2025 INSC 481

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1239 OF 2023

THE STATE OF TAMIL NADU …PETITIONER(S)

VERSUS

THE GOVERNOR OF TAMILNADU & ANR. …RESPONDENT(S)

J U D G M E N T

Signature Not Verified
Digitally signed by CHANDRESH
Date: 2025.05.05 19:19:42 IST
Reason:

J.B. PARDIWALA, J.

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1. While the framers of the Constitution set out with a vision that the Governor would be a "constitutional head, a sagacious counselor and adviser to the Ministry"[1], someone who can "pour oil over troubled waters", what has unfolded before us in the instant litigation has been quite the opposite, as this Court has been called upon to calm the troubled waters stirred by the ensuing long-drawn battle of a high constitutional order between the petitioner and the respondent.

2. The State of Tamil Nadu, being aggrieved by the action of the Governor on few issues of prime public importance, has invoked the jurisdiction of this Court under Article 32 of the Constitution seeking appropriate reliefs as prayed for in the writ petition. The petitioner is aggrieved by the action, or rather inaction, on part of the Governor of Tamil Nadu in discharge of the following functions:

(i) Withholding of assent to and reserving for consideration of the President, by the Governor of 10 Bills enacted by the Legislature for the State of Tamil Nadu.

(ii) Inaction on files submitted to the Governor for according sanction to prosecute public servants and investigate various crimes of corruption involving moral turpitude.

[1] 8, CONSTITUENT ASSEMB. DEB., (May 30, 1949) 431.

(iii) Pendency of a number of files submitted to the Governor for premature release of prisoners.

(iv) Pendency of proposals submitted to the Governor for appointment of members to the Tamil Nadu Public Service Commission under Article 316 of the Constitution.

A. FACTUAL MATRIX

i. Factual background with respect to assent to bills.

3. The Legislature for the State of Tamil Nadu, between 13.01.2020 and 28.04.2023, enacted and forwarded 12 Bills to the Governor for grant of assent as per Article 200 of the Constitution. Even though the present Governor took charge of the office with effect from 18.11.2021, yet he did not take the necessary action on any of the said Bills forwarded to his office till October 2023. The petitioner, being aggrieved by the inaction on part of the Governor, had to ultimately file the present writ petition before this Court. The same was filed on 31.10.2023.

4. This Court issued notice to the respondents on 10.11.2023. The Governor, forthwith, took a decision on the 12 Bills on 13.11.2023 by withholding assent simpliciter to 10 bills i.e., he did not convey any message to the State Legislature for reconsideration of the said Bills as prescribed under the first

proviso to Article 200, and by reserving two Bills for the consideration of the President. The 10 bills for which assent was withheld were returned to the State Legislature by the Governor.

5. The State Legislature, on 18.11.2023, convened a special session and repassed the 10 bills which were returned by the Governor after withholding of assent. The bills were passed without any material change and were forwarded to the Governor's Secretariat on the same day for his assent in accordance with the first proviso to Article 200. This Court, in its order dated 20.11.2023, noted that since the repassed 10 bills were pending with the Governor, the hearing of the writ petition be adjourned to 01.12.2023 and issued directions that this Court shall be apprised of the progress in the matter.

6. On 28.11.2023, the Governor, without the aid and advice of the Council of Ministers of the State, in exercise of his discretion, reserved the said repassed Bills for the consideration of the President. The letter of the Governor to the Union Government referring the said Bills for the consideration of the President mentioned that the Bills were re-considered and passed again by the State Legislature. Interestingly, although the Governor noted that the Bills were ***intra-vires*** the competence of the State Legislature having been legislated under Entry 66 of List I, Entry 32 of List

II and Entry 25 of List III, yet he reserved the said Bills for the consideration of the President in the second round on the ground that the Bills suffered from repugnancy on account of being contrary to Entry 66 of the Union List i.e., List I. These grounds have been taken by the Governor to reserve the 10 Bills for consideration of the President. For reference, we have extracted the relevant portion of the letter pertaining to the Tamil Nadu Fisheries University (Amendment) Bill, 2023 which reads thus:

> *"I am directed to state that the Tamil Nadu Legislative Assembly has passed the Tamil Nadu Fisheries University (Amendment) Bill, 2023 (LA Bill No.15 of 2023) on 21.4.2023 and sent to the Hon'ble Governor for assent. Hon'ble Governor has returned the Bill with the following remarks –*
>
> *"I withhold assent".*
>
> *2. The State Government have reconsidered the said Bill and again passed in the Tamil Nadu Legislative Assembly on 18.11.2023 and sent to Hon'ble Governor for assent.*
>
> *3. In this regard, I am directed to inform that a Background Note on Reserving the Bills for the consideration of Hon'ble President regarding University Bills which has been approved by the Hon'ble Governor is enclosed, since, co-ordination. and determination of standards in institutions of higher education or research and scientific and technical institutions Is in Entry No.66 of the Union List of the Seventh Schedule of the Constitution, the Bills suffer from repugnancy. Hence, the Hon'ble Governor has reserved the Bill viz. Tamil Nadu Fisheries University (Amendment) BIii, 2023 (LA Bill No.15 of 2023) for the consideration of the Hon'ble President.*

4. The Bill falls, mainly, within the scope of the following entries of the Union, State and Concurrent. Lists In the Seventh Schedule to the Constitution, namely-

UNION LIST

Entry 66·- Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

STATE LIST

Entry 32 -- Incorporation, regulation and winding up of corporations, other than those specified in List-I and Universities;

CONCURRENT LIST

Entry 25 -- Education, including technical education, medical education and universities and is intra-vires the State Legislature.

5. I am, therefore, directed. to request to take appropriate action for the Bill to have consideration of the Hon'ble President."

7. The Governor, on 04.12.2023, also sought to clarify that the 10 Bills to which he had withheld assent simpliciter were not returned to the Legislature for reconsideration as stipulated in the first proviso of Article 200. Despite that, the State Government had placed the Bills before the legislative assembly again. After the Bills were repassed by the legislative assembly, the State Government sent the same back to the Governor for assent. The Governor clarified that since the Bills suffered from repugnancy, he was reserving the said Bills for the consideration of the President. These clarifications were sent for all the 10 Bills. For reference, we have extracted

the relevant portion of the letter pertaining to the Tamil Nadu Fisheries University (Amendment) Bill, 2023 which reads thus:

> *"Kindly refer our letter dated 28.11.2023.*
>
> *2. I am now directed to elaborate further on the circumstances under which the Bill was requested to be placed before the Hon'ble President for consideration. When the, The Tamil Nadu Fisheries University (Amendment) Bill, 2020 (LA Bill No. 2 of 2020) passed by the Tamil Nadu Legislative Assembly on 09.01.2020 was sent to the Hon'ble Governor for his essent, the Hon'ble Governor has exercised his substantive powers under Article 200 of the Constitution and took decision of withholding his assent to the Bill and the file was returned to the Law Department of the State Government, conveying the decision of the Governor "I Withhold assent". It is clarified that the Bills was not returned for re-consideration as stipulated in the proviso to Article 200 of the Constitution.*
>
> *3. While withholding his assent, the Hon'ble Governor has relied on the position held by the five member bench (Constitution Bench) of the Hon'ble Supreme Court in Union of India and others Vs. Valluri Basavalah Chowdhary and others and Maharao Sahit Shri Bhim Singhi Vs. Union of India and others. (Civil Appeal No's 1896 of 1976, 265-300 of 1977, 29-38 of 1977 and 5 of 1977 and W.P. No. 350 of 1977, decided on May 1, 1979) where it has been stated In Para 19:*
>
> *"The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State Legislature has to be reserved for the assent under Article 200. Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may, except In the case of a 'Money Bill', withhold his assent*

therefrom, In which case the Bill falls through unless the procedure indicated in the first proviso is followed, I.e. return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down In Article 201".

