

INTERNATIONAL JOURNAL FOR
CONSTITUTION
& DEVELOPMENT OF LAW [IJCDL]

ISSN. 3049-3579 (ONLINE)

2025

VOLUME 1 ISSUE 4

This Article is brought to you for "free" and "open access" by the International Journal for Constitution and Development of Law. It has been accepted for inclusion in the Journal after due review.

To submit your Manuscript for Publication at International Journal for Constitution and Development of Law, kindly email your Manuscript at ijcdl.official@gmail.com.

**ARTICLE 200 AFTER THE PRESIDENTIAL REFERENCE:
DISCRETION, TIMELINES AND JUDICIAL REVIEW RE-IMAGINED**

Mahee Chourasia¹ & Hardik Singh²

INTRODUCTION

In light of the recent advisory opinion of the Hon'ble Supreme Court, comprising a 5 Judges bench in the Presidential Reference sought by President Droupadi Murmu under Article 143 of the Constitution, following the Hon'ble Court's judgement in State of Tamil Nadu vs the Governor of Tamil Nadu³ (herein referred as Tamil Nadu case), it becomes important to fathom the implications of this opinion, as it diverges from the ratio of the earlier Judgement of the Hon'ble Court in the Tamil Nadu case. Through this article, we analyze the opinion delivered by the Court and whether it undo's the gains made in the Tamil Nadu case and what questions still remain unanswered after the opinion.

Brief of the Tamil Nadu case

The issue in the Tamil Nadu case related to a prolonged deadlock between the Governor and the State legislature, wherein the Governor had refrained to assent to the bills passed by the State Legislature. Even after a meeting, when the deadlock couldn't be resolved the State Legislature approached the Hon'ble court to direct the governor to assent to the said bills and that his exercise of powers was malafide and unconstitutional. For the sake of brevity, the issues and judgement are being presented in a tabular manner: -

<u>ISSUES</u>	<u>JUDGEMENT</u>
I) What courses of action are available to the Governor in exercise of his powers under Article 200 of the Constitution?	The Governor has three options- a) Assent to the bill b) Withhold assent to the bill c) Reserve the bill for the consideration of the President

¹ The author is a student of law at Gujarat National Law University, Gandhinagar.

² The co-author is a student of law at Gujarat National Law University, Gandhinagar.

³ State of T.N. v. Governor of T.N., (2025) 8 SCC 1.

	The first proviso to Article 200 should be read in conjunction with the option of withholding of assent.
II) Whether the Governor can reserve a bill for the consideration of the President at the time when it is presented to him for assent after being reconsidered in accordance with the first proviso to Article 200, more particularly, when he had not reserved it for the consideration of the President in the first instance and had declared withholding of assent thereto?	As a general rule, it is not permissible. The only exception to this general rule is when the bill presented in the second round is materially different from the one presented to the Governor in the first instance.
III) Whether there is an express constitutionally prescribed time- limit within which the Governor is required to act in the exercise of his powers under Article 200 of the Constitution?	Despite there being no prescribed time-limit under Article 200, the court took support of its decisions in AG Perarivalan case ⁴ and Keisham case ⁵ and prescribed time-limits.
IV) Whether the Governor in the exercise of his powers under Article 200 of the Constitution can only act in accordance with the aid and advice tendered to him by the State Council of Ministers? If not, whether the constitutional scheme has vested the Governor with some discretion in discharge of his functions under	As the general rule, the Governor in exercise of his functions under Article 200 is required to abide by the aid and advice tendered by the Council of Ministers. The only exceptions to this rule can be traced to the second proviso to Article 200 and Article 163(1) of the Constitution. Overruled B.K. Pavithra ⁶ on not being in consonance with Samsheer Singh ⁷ .

⁴A.G. Perarivalan v. State of T.N., (2023) 8 SCC 257.

⁵KeishamMeghachandra Singh v. Speaker, Manipur Legislative Assembly, (2021) 16 SCC 503.

