Article 200 not only confers discretion on the Governor but also circumscribes that discretion by prescribing the specific circumstances in which assent must be withheld and a Bill reserved for the President's consideration. Article 201 complements this scheme by vesting in the President plenary authority to grant or withhold assent to any Bill so reserved, including the power to reconsider and decide upon the same measure on multiple occasions. Such Constitutionally conferred discretion, both on the Governor and the President, cannot be abridged by imposing a mandatory requirement that every reserved Bill be submitted to the Supreme Court under Article 143. Any rule seeking to replace the President's independent judgment with automatic judicial consultation would subvert the balance struck by the Constitution.

While successive decisions have recognised the Supreme Court's Advisory jurisdiction under Article 143 as a valuable instrument to guide the President when a Bill is reserved for assent, none has held that such a reference is compulsory. In *Re: The Special Courts Bill*, Justice Untwalia, concurring with the majority, observed that a presidential reference under Article 143 may pre-empt constitutional challenges to a Bill's vires and thereby conserve public time and resources by avoiding later petitions.⁵³ He emphasised, however, that this procedure, though advantageous, is not invariably necessary and expressly declined to construe Article 143 as imposing a binding obligation on the President.

In the *Tamil Nadu Governor* case, the Supreme Court reaffirmed that the President's power to seek an Advisory Opinion under Article 143 upon a Bill reserved under Article 200 is facultative, not compulsory. The judgment recognised that, as a prudential measure in the face of arguable Constitutional infirmities, the President may elect to obtain the Court's guidance, but it declined to characterise such recourse as obligatory. Moreover, the Court's reasoning was confined to the reviewability of the President's dissent and did not advance any rationale for transforming this discretionary advisory process into a mandatory prerequisite.

An examination of the Constituent Assembly debates makes plain that Article 143 was never intended to impose a binding duty on the President to seek the Supreme Court's advice. The only substantive inquiry in those proceedings concerned whether the Supreme Court would be bound to answer a presidential reference. The framers highlighted two key distinctions between section 213 of the Government of India Act, 1935 and Article 143. First, section 213 was confined to questions of law, whereas Article 143 extends to questions of both law and fact. Second, clause (2) of Article 143 authorises the President to seek the Court's opinion on disputes arising under pre-constitutional treaties, agreements, covenants, engagements, sanads, or similar instruments. In respect of these pre-constitutional matters, the Court's duty to respond is made obligatory by the use of the term "shall."

By contrast, jurisdictions such as Sri Lanka⁵⁴ and the Republic of Kiribati⁵⁵ impose mandatory advisory references only because their constitutions explicitly require them. The Constitution of India contains no equivalent provision mandating the President to refer every reserved Bill to the Supreme Court.

QUESTION NINE

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?

Summary Statement

Articles 200 and 201 of the Constitution vest in the Governor and the President an indispensable role in the legislative process by empowering them to grant or withhold assent to Bills. Ordinarily, this function lies within the internal mechanics of the legislative–executive interface, and courts accordingly exercise significant restraint in intervening before a Bill is finally enacted. A critical Constitutional question nevertheless arises when a Bill pending assent is challenged as patently unconstitutional—that is, when it manifestly violates explicit Constitutional provisions or foundational principles.

In the *Tamil Nadu Governor* case, the Supreme Court held that Constitutional courts are not precluded from adjudicating such challenges at a pre-enactment stage. The Court articulated two principal rationales: first, to prevent the futile enactment of an unconstitutional law and thereby conserve legislative time and public resources; and second, to afford Constitutional actors: the Governor, the President, and the Council of Ministers, an opportunity to review and, if necessary, amend or withdraw the measure before it becomes law. The Court emphasised that this pre-enactment scrutiny is exceptional, confined strictly to instances of manifest constitutional infirmity, while marginal or reasonably debatable issues remain outside its scope in deference to institutional comity and legislative autonomy.