4. However, State Government placed the Bill again in the Legislative Assembly and after getting Assembly's endorsement, sent them again to the Hon'ble Governor on 18.11.2023.

5. The Hon'ble Governor had not returned the Bills under the proviso to Article 200 for re-consideration, however, State Government has sent them back. Since the Bill suffers from repugnancy, Hon'ble Governor has reserved the same for the consideration of the Hon'ble President."

8. In view of the reservation of the 10 Bills for the consideration of the President, the petitioner filed the I.A. No. 259020 of 2023 on 11.12.2023, seeking amendment of the prayers of the present writ petition and prayed for insertion of the following prayer:

"Pass any writ/order or direction to declare that the action of the Governor of Tamil Nadu/ first Respondent of reserving the following Bills 1. Bill No 2/2020 namely "A Bill further to amend the Tamil Nadu Fisheries University Act, 2012", 2. Bill No 12/2020 namely "A Bill further to amend the Tamil Nadu Veterinary and Animal Sciences University Act, 1989", 3. Bill No 24/2022 namely "The bill to amend the Universities laws. The Vice-Chancellors of all Universities (except University of Madras)", 4. Bill No 29/2022 namely "A Bill further to amend the Tamil Nadu Dr. Ambedkar Law University Act, 1996", 5. Bill No 39/2022 namely "A Bill further to amend the Tamil Nadu Dr. M.G.R. Medical

University, Chennai, Act, 1987", 6. Bill No 40/2022 namely "A Bill further to amend the Tamil Nadu Agricultural University Act, 1971", 7. Bill No 48/2022 namely "A bill further to amend the Tamil Nadu Universities Laws", 8. Bill No 55/2022 namely "A Bill further to amend the Tamil University Act, 1982", 9. Bill No 15/2023 namely "A Bill further to amend the Tamil Fisheries University Act, 2012", 10. Bill No 18/2023 namely "A Bill further to amend the Tamil Nadu Veterinary and Animal Sciences University Act, 1989" for the consideration of the President qua the Bills passed and forwarded by the Tamil Nadu State Legislature to him as unconstitutional, illegal, arbitrary, unreasonable besides malafide exercise of power and/or to quash the being ultra- vires Articles 14, 19 and 21 read with Article 200 of the Constitution and direct the Respondent-1 to declare assent to the same."

9. Thus, what was sought to be conveyed by the aforesaid I.A. was that the 10 Bills were reconsidered and passed again by the State Legislature and were thereafter forwarded to the Governor for his assent in terms of the first proviso to Article 200. However, the Governor reserved the said Bills for the consideration of the President. It was alleged that such action on the part of the Governor was violative of Article 200 and was done with a *mala fide* intention only with a view to circumvent the jurisdiction of this Court.

10. Upon the suggestion made by this Court, the Governor, on 12.12.2023 wrote to the Chief Minister for the State of Tamil Nadu inviting him to a meeting in an attempt to resolve the deadlock. The Governor and the Chief Minister

met on 30.12.2023, pursuant to which the Chief Minister submitted a representation summarising the following issues:

a. The Bills could not have been reserved for the consideration of the President after the decision of this Court in ***State of Punjab v. Principal Secretary to the Governor of Punjab*** reported in **(2024) 1 SCC 384**, wherein it was held that once the Governor decides to exercise the power of withholding assent to a bill, the operation of the first proviso to Article 200 has to necessarily follow.

b. Article 200 does not confer any power upon the Governor to exercise the option of reserving a bill for Presidential consideration after a bill has been reconsidered and repassed by the State Legislature. Since, the 10 Bills in the present case were reconsidered and passed again by the State legislature, the only constitutionally permissible option for the Governor was to grant assent.

c. The Governor also acted in contravention of the aid and advice of the Council of Ministers that "*the Bill repassed by the Legislative Assembly should be assented to by the Hon'ble Governor without withholding assent*", which is *ultra vires* of the Constitution.

11. In light of the above representation, the Chief Minister requested the Governor to:

(i) Recall the 10 Bills reserved for the consideration of the President and grant assent expeditiously;

(ii) In future, grant assent to Bills passed by the State Legislature within 30 days and avoid unnecessary reservation of the bills for the consideration of the President;

(iii) Act in accordance with the aid and advice tendered by the Council of Ministers.

12. Out of the 10 Bills reserved for her consideration, the President withheld assent to seven Bills, granted assent to one Bill and is yet to consider the remaining two Bills.

13. The status of the Bills is summarized below:

S. No.	**Bill Details**	**Forwarded to the Governor by the State Legislature**	**Action by the Governor**	**Re-enacted by the State Legislature**	**Action by the Governor**	**Action by the President**
1.	Bill No. 2/2020 namely "A Bill further to amend the Tamil Nadu Fisheries University Act, 2012.	13.01.2020	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent withheld on 26.02.2024.

2.	Bill No 12/2020 namely "A Bill further to amend the Tamil Nadu Veterinary and Animal Sciences University Act, 1989"	18.10.2020	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent is awaited since 28.11.2023.
3.	Bill No 24/2022 namely "The bill to amend the Universities laws. The Vice Chancellors of all Universities (except University of Madras) to be appointed by the Government instead of Governor."	28.04.2022	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent withheld on 26.02.2024.
4.	Bill No. 25/2022 namely "A bill to further amend the Chennai University Act."	28.04.2022	Reserved for consideration of the President on 13.11.2023.	-	-	Status not on record.
5.	Bill No. 26/2022 namely "A Bill to provide for the Establishment and Incorporation of a University for Siddha	05.05.2022	Reserved for consideration of the President on 13.11.2023.	-	-	Status not on record.

	Ayurveda, Unani, Yoga & Naturopathy and Homeopathy in the State.”					
6.	Bill No 29/2022 namely “A Bill further to amend the Tamil Nadu Dr. Ambedkar Law University Act, 1996”.	16.05.2022	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent withheld on 15.02.2024.
7.	Bill No 39/2022 namely “A Bill further to amend the Tamil Nadu Dr. M.G.R. Medical University, Chennai, Act, 1987”.	16.05.2022	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent withheld on 16.02.2024.
8.	Bill No 40/2022 namely “A Bill further to amend the Tamil Nadu Agricultural University Act, 1971”.	16.05.2022	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent withheld on 18.02.2024.

9.	Bill No 48/2022 namely "A bill further to amend the Tamil Nadu Universities Laws."	27.10.2022	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent granted on 18.02.2024.
10.	Bill No 55/2022 namely "A Bill further to amend the Tamil University Act, 1982."	27.10.2022	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent withheld on 18.03.2024.
11.	Bill No 15/2023 namely "A Bill further to amend the Tamil Nadu Fisheries University Act, 2012."	28.04.2023	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent withheld on 26.02.2024.
12.	Bill No 18/2023 namely "A Bill further to amend the Tamil Nadu Veterinary and Animal Sciences University Act, 1989".	28.04.2023	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent is awaited since 28.11.2023.

ii. **Factual background with respect to accord of sanction for investigation into cases of corruption against public servants.**

14. Between 10.04.2022 and 15.05.2023, the Government of Tamil Nadu submitted to the Governor, four files relating to the prosecution of public servants involved in crimes of moral turpitude under the Prevention of Corruption Act, 1988, which at the time of filing of the writ petition remained pending with the Governor.