⁶B.K. Pavitra v. Union of India, (2019) 16 SCC 129.

⁷Samsheer Singh v. State of Punjab, (1974) 2 SCC 831.

Article 200?	
V) Whether the exercise of discretion by the Governor in discharge of his functions under Article 200 could be said to be subject to judicial review? If yes, what are the parameters for such judicial review?	The withholding of assent or reservation of bills for the consideration of the President by the Governor in exercise of his discretion which is subject to the limits defined by the Constitution, would be justiciable on the touchstone of judicially determinable standards.
VI) What is the manner in which the President under Article 201 of the Constitution is required to act once a bill has been reserved for his consideration by the Governor under Article 200 of the Constitution?	There is no 'pocket veto' or 'absolute veto' available to the President in discharge of his functions under Article 201. Further it was held that bills which are of such a nature so as to cause peril to the principles of representative democracy as a measure of prudence, the President ought to make a reference to this Court in exercise of his powers under Article 143 of the Constitution.

ANALYSING THE COURT'S DECISION

I. On discretion and Governor's power of reservation of bills

The court held- after interpreting the decisions of this court in *Shamsher Singh (supra)*, *M.P. Special Police establishment*⁸ and *Nabam Rebia*⁹, regarding the discretionary power of the Governor under Article 200- that the Governor has discretion under Article 200 to choose any of the three options available to him. This is in contrast to the judgement in *Tamil Nadu case (supra)* wherein the conclusion arrived was that the second proviso to Article 200- which talks about reserving the bills for the consideration of the President- is the only instance that contemplates discretion of the Governor. The advisory opinion relied upon the decision of the

⁸MP Special Police Establishment v. State of M.P. & Ors., (2004) 8 SCC 788.

⁹Nabam Rebia & Bamang Felix v. Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1.

Hon'ble court in the Nabam Rebia case (*supra*), wherein the court concluded in para 154 on the same, which is reproduced below for reference-

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.*

On the issue of reservation of bill for the consideration of the president- *once the bill has been presented in the second round to Governor-* as stipulated in the second Proviso to Article 200, the Hon'ble court held in the Tamil Nadu case that the Governor has only one option, i.e., to grant assent to the bill as evident from the words “*shall not withhold assent therefrom*” in the first proviso to Article 200. The advisory opinion on the other hand held that the power under the second proviso to Article 200 can be exercised by the governor even when the bill has been reconsidered by the state legislature and presented to him in the second round, more so holding that it 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. It even negates the exception carved out in the Tamil Nadu case (*supra*) for reserving such bill in the second round if the bill was materially different from what was presented in the first round.

II. On time-limits and issue of deemed assent

In the Tamil Nadu case, the Hon'ble court had imposed timelines upon expiration of which the doors for Judicial review would be open for the State legislature, with clarifying that such timelines were not akin to amending the text of the Constitution, because it only opens the doors for judicial review and not automatic assent. Although the Hon'ble court in the same case had held, owing to the inaction by the Governor on the bills, they are deemed to be assented. The court held in the advisory opinion that the phrase “*as soon as possible*” in the proviso to Article 200, in any event, cannot translate into the strict imposition of timelines of the Governor, for exercise of his discretion or carrying out functions, under Article 200. It

took support from the Judgement of the Hon'ble court in [Nambudiri](#)¹⁰. A logical corollary of this reasoning was, that if there are no prescribed timelines under Article 200 and 201, then expiry of them also cannot amount to 'deemed consent'. The court held that the use of Article 143 (as was done by the court in Tamil Nadu Case, for 'deemed assent') would amount to a usurpation of the gubernatorial function of the Governor, and similarly of the President's functions, which would be 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 of the Constitution.