Detailed Analysis

Scope of Pre-Assent Constitutional Recourse by the Governor and President

When a Bill reserved by the Governor under Article 200 for the President's consideration gives rise to serious and manifest constitutional defects, particularly those threatening the democratic order, as underscored in *M.P. Special Police*, the President may invoke the Supreme Court's advisory jurisdiction under Article 143. Both the Sarkaria and Punchhi Commissions have endorsed this procedure as a vital preventive safeguard, enabling the President to solicit the Court's opinion on pure questions of Constitutional law before the Bill proceeds to assent.

An Advisory Opinion under Article 143, while not binding upon the executive or legislature, carries significant persuasive authority and can preclude subsequent litigation and potential invalidation. This mechanism thereby conserves legislative and judicial resources and reinforces the system of checks and balances by ensuring that decisions of high Constitutional functionaries are grounded in judicial analysis rather than political expediency. Importantly, the advisory jurisdiction is confined strictly to issues of Constitutional interpretation and does not extend to policy formulation or political judgment, in alignment with the "political thicket" doctrine.

Pre-Enactment Judicial Review and the Principle of "Prevention Before Cure"

Constitutional courts retain the authority to identify and address manifest Constitutional defects in a Bill before it is enacted. This preventive jurisdiction allows the judiciary to interdict legislation that plainly conflicts with explicit Constitutional provisions or foundational principles, thereby conserving public resources and legislative time and shielding the Constitutional order from irreparable harm. By issuing timely observations or recommendations to the Governor, the President, or the Council of Ministers, courts afford constitutional functionaries an opportunity to reconsider, amend, or withdraw objectionable provisions. Such intervention preserves the integrity of the legislative process and upholds the separation of powers by ensuring that only constitutionally sound measures proceed to enactment. This extraordinary pre-enactment remedy must be confined to cases of patent unconstitutionality, where the defect is self-evident and beyond reasonable dispute, and must not extend to marginal or debatable issues, which remain within the province of the ordinary post-enactment judicial review.

QUESTION TEN

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?

Summary Statement

Article 142 empowers the Supreme Court to issue “such decrees or orders as may be necessary for doing complete justice in any cause or matter pending before it.” This remedial jurisdiction, however, is not an independent source of substantive authority but a procedural mechanism to effectuate justice within the Constitutional framework. While Article 142 may override procedural constraints, it cannot contravene substantive legal or Constitutional mandates.

The Constitutional powers and functions of the President or a Governor are not subject to substitution under Article 142, except in rare circumstances of Constitutional paralysis or clear dereliction of duty. Even in such cases, the Court’s intervention constitutes a narrowly tailored judicial response to uphold constitutional justice, rather than an assumption of executive prerogatives. Article 142 must not be treated as a gateway for judicial overreach into domains the Constitution assigns to the executive.

In circumstances of prolonged executive inaction or Constitutional default, such as the refusal to act on a remission recommendation or to grant sanction, the Supreme Court may, in exercise of its jurisdiction under Article 142, issue directions as a Constitutional safeguard rather than assume executive authority. In *A.G. Perarivalan*, the Court resorted to Article 142 only after the Governor’s inaction persisted for more than two and a half years, amounting to a clear dereliction of duty. Accordingly, Article 142 cannot be invoked to override or bypass the Constitutionally vested powers of the President or Governor except in those rare instances where their inaction defeats the very essence of constitutional governance.

Detailed Analysis

In *Prem Chand Garg v. Excise Commissioner*, the Supreme Court held that any exercise of power under Article 142 must strictly conform to the Constitution and to existing statutory provisions.⁵⁶ This principle was reaffirmed in *National Spot Exchange Ltd. v. Union of India*, where the Court drew a clear distinction between procedural relaxations, permissible under Article 142, and the overriding of substantive statutory frameworks.⁵⁷ The Court emphasised that it could not “ignore the substantive provisions of a statute” under the guise of doing complete justice.