15. It is only upon the present writ petition being filed and issuance of notice that the Governor's office started acting upon the files. The Governor, on 01.12.2023, submitted the factual position regarding the bills, files and other cases pending with his office detailing the actions taken thereupon. The details of the files requesting for sanction to investigate and prosecute and the Governor's actions thereupon are summarised below:

S. No.	Department	Subject	Request sent by the State to the Governor	Status of the Files
1.	Tamil Development and Information Department	Request to accord sanction by the Hon'ble Governor/Chancellor for initiating preliminary enquiry under Section 17A(1)(b) of the Prevention of Corruption Act, 1988 against	11.05.2022	Sanction accorded on 18.11.2023.

		Thiru G. Bhaskaran, Former Vice-Chancellor, Tanjavur University.		
2.	Public (S.C.) Department	Request to accord sanction by the Hon'ble Governor u/s 19(1) of the Prevention of Corruption Act, 1988 to prosecute Thiru K.C. Veeramani, former Minister.	12.09.2022	• A duly authenticated investigation report was sought from the Government on 07.07.2023. • The Government sent a reply dated 11.07.2023 stating that authenticated investigation report has been submitted. • The Governor sent back the file to the Government on 15.11.2023 with the observation that there was no duly authenticated investigation report in the file. • The Government re-submitted the file on 18.11.2023.

3.	Public (S.C.) Department	Request to accord sanction by the Hon'ble Governor for initiating prosecution u/s 19 of the Prevention of Corruption Act, 1988 against Thiru B.V. Ramana @ B. Venkataramana, former Minister for Commercial Taxes and Dr. C. Vijayabaskar, former Minister for Health & Family Welfare.	12.12.2022	Sanction accorded on 13.11.2023.
4.	Public (S.C.) Department	Request to accord necessary sanction by the Hon'ble Governor for initiating prosecution u/s 19(1)(b) of PC ACT, 1988 against Thiru M.R. Vijayabhaskar, former Minister.	15.05.2023	Under consideration since May 2023.

iii. <u>Factual background with respect to the files pertaining to premature release of prisoners</u>.

16. The petitioner forwarded 53 files pertaining to the premature release of prisoners to the Governor between June and August 2023 requesting approval thereof.

17. In response to the allegation of delay and pendency on the said files, the office of the Governor represented before this Court that since September

2021, i.e., from the date the present Governor assumed office, 580 proposals regarding premature release of prisoners were received out of which 362 files were approved, 165 files were rejected and 53 were under consideration.

18. The Governor informed in the backdrop of the factual position prevailing on 01.12.2023 that the 53 files that remained pending were recent proposals sent by the petitioner only between June and August 2023. This Court has not been apprised of the status of these files after 01.12.2023 by any of the parties.

iv. <u>Factual background with respect to the appointments to the Tamil Nadu Public Service Commission (TNPSC)</u>.

19. It is the case of the petitioner that it was represented before the Governor by way of various representations that as per Regulation 3 of the Tamil Nadu Public Service Commission Regulations, 1954, the Commission shall consist of a Chairman and 14 Members. However, no heed was paid to such representations. The functioning strength of TNPSC was of four members on the date of filing of the present petition.

20. In regard to the aforesaid, the petitioner forwarded representations to the Governor's office seeking approval of the proposed names for the position

of members in TNPSC and carrying out their appointments. The petitioner also sent reminders to the Principal Secretary to the Governor for acting on the files sent to the Governor's office in this respect.

21. The Governor, on 27.09.2023, returned the said files with a note raising some queries regarding transparency in the selection process, tenure of the members to be appointed and credentials of the proposed candidates. The Governor clarified that as the queries raised by his office were not addressed by the petitioner, the proposal for appointment of the recommended candidates was being returned and the same was no longer pending before him. This happened on 26.10.2023.

22. The petitioner, on the other hand, has averred in its writ petition that such queries were against the established practices to the selection of constitutional posts and that the availability of the chairman and members in the TNPSC was essential to monitor and expedite various recruitment processes as well as promotions. Delays in appointments to the TNPSC resulted in non-availability of sufficient members, which detrimentally affected the functioning of the Executive.

23. The petitioner explained this position and also addressed the queries raised by the Governor in its clarification note dated 07.10.2023. The files for

approval of appointments were accordingly re-submitted on 10.10.2023, however, the same were returned by the Governor on 27.10.2023 without assigning any reasons.

v. **Factual background with respect to dismissal of ministers and allocation of ministries.**

24. On 29.06.2023, the Governor *suo moto* and contrary to the aid and advice of the State Council of Ministers recommended the dismissal and divestment of portfolio of Senthil Balaji, a minister in the Tamil Nadu Cabinet on the ground that he was arrested by the Enforcement Directorate and was in judicial custody. However, the Governor addressed another letter to the Chief Minister on the very same day informing that he had kept the dismissal of Senthil Balaji in abeyance till further communication in light of the advice of the Union Minister of Home Affairs that it would be prudent to seek the opinion of the Attorney General on the matter.

25. In a similar case, Dr. K. Ponmudy, a minister in the Government of Tamil Nadu was convicted and sentenced by the Madras High Court against which, he filed an appeal before this Court. This Court, *vide* order dated 11.03.2024, suspended the conviction of Dr. K. Ponmudy from its operation keeping in view Section 8(3) of the Representation of People's Act, 1951 and more

particularly for the reason that he should not suffer disqualification from the office of Member of Legislative Assembly.

26. Accordingly, on 13.03.2024, the Speaker of the State Legislative Assembly declared that the disqualification ceased to operate with effect from 19.12.2023. The Election Commission also withdrew the notification of vacancy for his constituency.

27. The Chief Minister wrote to the Governor on 13.03.2024 to swear in Dr. K. Ponmudy as a Minister and allot to him the portfolio of Higher Education. However, the Governor *vide* the letter dated 17.03.2024, declined the request stating that the conviction order was suspended from its operation by way of 'interim relief' granted by this Court which meant that the conviction against Dr. Ponmudy, though existent, had been made non-operative and not set aside. The Governor also stated that the re-introduction of Dr. K. Ponmudy in the Cabinet would be against "constitutional morality".

28. Consequently, the petitioner was constrained to file I.A. No. 69967 of 2024 on 18.03.2024 to amend its prayer in the present writ petition for including the relief of staying the operation of the Governor's letter dated 17.03.2024 and directing him to administer the oath of office and secrecy to Dr. K. Ponmudy. The amendment sought to be made reads thus:

"It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

a) Grant permission to amend the prayer in the above W.P. No. 1239 of 2023 and add the following prayer:

> *"f. Call for the records of the 1st Respondent pertaining to Letter No. 007/RBTN/ 2024 dated 17.03.2024 and quash the same and direct the 1st Respondent to act in accordance with the letter of the Hon'ble Chief Minister of Tamil Nadu in D.O. Letter No. 952/CMO/2024 dated 13.03.2024 and consequently to appoint Thiru K. Ponmudi, Member of Tamil Nadu Legislative Assembly as a Minister of the Government of Tamil Nadu by administering oath of office and secrecy with the portfolios specified in the letter of the Hon'ble Chief Minister of Tamil Nadu in D.O. Letter No. 952/CMO/2024 dated 13.03.2024 and consequently to change the portfolios among Hon'ble Ministers"*

b) Pass such other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

29. This Court heard the application on 22.03.2024 and expressed its displeasure at the reluctance of the Governor to accept the order of this Court dated 11.03.2024 suspending the sentence of Dr. K. Ponmudy. This prompted the Governor to swear in Dr. K. Ponmudy as Minister in the State Cabinet and the I.A. was disposed of accordingly recording the same.