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

In the Tamil Nadu case, the Hon'ble court treated the first proviso as structurally and textually attaching only to "withhold assent". The Hon'ble court held that once a bill is re-presented to the governor after reconsideration under first proviso, the governor is obliged to grant assent to the bill. The governor cannot withhold the assent again or reserve it for the President. The only exception to this general rule, carved out in the Tamil Nadu case is when the bill presented in the second round is materially different from the one presented to the Governor in the first instance, restoring the three initial options. The Hon'ble court relied on precedents like Punjab case (*supra*), Kameshwar Singh¹¹, Valluri Basavaiah Chowdhary¹², and Hoechst Pharmaceuticals¹³ to affirm only three core options under Article 200 while distinguishing Samsher Singh (*supra*) and B.K. Pavitra (*supra*) to limit gubernatorial discretion.

The advisory opinion on the other hand rejected this view. It held that the first proviso qualifies only with the verb "Withhold", exhausting only that option post-reconsideration. This does not affect the rest two options, i.e. assent or reservation for the President. This permits the Governor to reserve the re-passed bill in appropriate federal cases. This was done in order to further strengthen, and increase the potential for the dialogic and consultative process that our Constitution values at its core, rather than retracting from it. It relied on the same three precedents as the Tamil Nadu case, but interpreted it differently and held that

¹⁰Purushothaman Nambudiri v. State of Kerala, 1961 SCC OnLine SC 361.

¹¹State of Bihar v. Kameshwar Singh, (1952) 1 SCC 528.

¹²Union of India v. Valluri Basavaiah Chowdhary, (1979) 3 SCC 324.

¹³Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45.

article 200 offers three options but critiqued the Tamil Nadu case regarding governor's power after sending it to the state legislature for reconsideration under first proviso.

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

In the Tamil Nadu case, the Hon'ble the court held that the functions exercised by the Governor and President under Articles, 200 and 201 are subjected to judicial review. Under Article 200, particularly the discretionary action contrary to aid and advice of Council of Ministers are subjected to judicial review to ensure constitutional bounds, distinguishing B.K. Pavitra (*supra*) and Hoechst case (*supra*). The Hon'ble court relied on Shamsher Singh (*supra*) and Nabam Rebia (*supra*) which allowed judicial review in exceptional cases of threats to democracy and the court outlined five grounds that would invite judicial review.

Similarly, certain grounds have also been laid down for justiciability of the President's function under article 201. The grounds being that if it is found to be arbitrary/malafide in enforceability, bill is found to be unconstitutional invites judicial review via Article 143 reference or inaction of the President invites mandamus.

Contrary to this, in the advisory opinion, it is held that Governor's and President's functions are non-justiciable as they form a dialogic legislative process among constitutional authorities protected by separation of powers and federalism. According to them this would violate basic structure by enabling judicial veto over legislative sanctity. This is held in para 146, which is reproduced below for reference-

*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 Page 96 of 111 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.*

However, the Hon'ble court in its advisory opinion also laid down scope for limited judicial intervention for prolonged, unexplained inaction via mandamus without merits review.

CONCLUSION

The advisory opinion by the Hon'ble Court relies on precedents with affirming judicial integrity while doing so, but leaves many questions unanswered. While the Tamil Nadu Judgement, did not rely on precedents or interpreted them differently than what was done by the court in the advisory opinion, it at least provided for judicial recourses in cases of prolonged delay by the Governor on bills passed by the Legislature. Although as the advisory opinion was against this recourse, and it concluded the same upon precedents, the opinion on one hand provides for issuance of a limited mandamus in cases where the Governor sits on the bills even after a reasonable period of time, it fails to specify this 'reasonable time' period, leaving the issue confusingly- wherein it is judicially non-permissible to withhold simpliciter assent to bills passed by the state legislature, but when can such recourse of limited mandamus be taken against this simpliciter withholding of assent by the governor on passed bills, remains vague due to the wording of 'reasonable time' period by the court. The extensive discretionary power given to Governor in contrast with what was done in the Tamil Nadu case, confers upon the Governor extensive responsibility to act on bills passed by the State legislature with prudence and diligence.

It now remains to be seen, how the dust settles on these pressing issues which still remain unanswered and leaves the Legislature in a 'Legal limbo', and how do the Courts answer it.