Constitution Benches have further circumscribed the scope of Article 142 in order to preserve the separation of powers. In *High Court Bar Association, Allahabad v. State of Uttar Pradesh*, (2022) 14 SCC 1, and *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 2 SCC 1, the Court held that Article 142 may not be invoked to alter or affect the substantive rights of parties governed by statutory or constitutional law. These decisions underscore that Article 142 serves only as a tool for procedural justice and cannot be employed to usurp functions specifically entrusted to the legislature or the executive.

In *A.G. Perarivalan*, the Supreme Court invoked Article 142 only after the Governor had withheld action on a remission recommendation for over two and a half years, constituting a clear dereliction of constitutional duty. The Court observed: “We do not consider it fit to remand the matter for the Governor’s consideration ... In exercise of our power under Article 142, we direct that the appellant is deemed to have served the sentence ...”. In this context, the Court’s intervention rested solely on the Governor’s failure to discharge a mandatory Constitutional obligation, and not on any adjudicative determination that the remission ought to have been granted.

In *Madhya Pradesh Special Police Establishment*, the Court recognised its power to curb executive action that is irrational or arbitrary. The judgment made clear, however, that this corrective jurisdiction derives from the standard judicial review under Articles 136 and 226, rather than from any substitutionary use of Article 142.⁵⁹

The judgment made clear, however, that this corrective jurisdiction derives from the standard judicial review under Articles 136 and 226, rather than from any substitutionary use of Article 142. As the Court stated: “...the writ court while exercising its jurisdiction under Article 226 of the Constitution of India as also this Court under Articles 136 and 142 ... can pass an appropriate order which would do complete justice ...”. This remedy was afforded in response to manifest error, not as a general means to override executive discretion.

Article 142’s grant of power “in any manner” must be construed as prohibiting both direct and indirect substitution of executive functions. Any order that, in effect, performs duties Constitutionally assigned to the Governor, absent exceptional executive inaction, would exceed the Court’s Constitutional remit. In *Union Carbide Corporation v. Union of India*, the Supreme Court reaffirmed that Article 142 does not empower it to override substantive law.⁶⁰ The Court has likewise emphasised that judicial innovation must respect the Constitution’s basic structure. In *Supreme Court Advocates-on-Record Association v. Union of India*, a Constitution Bench held that the separation of powers is an inviolable feature of the Constitution. Accordingly, even when exercising its remedial jurisdiction under Article 142, the judiciary must refrain from assuming the discretionary functions of other Constitutional office-holders, for any such substitution would violate the Separation of Powers Doctrine.

QUESTION ELEVEN

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?

Summary Statement

Under Article 200 of the Constitution, a Bill passed by a state legislature does not attain the status of a “law in force” until it receives the Governor’s assent. Absent such assent, the legislative process remains incomplete, and the Bill lacks any legal efficacy.

Detailed Analysis

The requirement of gubernatorial assent is both Constitutionally entrenched and judicially affirmed. Article 200 of the Constitution of India stipulates that upon the passage of a Bill by the Legislature of a State, it shall be presented to the Governor, who is vested with the discretion to: (a) grant assent; (b) withhold assent; (c) reserve the Bill for the consideration of the President; or (d) return the Bill to the Legislature for reconsideration. It is only upon the Governor’s assent that the Bill is transformed into an Act and acquires the force of law. Accordingly, a Bill does not attain legal efficacy merely by virtue of legislative passage; the conferment of assent is a Constitutionally indispensable condition for its enactment.

The Constitutional requirement of assent has been authoritatively affirmed by the judiciary. In *Chotey Lal v. State of Uttar Pradesh*, the Allahabad High Court held that judicial review of legislation is permissible only after a Bill has received assent and become law.⁶² The Court categorically stated that no Bill may be declared void or subjected to judicial scrutiny prior to its transformation into an Act through the requisite assent. It emphasized that assent by the Governor or the President constitutes an essential stage in the legislative process, without which the Bill lacks the character of law and remains unenforceable and immune from challenge.