30. In the aforesaid factual matrix, the petitioner have prayed for a declaration that the reservation of the bills by the Governor for the consideration of the President after they were repassed by the State Legislature and presented before him as illegal. Further, as a sequitur, the petitioner have prayed that the act of withholding of assent by the President be declared as *void ab-initio*. The petitioner have also prayed for a declaration that the simpliciter withholding of assent by the Governor without following the procedure prescribed in the first proviso to Article 200, be also declared to be illegal for being in contravention to the position of law as laid down in ***State of Punjab*** *(supra)*. The petitioner have also prayed for a direction to the Governor to accord sanction for prosecution, take prompt decision on the pending files pertaining to grant of remission and to clear the proposal for appointment of members to the TNPSC.

B. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Petitioner

31. Mr. Rakesh Dwivedi, the learned Senior Counsel appearing for the petitioner, made elaborate submissions on the following aspects:

a) Apparent Constitutional errors committed by the Governor.

i) Pocket veto is not available under the Indian constitutional scheme. The Governor could not have kept the Bills submitted to him

between the years 2020 and 2023 in a cold storage without taking any decision on them. The fact that he entered no discussion with the State Government or the Chief Minister in relation to the Bills submitted to him further indicates that the Governor exercised pocket veto in relation to the said Bills, thereby bringing the constitutional machinery to a standstill. He submitted that the substantive part of Article 200 uses the expression "shall declare" which indicates that the function of the Governor is mandatory. The underlying objective of Article 200 is to make a Bill operative as an Act. Therefore, the scheme of Article 200 negates the possibility of engaging in inordinate delay or pocket veto.

ii) The Governor failed to take note of the decision of this Court in ***State of Punjab*** *(supra)*. Although the said decision held that the first proviso to Article 200 attaches to the option of withholding assent, yet the Governor recorded a simpliciter finding of withholding assent without conveying any message to the State Legislature, as provided under the first proviso. He submitted that simpliciter withholding of assent by the Governor is also violative of Article 14 which mandates that the exercise of Constitutional powers should be based on reason and transparency. The State Legislature must be told why the assent has been withheld so as to

enable it to reconsider the Bill. He further submitted that in the absence of any message, it would be open to the State Legislature to understand that the Governor wishes the entire Bill to be reconsidered.

iii) On the facts of the present case, Mr. Dwivedi submitted that having recorded that the Bills submitted to him were *intra vires* of the State Legislature, it was not open to the Governor to reserve the Bills for the consideration of the President upon being repassed and presented again before him. He submitted that once the reservation of the Bills for the consideration of the President is found to be erroneous in law, any subsequent withholding of assent by the President would also be legally vitiated.

iv) He submitted that even the withholding of assent by the President under Article 201 was by way of a non-speaking order and thus does not comply with the first proviso to the Article. Similar to Article 200, the withholding of assent under Article 201 must necessarily result in a message under the first proviso. He summarised his arguments on this aspect by submitting that the acts of simpliciter withholding, reserving for the consideration of the President, delay by Governor, as well as simpliciter withholding of

assent by the President are all unconstitutional, and hence null and void.

b) Justiciability and Judicial Review.

i) Mr. Dwivedi submitted that no constitutional power vested in any authority, howsoever high, is beyond the powers of judicial review of the constitutional courts. The scope of judicial review may vary, but no power is beyond the purview of the courts. The Courts may exercise restraint, but that is not to say that if the power has been exercised unconstitutionally, manifestly arbitrarily, in breach of fundamental rights enshrined in Part III or any other provision of the Constitution, or in a *mala fide* manner, the courts would be prohibited from striking down the exercise of such power.

ii) In furtherance of the aforesaid submission, he drew our attention to the decision in ***S.R. Bommai v. Union of India*** reported in **(1994) 3 SCC 1** wherein the justiciability of a proclamation under Article 356 was propounded. He also relied upon the decisions of this Court in ***Rameshwar Prasad v. Union of India*** reported in **(2006) 2 SCC 1** and ***Kihoto Holohan v. Zachillhu*** reported in **1992 Supp (2) SCC 651** wherein the exercise of power of the Governor to invite the leader of the majority party to form government and the

power of the Speaker under the 10th Schedule to the Constitution were respectively held to be justiciable by this Court.

iii) In light of the aforesaid, he submitted that the position of law as on date, as explained by several Constitutional Bench decisions, is clear that no exercise of Constitutional power is outside the ambit of judicial review. No power is absolute and non-justiciable. Hence, the power exercised under Article 200 can also be examined by this court to discern any unconstitutionality.

c) Governor is required to act upon the aid and advice of the Council of Ministers.

i) Mr. Dwivedi submitted that the various provisions of the Constitution stand in harmony and are interdependent. They are not isolated silos. They share the ultimate objective of harmonious Parliamentary governance, seek welfare of the people and implement Parliamentary form of democracy within a federal system. Therefore, interpretation of a Constitutional provision should accord with these fundamental principles and the basic structure of the Constitution.

ii) He submitted that this Court has been consistent in its approach while interpreting the constitutional provisions, more particularly

those that pertain to the Governor or the President, in light of the fundamental principles of Parliamentary democracy and federalism. He placed reliance on the decisions of this Court in ***Samsher Singh v. State of Punjab*** reported in **(1974) 2 SCC 831**, ***S.R. Bommai*** *(supra)*, ***Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly*** reported in **(2016) 8 SCC 1** in support of the aforesaid submission.

iii) He further submitted that the discretion of the Governor under the Indian Constitution is governed solely by Article 163(1) and the interpretation adopted by this Court has been such which does not make the Governor dominant over the Chief Minister, who is an elected representative of the people.

iv) Article 200 embodies an aspect of legislative procedure so as to make a Bill operative as an Act. Seen thus, it is imperative that the Governor acts upon the aid and advice of the Council of Ministers when exercising his power under Article 200.

v) Taking us through the historical background in which Article 200 came to be drafted, Mr. Dwivedi submitted that Section 75 was the provision corresponding to Article 200 in the Government of India Act, 1935. However, in Section 75 the expressions "Governor in

his discretion" and "Governor may, in his discretion" were deployed in the substantive part and the proviso respectively. Later on, when the draft of the Constitution was prepared by the constitutional advisor, the expression "Governor in his discretion" was dropped from the substantive part of Article 147 (predecessor of draft Article 175), but the expression "Governor may, in his discretion" was retained in the proviso. The same position continued in Article 175 of the Draft Constitution, 1948 (hereinafter, "**the Draft Constitution**") (predecessor of Article 200) presented before the Constituent Assembly. However, ultimately, the expression conferring discretion was dropped and Article 200 came to be adopted in its present form. He submitted that the reason for this was explained by Dr. Ambedkar who said that there can be no room for the Governor to act on his discretion in a responsible form of government. Further, it was explained by Mr. T.T. Krishnamachari that the returning of the Bill to the Legislature will only be upon the advice of the Council of Ministers and not on the personal discretion of the Governor.

vi) Mr. Dwivedi submitted that issues of repugnance of State legislation with a Central enactment are not of easy determination and the only method of discourse between the Governor and the

State Legislature is provided in the first proviso to Article 200. Hence, simpliciter withholding of assent without taking recourse to the first proviso ought to be rejected by the Courts and compliance with the first proviso ought to be mandated in every case of withholding of assent. Furthermore, issues of repugnance should be left for the constitutional courts to decide.

vii) The interpretation of Article 200 must be done in line with the intent of the framers of the Constitution which is evident from the Constituent Assembly Debates. The only instance where this Court adopted an approach contrary to the one suggested by the Constituent Assembly pertained to the appointment of Judges to the High Court and this Court and that approach was adopted to preserve the independence of the judiciary, which is part of the basic structure. However, in the present case, there is no compelling need to diverge from the view adopted by the Constituent Assembly as that view supports the fundamental principles of federalism.

d) Option of withholding of assent is attached to the first proviso to Article 200.

i) He submitted that the exercise of power to withhold assent by the Governor is coupled with the duty of the Governor to comply with the procedure prescribed in the first proviso to Article 200 and the

same has been recognised in the decision in ***State of Punjab*** *(supra)*.

ii) On the use of the expression "shall declare" in the substantive part of Article 200, he submitted that this expression in the main part of Article 200 would, by necessary implication, require the Governor to mention the reasons for withholding the assent.

iii) He submitted that the expression "shall not withhold assent therefrom" in the first proviso to Article 200 takes away the option of reserving the Bill for the consideration of the President from the Governor when the Bill is repassed by the State Legislature and presented before him for assent. In support of his submission, he argued that the use of a negative expression renders the course of action prescribed as mandatory in nature. He further submitted that the phraseology of the first proviso to Article 200 is different from the proviso to Article 201 inasmuch as the latter does not oblige the President to mandatorily assent to the Bill after it has been repassed by the State Legislature and is presented before him again. Whereas, in contrast, the first proviso to Article 200 is couched in a negative language and thus prohibits the Governor from taking any other recourse than granting assent.

e) Reservation of bills for the consideration of the President.

i) Mr. Dwivedi submitted that the power to reserve the Bill for the consideration of the President is not open ended. If specific provision of the Constitution does not require Presidential assent to the Bill passed by State Legislature, then such a Bill cannot be reserved for the consideration of the President.

ii) He submitted that a further limitation on the power to reserve a Bill is that it can only be reserved on the aid and advice of the Council of Ministers and the Governor has no personal discretion in this matter. Articles 31A, 31C, 213, 254, 288, 304(b), 360 and 6th Schedule are the only provisions which expressly require assent of President. It is only when these articles are attracted that the Governor can reserve the Bills for consideration of the President. In the exclusive domain of Legislation under the State List or List-II of the 7th Schedule of the Constitution, no assent of President is needed.

iii) On the aspect of repugnancy, he submitted that the letter of the Governor informing that the Bills were being reserved for the consideration of the President fails to specify the Central law with which States Bills are repugnant. This indicates non-application of

mind. He submitted that in ***Kaiser-I-Hind Pvt. Ltd. and Anr. v. National Textile Corporation (Maharashtra North) Ltd. and Ors.*** reported in **(2002) 8 SCC 182**, a Constitution Bench of this Court held that the Central law with which repugnance exists must be pointed out by the proposal of State government specifically. Even the nature of repugnance should be stated so as to enable the President to consider the nature, extent, feasibility, practicality and desirability of assenting.

iv) On the aspect of reading in a time limit within the scheme of Article 200, he submitted that an outer limit of 2 to 3 months needs to be stipulated by this court to obviate exercise of pocket-veto by the Governors. Delays of over 3 months needs to be curbed.

32. Dr. Abhishek Manu Singhvi, the learned Senior Counsel appearing for the petitioner, made detailed submissions broadly on the following aspects:

a) The Governor in exercise of his functions under Article 200 is required to act on the aid and advice tendered by the Council of Ministers.

i) The Governor is merely a titular or *de jure* head of the State and the task of governing the State is entrusted to the Chief Minister and his Council of Ministers who can be said to be the head of the State

de facto. The powers vested in the Governor under the Constitution must be exercised on the aid and advice of the Council of Ministers headed by the Chief Minister.

ii) The Constituent Assembly Debates indicate that the framers of our Constitution envisaged the position of the Governor as that of a guide, philosopher and a friend of the Government and the people in general.

iii) The Constituent Assembly, in its wisdom and in consonance with the position of the Governor in the parliamentary form of Government, removed the phrase "in his discretion" from the substantive part and the first proviso to Section 75 of the Government of India Act upon which Article 200 was modelled.

iv) The Constitutional Scheme does not envisage that the Governor would have the power to veto Bills duly passed by the State Legislature and would be capable of supplanting the policies of the Government with his own discretion. The Governor cannot sit over the Bills enacted by the Legislature indefinitely as that would be against the interest of the people who elect the Government with the aspiration that the Government would legislate in their interest.

Gubernatorial procrastination is a new phenomenon and requires judicial intervention for finding a new solution for it within the Constitutional framework.

v) Placing reliance on the Constitution Bench decision in ***Samsher Singh*** *(supra)*, he submitted that although the executive power of the State is vested in the Governor yet it is actually carried on by the Ministers under the Rules of Business made under Article 166(3). Further, the President or the Governor act on the aid and advice of the Council of Ministers with the Prime Minister as the head in the case of the Union and the Chief Minister as the head in the case of States, in all matters which vest in the Executive, irrespective of whether those functions are executive or legislative in character.

vi) Referring to the observations made by a Constitution Bench of this Court in ***Nabam Rebia*** *(supra)*, it was submitted that the Governor cannot be entrusted with such powers and functions as would assign to him a dominating position over the State Executive and the State Legislature. The Governor cannot be accepted as an all-pervading super-constitutional authority. It was submitted that an examination of the executive and legislative functions of the Governor in the

context of the constitutional scheme clearly brings out that the Governor has not been assigned any substantive role either in the executive or the legislative functioning of the State.

vii) It was argued that this Court in ***Nabam Rabia*** *(supra)* has gone further to say that any exercise of discretionary powers of the Governor is limited to situations where a constitutional provision expressly provides that the Governor should act in his own discretion. Additionally, a Governor may exercise his functions in his own discretion in situations where the constitutional provision concerned cannot be construed otherwise and in situations where the clear intent underlying a constitutional provision so requires i.e., where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms.

viii) In response to our specific question as regards the observations made by this Court in ***B.K. Pavitra v. Union of India*** reported in **(2019) 6 SCC 129**, that the eventuality in Article 254(2) does not exhaust the ambit of the power entrusted to the Governor under Article 200 to reserve a Bill for the consideration of the President, he submitted that the Governor may legitimately refer a bill for

consideration at the end of the President upon entertaining a legitimate doubt about the validity of law. However, such reference of a bill can only be done with the aid and advice of the Council of Ministers and not upon the individual discretion of the Governor.

ix) He further submitted that the said observations in ***B.K. Pavitra*** *(supra)* should be interpreted to mean that even though the power under Article 200 is entrusted to the Governor, yet such exercise of power can only be done with the aid and advice of the Council of Ministers of the State. The Governor has no independent discretion under the substantive part of Article 200 for referring the bill for the consideration of the President. As is crystal clear from the Constituent Assembly Debates, there is no independent discretion vested in the Governor in exercise of his functions under Article 200 of the Constitution. Although the power of reserving Bills for the consideration of the President is a necessary channel for references under Article 254(2) to save the competence of the State Legislatures from being unduly restricted by the operation of the rule of repugnancy embodied in Clause (1) of the Article 254, yet such power is also subject to the aid and advice of the Council of Ministers.