This position was subsequently endorsed by the Supreme Court in *Kaiser-i-Hind (P) Ltd.*, wherein the Court held that assent is a substantive constitutional requirement. Therefore, a Bill passed by the state legislature, but not assented to, cannot be regarded as an “Act” within the meaning of law.

The Constitutional interpretation of “law” under Article 13 is of particular relevance in assessing the status of a Bill prior to assent. Article 13(3)(a) defines “law” to include ordinances, orders, bye-laws, rules, regulations, notifications, and even customs or usages having the force of law. Clause (3)(b) further clarifies that “laws in force” refers to laws enacted prior to the commencement of the Constitution, provided they have not been repealed. Notably, a Bill is excluded from both definitions and, therefore, does not qualify as “law” or “law in force” within the meaning of Article 13. This exclusion has significant implications: it precludes the invocation of Article 13 to challenge the constitutionality of a Bill prior to its enactment. Judicial review under Article 13 is thus confined to laws that have attained legal status through the due process of assent.

Nevertheless, the Constitution does contemplate a mechanism for pre-enactment Constitutional scrutiny through Article 143. Under this provision, the President may refer questions of law or fact to the Supreme Court for its Advisory Opinion. This advisory jurisdiction has been exercised in landmark instances, including in *Re: The Kerala Education Bill*⁶³ and in *Re: The Special Courts Bill*.⁶⁴ However, it must be underscored that Opinions rendered under Article 143 are not binding and do not obviate the Constitutional requirement of assent for a Bill to acquire the status of law.

The necessity of publication for a Bill to attain the force of law post-assent has also been authoritatively addressed by the Orissa High Court. In *Gajapati Narayan Deo v. State of Orissa*, the Court held that the “declaration” of assent signifies no more than the public notification that assent has been accorded.⁶⁶ This principle was reaffirmed in *Narayana v. State of Orissa*, where the Court ruled that publication of a Bill, once duly passed and assented to, serves solely as evidence of the Governor’s or President’s assent. There, publication is not a condition precedent to the legislation’s operative effect unless the statute in question expressly so provides. Accordingly, upon the grant of assent, a Bill becomes law irrespective of whether it has been published, save in those instances where the enabling statute mandates publication as a precondition to enforceability.

QUESTION TWELVE

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?

Summary Statement

Under the proviso to Article 145(3) of the Constitution, the Supreme Court, when hearing an appeal, is obliged to refer any question involving a substantial question of law as to the interpretation of the Constitution to a larger Bench, provided two conditions are satisfied.⁶⁷ First, the Supreme Court must be satisfied that the issue in question indeed raises a substantial question of Constitutional interpretation. Second, it must be satisfied that the resolution of that question is essential for the disposal of the appeal. Once both limbs of this test are met, the proviso's use of the term "shall" renders the referral mandatory. Far from a mere procedural formality, this requirement operates as a structural safeguard to preserve uniformity and authoritative coherence in Constitutional adjudication. Judicial pronouncements and the Constituent Assembly Debates alike confirm that compliance with this referral obligation is compulsory. It bears emphasis, however, that only those cases meeting both thresholds prescribed by Article 145(3) attract the referral mandate; not every matter of Constitutional interpretation will thereby require reference to a larger Bench.

Detailed Analysis

Under the proviso to Article 145(3), the referral obligation arises only when a bench of fewer than five judges is hearing an appeal under the Chapter, other than one brought under Article 132.⁶⁸

In such cases, the Court must satisfy itself of two cumulative conditions before the mandatory referral is triggered:

- The Court must be satisfied that the appeal raises a substantial question of law as to the interpretation of the Constitution.
- The Court must be satisfied that the resolution of that question is essential for the disposal of the appeal.