b) The Governor cannot reserve a bill for the consideration of the President when it is repassed by the State Legislature, with or without amendments, under the first proviso to Article 200?

i) Mr. Singhvi submitted that the relevant consideration at the end of the Governor when a bill is presented before him for assent broadly should be as follows:

1. The first step is to ascertain whether the Bill is a Money Bill – In cases of Money Bills, the Governor has to grant assent.
2. Thereafter, the Governor must ascertain whether the second proviso to Article 200 is attracted, that is, whether the Bill, if it became law, would derogate from the powers of the High Court - If the answer is yes, then the Governor must reserve the Bill for the consideration of the President.
3. In all other cases, the Governor has three options to choose from when the bill is presented before him for the first time – to either assent, or withhold assent, or reserve the Bill for the consideration of the President.

ii) He submitted that after the Governor has withheld assent to a bill and returned the same to the Legislative Assembly, it is not open to the Governor to reserve the said bill for the consideration of the President once the Legislative Assembly re-passes it with or

without amendment. If the Governor wants to reserve any bill for the consideration of the President, he must do so in the first instance when the bill is presented to him for assent. The Governor can choose any one of the three options at the first instance but if he exercises the option to withhold assent, then the option of reserving the bill for the consideration of the President ceases to exist because the next step in such a case is to follow the procedure prescribed under first proviso to Article 200.

iii) Explaining the reason for the aforesaid, he submitted that upon exercising the second option, the third option no longer remains for the Governor as the first proviso to Article 200 comes into operation. Article 200 does not provide any scope to the Governor for the reservation of the bill once the second option has already been exercised. The decision of the Governor to go down the path of sending the bill back to the Legislature precludes him from reversing his constitutional election subsequently, by referring it to the President after the Bill is returned to him consequent to repassing by the Legislature.

c) The first proviso to Article 200 is attached to the option of withholding of assent provided in the substantive part of the article.

i) The concluding part of the first proviso stipulates that if the Bill is passed again by the Legislature either with or without amendments, the Governor shall not withhold assent therefrom upon presentation. The expression "shall not withhold assent therefrom" is a clear indicator that the exercise of the power under the first proviso is relatable to the withholding of the assent by the Governor to the bill in the first instance. This phrase constitutes a clear and unequivocal constitutional prohibition against the Governor. The role which is ascribed by the first proviso to the Governor is recommendatory in nature and it does not bind the State Legislature.

ii) The first proviso to Article 200 expands upon the second option to ensure that the object of the Article is not rendered otiose as without the first proviso, Article 200 would allow the Governor to indiscriminately veto bills by repetitively and sequentially withholding the assent and cripple an elected Government for political reasons.

iii) On the use of the expression “may” in the first proviso to Article 200, placing reliance on the decision of this Court in ***State of Uttar Pradesh v. Jogendra Singh*** reported in **AIR 1963 SC 1618** the counsel submitted that in the said decision while adjudicating the duty of the Governor to refer the cases relating to Government servants to the Administrative Tribunal under Rules 4(2) of the Civil Service Rules which also used the expression “may” this Court had held that the word “may” is capable of meaning “must” or “shall” in the light of the context. He further submitted that where a discretion is conferred upon a public authority coupled with an obligation, the word “may” which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word “may” out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed.

iv) The first part of the first proviso is mandatory in nature. It authorises the Governor to, as soon as possible, after the presentation for Bill for assent, return the Bill together with a message requesting the House to reconsider the Bill with the desirability of introducing any such amendments as he may recommend in his message. He submitted that this interpretation

was also followed by this Court in the decision in ***State of Punjab*** *(supra)* by stating that Governor must mandatorily follow the course of action indicated in the first proviso of communicating to the State Legislature "as soon as possible" a message warranting reconsideration of the Bill.

v) The Governor can only return the bill when he has withheld the assent. The Governor cannot be expected to keep the bill in his custody after withholding the assent as it would amount to a "pocket veto" or veto which is contrary to the intention of the makers of the Constitution. Any acceptance of such "suspended animation" doctrine of a Bill, supposedly kept indefinitely pending by a Governor, would be grossly violative of the Constitutional text, spirit and intent.

vi) The counsel while highlighting the facts of the case at hand, submitted that the Governor had returned the Bills with the remarks "I withhold assent" which amounts to a clear withholding as per the second option of the substantive part of Article 200. When these Bills were returned to the Legislative Assembly, the Bills only contained a signed endorsement by the Governor with the remarks "I withhold assent" and there was no message for reconsideration.

In such a situation of simpliciter withholding of assent, the State Legislative Assembly cannot be precluded from re-considering the Bill and re-passing the Bill as the exercise of the option of withholding of assent brings into operation the first proviso whereby such Bills have to be returned to the State Legislative Assembly.

vii) Once the first proviso comes into operation, the State Legislature is bound to mandatorily reconsider the Bills and pass them with or without any amendments as indicated by the expression "House or Houses shall reconsider the Bill accordingly" in the second part of the first proviso to Article 200.

d) A time-limit must be read into the expression "as soon as possible" appearing in the first proviso to Article 200 to curtail the prevalent practice of gubernatorial procrastination.

i) He submitted that the expression "as soon as possible" provided in first proviso to Article 200 does not provide any strict time limit to be followed by the Governor to decide upon the Bills presented for assent, but that should not and cannot mean that the Governor can keep a Bill duly passed by the State Legislative Assembly "pending" for indeterminate periods. This course of action is inconsistent with the phrase "as soon as possible".

ii) The counsel placed reliance on the following decisions of this Court in support of his submission:

- ***The State of Telangana v. Secretary to Her Excellency the Hon'ble Governor for the State of Telangana & Anr.*** reported in **(2024) 1 SCC 405** has emphasized that the phrase "as soon as possible" has significant Constitutional content, and must be borne in mind by Constitutional functionaries.
- ***Ram Chand and Ors. v. Union of India and Ors.*** reported in **(1994) 1 SCC 44** held that where for exercise of power no time-limit is fixed, it has to be exercised within a time which can be held to be reasonable.
- ***Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly and Ors.*** reported in **(2021) 16 SCC 503** had postulated a "three months outer limit" for deciding disqualification petitions filed before the Speaker.
- ***M/s North Eastern Chemicals Industries (P) Ltd. & Anr. v. M/s Ashok Mills*** - **CA No. 2669 of 2023** has held that where there is no time period prescribed by the statute, the Court must undertake a holistic assessment of the facts and circumstances, conduct of the parties, and the nature of the proceedings to examine the possibility of delay causing prejudice to a party.