In determining each condition, the Court exercises its judicial discretion and must record its satisfaction that both thresholds have been met. In addition, Order VI, Rule 2 of the Supreme Court Rules, 2013 provides⁶⁹:

“Where, during the hearing of any cause, appeal or proceeding, a Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it.” The repeated use of the term “shall” in both the Rule and its enabling provision imparts mandatory force to the referral process, leaving no room for discretionary evasion.

In *Rao Shiva Bahadur Singh v. State of Vindhya Pradesh*, the Supreme Court expressly held that the Constitution’s underlying principle requires all constitutional questions to be heard and decided by a Bench of not fewer than five Judges.⁷⁰ Accordingly, where a bench of fewer than five judges identifies a qualifying Constitutional question, it is obliged to refer the matter forthwith to a larger Bench before proceeding further; any failure to do so would contravene the Constitutional mandate. It is therefore well settled that any substantial question of law concerning Constitutional interpretation must be determined by a Constitutional Bench, a purpose further reinforced by the introduction of Article 145(3).

During the Constituent Assembly debates, Dr. B.R. Ambedkar introduced an amendment, subsequently incorporated as Article 145(3) of the Constitution, mandating that all matters concerning Constitutional interpretation be heard and decided by a bench of no fewer than five judges. The purpose of this provision was to ensure that Constitutional questions receive authoritative consideration by a majority of the Court. Accordingly, once a substantial question of law relating to Constitutional interpretation has been identified, the Bench is duty-bound to refer the matter to a larger bench.

However, not every Constitutional question qualifies as a “substantial question of law” for the purposes of Article 145(3). In *Shrimanth Balasaheb Patil*, the Supreme Court held that the provision must not be construed so as to require every case of Constitutional interpretation to be referred to a Constitutional Bench. The Court explained that questions which have already been authoritatively decided and have no bearing on the final outcome cannot be regarded as substantial questions of law. Accordingly, in the interest of judicial economy, only those questions that remain undecided and are essential to the resolution of the matter should be referred to a larger Bench.

In view of the proviso to Article 145(3), the Court is required to examine substantial questions of Constitutional interpretation only when adjudicating an appeal under the provisions other than Article 132. Under this proviso, if the Bench is satisfied that a genuine substantial question of law has not been decided and is vital to disposing of the appeal before it, the Court must refer the matter to a larger bench.

Thus, it is submitted that the obligation to refer arises solely in those circumstances where a Bench identifies an undecided Constitutional question that is essential for the determination of the appeal.

QUESTION THIRTEEN

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?

Summary Statement

Article 142 confers on the Supreme Court of India the power to pass such decrees or orders as may be necessary for doing complete justice in any cause or matter.⁷¹ This authority, while broad enough to permit the Court to relax procedural formalities, fill statutory lacunae or depart from rigid legal rules, is nonetheless subject to the limits imposed by express substantive and procedural provisions; it cannot be wielded to override explicit legislative mandates or to create rights or remedies inconsistent with statutory or Constitutional constraints.

Detailed Analysis

Article 142's Constitutional object is to furnish the Supreme Court with the flexibility required to administer justice when positive law proves inadequate. It embodies a deliberate design to avert the frustration of justice by technicalities or lacunae.

However, the mandate to do "complete justice" cannot serve as a licence to contravene binding legal provisions or foundational public policy. While the scope of Article 142 is broad, its application remains confined by the architecture of Constitutional governance, legislative competence, and express statutory prohibitions. Doctrinally, Article 142 does not operate in isolation from the rest of the Constitution. It serves to supplement, not supplant, substantive and procedural law. The Supreme Court may temper or mould relief in keeping with equitable principles, yet it may not engraft new rights or remedies that run counter to the statutory scheme or the Constitution's design.

Article 142(1) empowers the Supreme Court to issue such orders as may be necessary for doing complete justice in any matter before it. The provision operates as a supplementary authority, enabling the Court to surmount procedural technicalities and secure equitable outcomes where ordinary remedies prove inadequate, especially in disputes of a complex or sensitive nature. For example, in *Ram Janmabhoomi v. M. Siddiq*, this Court invoked Article 142 to reconcile competing claims and preserve public order, expressly affirming its duty to secure “complete justice to all parties.”