- ***AG Perarivalan v. State, Through Superintendent of Police CBI/SIT/MMDA, Chennai, Tamil Nadu and Anr.*** reported in **(2023) 8 SCC 257** wherein while dealing with the delay caused by the Governor in deciding remission matters, this Court exercised its powers under Article 142 of the Constitution directing that the prisoner was deemed to have served the sentence.

iii) Mr. Singhvi referred to Chapter V of the report of the Sarkaria Commission on Centre-State Administrative Relations wherein it was suggested that the Governor should make a declaration under Article 200 within one month from the date on which the Bill is presented. He also referred to the Punchhi Committee Report on Centre-State Relations which recommended "maximum period of six months after Bill is presented" to be the time limit to be followed by the Governor under Article 200.

e) The observations made by this Court in its decision in Valluri Basavaiah Chowdhary are not applicable to the present case

i) Mr. Singhvi submitted that this Court in ***Valluri Basavaiah Chowdhary*** *(supra)* had no occasion to adjudicate upon the

interpretation of the constitutional powers of the Governor under Article 200 of the Constitution. Therefore, the observations of the Court in Para 19 cannot be construed to be its ratio *decidendi*. At most, these observations could be considered as *obiter dicta*. Indeed, they may not even constitute obiter but are mere observations, totally unconnected to and unnecessary for that case.

ii) He relied upon the decision of this Court in ***Secunderabad Club v. Commissioner of Income-Tax*** reported in **(2023) SCC OnLine SC 1004** to submit that in terms of Article 141 of the Constitution, only the *ratio decidendi* of a judgment, that is, the reason assigned in support of the conclusion, is binding. He submitted that this Court has held that what is binding, therefore, is the principle underlying a decision which must be discerned in the context of the question(s) involved in that case from which the decision takes its colour. In a subsequent case, a decision cannot be relied upon in support of a proposition that it did not decide. Therefore, the context or the question, while considering which, a judgment has been rendered assumes significance.

iii) He submitted that the *obiter dictum* of the Supreme Court is binding under Article 141 to the extent of the observations on points raised

and decided by the court in a case. Although the obiter dictum of the Supreme Court is binding on all courts yet it only has persuasive authority as far as the Supreme Court itself is concerned.

iv) He further submitted that a decision is not an authority for what can be read into it by implication or by assigning an assumed intention of the judges and inferring from it a proposition of law which the judges have not specifically or expressly laid down in the pronouncement.

v) Lastly, he submitted that even if the decision in ***Valluri Basavaiah Chowdhary*** *(supra)* is interpreted as a binding precedent, still such interpretation of the Article 200 would fall foul of the intention envisaged by the Constituent Assembly.

f) Role of the President under Article 201.

i) On the aspect of the position of the President under Article 201, he submitted that the President is not required to mandatorily assent to the bill that is presented to him for his consideration after being repassed by the State Legislature, once such bill has been sent back by the President under the proviso to Article 201 in the first instance.

ii) It was submitted that Article 201 does not contain the expression "shall not withhold assent therefrom" in the proviso unlike the first proviso to Article 200. He further submitted that this Court in ***Kaiser-I-Hind*** *(supra)* had held that the assent of the President envisaged under Articles 31-A, 31-C, 254(2) and 304(b) of the Constitution respectively constitutes a distinct class and category of its own and is different from the assent envisaged under Articles 111 of the President or Article 200 of the Governor. A bare perusal of Article 201 indicates that even when the Houses of the State Legislature re-pass the Bill and present it for consideration in terms of the proviso to Article 201, there is no compulsion on the President to accord assent.

iii) Just as the Governor, the President is also bound by the aid and advice of his Council of Ministers under Article 201 of the Constitution. Such absence of compulsion of the President to grant assent to the Bill re-considered and repassed by the State Legislative Assembly is also subject to the aid and advice of the Council of Ministers. Whether the President should grant assent or not would be subject to the aid and advice by the Council of

Ministers. There is no individual discretion vested in the President in granting or not granting the assent under Article 201.

g) Malice in law and malice in fact

i) He submitted that the Governor could be said to have committed violence to the constitutional framework by not adhering to the mandate under Article 200 of the Constitution and has also attempted to render the present Writ Petition infructuous during its pendency.

ii) It was submitted that when the Petitioner had approached this Court initially, the Governor had kept 12 Bills pending. Thereafter, the captioned Writ Petitions were heard by this Court on 10.11.2023 wherein it was observed that the present Writ Petition raised a matter of serious concern and issued notice to the Union of India represented by the Secretary to the Government in the Ministry of Home Affairs. In light of the aforesaid, the Governor hastily on 13.11.2023 referred two Bills for the consideration of the President and withheld assent simpliciter to the remaining 10 Bills. On 18.11.2023, a special session of Tamil Nadu Legislative Assembly was held and the 10 Bills were reconsidered and passed in the Assembly. These Bills were sent to the Governor for consideration

on the same day itself. However, the Governor, with a view to render the present petition infructuous, reserved the 10 Bills for the consideration of the President.

iii) In the last, the learned counsel submitted that the action of the Governor has been contrary to what was laid down by this Court in ***S.R. Bommai*** *(supra)* wherein it was stated that the Governor is a very high Constitutional functionary and he is supposed to act fairly and honestly, in a manner consistent with his oath. It is for this reason that Article 356 places such implicit faith on his report. If, however, in a given case his report is vitiated by legal *mala fides*, it is bound to vitiate the President's action as well.

33. Mr. P. Wilson, the learned Senior Counsel, made extensive submissions on behalf of the petitioner. For the sake of brevity, we are recording only those submissions which are in addition to the points already canvassed by Mr. Dwivedi and Mr. Singhvi respectively:

i) The Constituent Assembly after long and detailed debates decided to have a nominated Governor in place of an elected Governor and consciously deleted all expressions from the Draft Constitution which conferred individual discretion on the Governor. He referred to certain

portions of the report of the Sarkaria Commission in support of his arguments.

ii) Article 91 of the Draft Constitution, 1948 which enumerated the assent to bills by the President, had postulated a time limit of six weeks for the President to provide his assent to the bills presented to him by the Houses of Parliament.

iii) Relying on the speech of Mr. T.T. Krishnamachari in the Constituent Assembly, he submitted that Article 200, as finally enacted, does not vest any discretion in the Governor to withhold a bill passed by the Legislature except on the express aid and advice of the Council of Ministers.

iv) He submitted that the Sarkaria Commission in its Report in Chapter V had observed that the Governor may reserve a bill for the consideration of President when it clearly violates Fundamental Rights or transgresses other Constitutional limitations. The power to reserve Bills could be used only in rare circumstances. In all other circumstances, the Governor needs to abide by the aid and advice of the Council of Ministers. Therefore, Article 200 does not confer general discretion on the Governor but mandates him to act in accordance with aid and advice of the Council of Ministers.

v) He submitted that the fear anticipated by Shri H.V. Kamath as regards the difficulties that may arise due to the use of the phrase "as soon as possible" during the discussion on draft Article 91 is exactly what has been happening in the States of Telangana, Punjab, Kerala as well as in the petitioner State. Thus, this Court must intervene and put the matter on quietus by declaring that it is deemed that assent has been granted to the Bills and declare the action of reserving Bills for assent of the President as *ultra vires.*

vi) He submitted that the 10 Bills which are the subject matter of present Writ Petition were dealt with by the Governor during the pendency of the Writ Petition in the manner referred to in paragraph 13 and 14 respectively of the third Amendment application in I.A. No. 216164 of 2024. Therefore, all unconstitutional acts of the Governor remain for consideration by this Court as they are actions *pendente lite* and this Court has the power to turn the clock back and restore *status quo ante*.

ii. <u>Submissions on behalf of the Respondents</u>

34. Mr. R. Venkatramani, the learned Attorney General for India, appeared for the respondents and submitted as follows:

a. The Governor while acting under Article 200 is not acting in exercise of ordinary discretion but is acting under a constitutional responsibility. Thus, even if it is assumed that the Governor has no individual discretion, he may still withhold assent to a bill as per his constitutional obligation.

b. He submitted that having regard to the high level of responsibilities entrusted to the Governor in dealing with Bills presented for his consideration, the Governor may reach out to the Council of Ministers for advice, in order to know the legislative intent, and be benefited as well. However, when on the plain understanding of the bills, the Governor finds constitutional contraventions, or seriously debatable issues of the Constitution, he may apply his mind, with or without the aid of the Council of Ministers. This principle of an area of constitutional deliberation prior to the Governor taking any call under Article 200, cannot be subjected to or put into any strait-jacket formula.