However, Article 142’s expansive authority does not permit the Supreme Court to act in contravention of explicit statutory or Constitutional mandates. The Court has consistently held that Article 142 may not be employed to disregard, suspend, or rewrite substantive law. In *Supreme Court Bar Association v. Union of India*, this principle was unequivocally affirmed: Article 142 “cannot be exercised contrary to express statutory provisions.”⁷³ The Court there declined to suspend an advocate’s licence under Article 142, observing that such power is vested exclusively in the Bar Council of India under the Advocates Act. This decision cements the doctrine that Article 142 may supplement, but never supplant, existing statutory and constitutional frameworks.

Article 142’s exercise must be consistent with the foundational principles of Constitutional governance: separation of powers, federalism, and the rule of law. The Supreme Court has affirmed that even in its quest to do “complete justice,” it remains constrained by the Constitution’s overarching architecture. In *Shilpa Sailesh v. Varun Sreenivasan*, the Court held that Article 142 cannot be invoked to produce a result that conflicts with the statutory scheme of the Hindu Marriage Act, save where a genuine lacuna in the legislation exists.⁷⁴ The decision underscored that Article 142 must operate in consonance with the broader constitutional framework and legislative intent.

Furthermore, the exercise of Article 142 is subject to public-policy constraints, including statutory provisions that embody core legal values and legislative judgments.

In *Prem Chand Garg*, this Hon'ble Court held that Article 142 does not authorise measures that contravene statutory safeguards reflecting essential legal principles. The distinction, therefore, is not merely between procedure and substance but between flexible justice and constitutional discipline. The decision in *Union Carbide Corporation* did not establish a conflicting precedent; it arose in a context where existing legislative mechanisms were arguably insufficient. Subsequently, in *Supreme Court Bar Association*, the Court reaffirmed that clear statutory prohibitions cannot be circumvented under Article 142, even in the pursuit of complete justice.

Article 142 confers considerable discretion on the Supreme Court; however, such discretion must be exercised within the Constitution's structural bounds. In *Bhim Singh v. Union of India*, the Supreme Court held that, although incidental functional overlap among State organs is inevitable, Article 142 cannot be employed to supplant the essential function of another organ.⁷⁵ To invoke Article 142 to enact or annul substantive law would violate the doctrine of separation of powers, a basic feature of the Constitution.

Judicial legitimacy is founded upon the observance of institutional limits, even in instances warranting extraordinary relief. The judiciary's credibility derives from its steadfast adherence to constitutional norms. In *Union of India v. R. Gandhi*, the Supreme Court warned against the use of judicial discretion to assume law-making functions under the guise of equitable relief. Accordingly, while Article 142 empowers the Court to secure justice in individual cases, its exercise must not yield a parallel legal regime or disregard the boundaries prescribed by Parliament or the Constitution.

QUESTION FOURTEEN

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?

Summary Statement

Neither the explicit text of the Constitution nor any implicit provision confines the Supreme Court's jurisdiction over disputes between State Governments and the Union Government exclusively to Article 131. Successive decisions of the Supreme Court have affirmed that States retain the right to invoke alternative constitutional remedies, most notably Articles 32 and 136, to seek appropriate relief against actions of the Union Government. Nor is there any bar to a State preferring simultaneous relief under both the Supreme Court's writ jurisdiction and Article 131. Accordingly, the availability of Article 131 as a special remedy does not in any manner limit a State's entitlement to approach this Court under the Constitution's general remedial provisions.

Detailed Analysis

The Constitution of India imposes no express or implied prohibition on the Supreme Court's jurisdiction to adjudicate disputes between the Union and State Governments, even beyond proceedings instituted under Article 131.⁷⁷

Article 131 confers upon this Court original jurisdiction to hear and determine any dispute between the Centre and one or more States, to the exclusion of any other court. However, neither expressly nor by necessary implication does Article 131 bar the Supreme Court from entertaining Centre-State disputes under other Constitutional provisions. No analogous restriction is found elsewhere in the Constitution.

In *State of West Bengal v. Union of India*, the Supreme Court reaffirmed that the “exclusionary jurisdiction” of Article 131 serves only to vest exclusive competence in the Supreme Court for Centre–State disputes and does not confine the Court’s authority exclusively to that provision. This issue has arisen from the recent practice of several State Governments: Kerala, Telangana, Punjab, and Tamil Nadu, approaching the Supreme Court against the Union under Article 32 of the Constitution. The admission of these petitions underscores their maintainability and aligns with this Court’s jurisprudence reaffirming the States’ entitlement to invoke Articles 32 and 136 against the Union.

In *State of West Bengal*, the Supreme Court held that the reliefs under Articles 32 and 136 are general remedies available to any party. Although Article 131 constitutes a specialised remedy for State Governments against the Union Government, the mere availability thereof does not limit a state’s ability to pursue its rights as any party under Articles 32 and 136. The Court further held that the pendency of proceedings under these general provisions does not preclude subsequent recourse to Article 131. Subsequently, in the *Tamil Nadu Governor* case, the Supreme Court confirmed that a state may challenge the President’s decision to withhold assent to a bill reserved by the Governor by way of a Writ of Mandamus under Article 32.⁷⁹ This pronouncement further solidifies a state’s right to seek relief from the Supreme Court under Article 32 against the Union Government.

Finally, other Constitutional provisions likewise envisage the Supreme Court’s jurisdiction in Centre–State disputes. Article 262, for instance, empowers Parliament to enact legislation excluding the Supreme Court’s authority over inter-State water disputes. In the absence of any such statutory bar, Article 262 necessarily presumes this Court’s competence to adjudicate disputes relating to waters.

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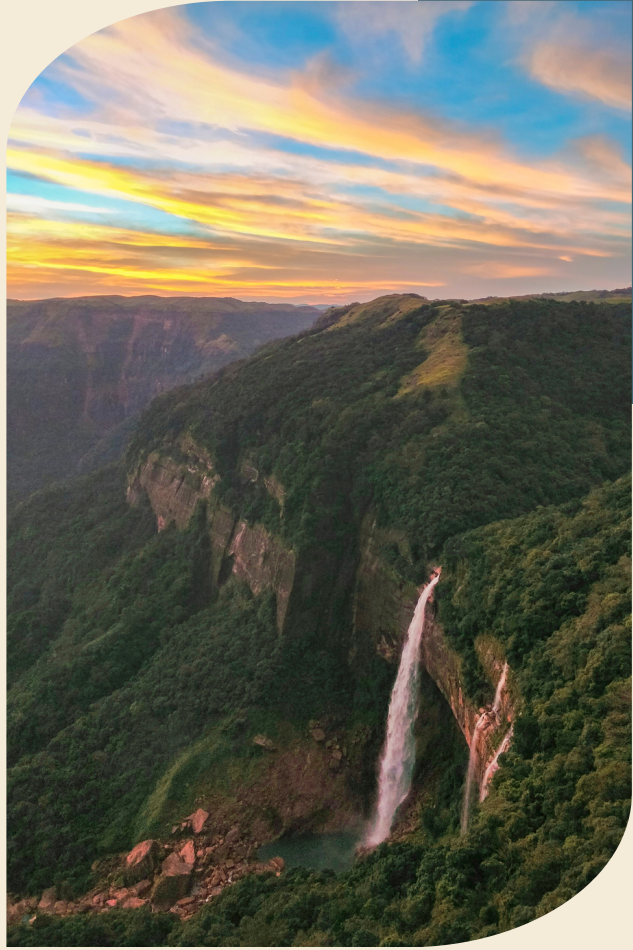
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