c. He submitted that when new issues and concerns of legislation involving federal structure of the polity of the nation arise, it is important that the role of the Governor is neither stretched beyond a point, nor should be allowed to be diminished to a status of no consequence.

d. He submitted that in the instant case, the Governor was persuaded by the observations made in ***Valluri Basavaiah*** *(supra)*, which suggest that when assent is withheld, the Bill will cease to exist. However, if the Governor chooses to follow the procedure under the first proviso, wherever it will be of relevance and of importance to follow, then the Governor would become bound by the mandatory stipulation enunciated in the first proviso.

e. He submitted that the single-minded focus of the Governor was to ensure that a repugnant law, if allowed to be on the statute book, would open the scope for maladministration of universities and impede the avowed object and purpose of excellence in higher education, placing all power in the hands of the State Government as opposed to the Chancellor. It is only with a view to avoid such a situation that the Governor withheld assent to the Bills in question.

f. On the aspect of reservation of the bills for the consideration of the President, he submitted that there is nothing in Article 200 that suggests that the Governor ceases to have the authority to refer the matter to the President after he has withheld assent to the bill in the first instance. If this authority is available at the time of withholding of assent, the same

cannot be taken away or not made available by the State Government acting on their own motion under the first proviso.

g. In furtherance of the aforesaid submission, he submitted that for all practical purposes, the Bills forwarded by the petitioner State on 18.11.2023 should not to be treated as sent by the Governor acting under the first proviso. Bills that are sent outside the procedure contemplated by the first proviso, would be open for consideration by the Governor for any further course of action including, reference to the President. The principle of power coupled with duty underlying Article 200 demands that recourse to reference to President even after initial withholding of assent by the Governor, be read into the Article, in order to make the power effective to achieve its purpose.

h. He submitted that on a proper reading of the substantive part and the first proviso to Article 200, it will be seen that four courses of actions are available to the Governor. The observations made in the ***State of Punjab*** *(supra)* decision may thus warrant a qualification, or an additional statement to fine-tune the scope of Article 200.

i. On the issue as regards whether the first proviso is attracted in all instances of withholding of assent, he submitted that the role for the first proviso is confined to cases where the bill may not be hit by any

constitutional limitation, is within the competence of the legislature, but may admit of changes, amendments, etc. Such amendments or changes that the Governor may thus suggest within the scope of the first proviso, will not be relatable to matters such as repugnancy. With the perception of repugnancy, the focus of the Governor will be outside the first proviso. He argued that even though this Court in ***State of Punjab*** *(supra)* has opined that the exercise of power under the first proviso is relatable to the withholding of the assent by the Governor, yet this view may require a further qualification that in the context of repugnancy, unlike any other reason for withholding of assent, the Governor need not necessarily proceed to act under the first proviso. The first proviso perhaps cannot be read to be pressed into service when both the Governor and the State Government understand the repugnancy dimension. In the event the State Government desires to clear the repugnancy or any other hurdle, it may itself seek the assent of the President. In such an event the State Government may also ask the Governor to refer the matter to the President for consideration.

j. He submitted that that in the present case as the President has withheld assent to the Bills in question, therefore in terms of the statement of law in ***Hoechst Pharamaceuticals*** *(supra)*, the action of the President in withholding assent is not justiciable. What cannot be directly done by

seeking such justiciability cannot be indirectly achieved by the claim that the action of the Governor in forwarding the bills in question to the President was beyond his authority.

k. He submitted that the exposition of Article 200 as done in ***State of Punjab*** *(supra)* is *sub-silentio* as the Court while making the said decision did not take into account the observations made by the Constitution Bench in ***Valluri Basavaiah*** *(supra)*.

l. In the last, he submitted that the matter may be referred to a larger Bench of this Court so as to harmonise the observations made in ***B.K. Pavitra*** *(supra)*, ***Valluri Basavaiah*** *(supra)* and ***State of Punjab*** *(supra)*.

35. Mr. Vikramjit Banerjee, the learned Additional Solicitor General, appeared for the respondents and submitted as follows:

a. A reading of Clause (1) of Article 163 categorically provides that the Governor ordinarily is aided and advised by the Council of Ministers headed by the Chief Minister, however, there is an express discretion vested with the Governor for exercising functions under the Constitution which permeates all of the provisions that require the Governor to exercise his/her power, including Articles 200 and 201.

b. Placing reliance on the decision of this Court in ***M.P. Special Police*** *(supra)*, he submitted that that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion and the exceptions are not exhaustive or limited but differ as per the facts of each case. He further submitted that the aforesaid decision recognised that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. There may be situations where, by reason of peril to democracy or democratic principles, an action may be compelled which by its very nature is not amenable to Ministerial advice. An instance of a situation curiously similar to the present case is discussed where bias was inherent and manifest in the advice of the Council of Ministers as the proposed bills sought to fundamentally encroach into the role of the Governor as the Chancellor by seeking to substitute "Chancellor" (who is the appointing authority of Vice Chancellors and also the disciplinary authority) with "Government". The State Government has impugned the notifications issued by the Governor (in the capacity of the Chancellor) for constitution of Search Committees for appointment of Vice Chancellors for State Universities. Additionally, the Bills were effectively aimed at seeking to control the co-ordination and standards

of higher and technical education/research which fall under Entry 66 of the Union List (under the Seventh Schedule of the Constitution).

c. Placing reliance on the decision of this Court in ***Purushothaman Nambudiri v. State of Kerala*** reported in **1961 SCC OnLine SC 361** he submitted that the idea of reading in a time limit in Articles 200 and 201 respectively had been deliberated upon and expressly rejected by this Court in the said decision.

C. ISSUES FOR CONSIDERATION

36. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions of paramount constitutional importance fall for our determination:

I) What courses of action are available to the Governor in exercise of his powers under Article 200 of the Constitution?

i. Whether the first proviso could be said to provide an independent course of action available to the Governor in addition to the three options provided under the substantive part of Article 200?

ii. In what manner the expression *"the Bill falls through unless the procedure* under *the first proviso is followed",* as used in ***Valluri Basavaiah Chowdhary*** *(supra),* should be construed?

iii. Whether the decision of this Court in ***State of Punjab*** *(supra)* could be said to be *per incuriam* for not having taken into consideration the observations made in previous decisions rendered by larger benches of this Court?

iv. Whether the scheme of Article 200 of the Constitution envisages the exercise of 'absolute veto' or 'pocket veto' of a bill by the Governor?

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?

i. Whether the reservation by the Governor, for the consideration of the President of the ten Bills which were repassed by the Tamil Nadu State Assembly and presented to the Governor on 18.11.2023, is erroneous in law and hence liable to be set aside?

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?

i. How is the absence of an express time-limit in Article 200 to be construed for ascertaining the manner in which the Governor is expected to exercise his powers under the said provision?

ii. What is the import of the expression "*as soon as possible*" appearing in the first proviso to Article 200?

iii. Whether a time-limit can be prescribed by this Court for ensuring that the exercise of power by the Governor under Article 200 is in conformity with the object of expediency underlying the scheme of the said provision?

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 Article 200?

i. How has the role of the Governor been envisaged under the constitutional scheme?

ii. Whether the Governor enjoys a certain degree of discretion in discharge of his functions in contrast to the President? What is the source of such discretion, if any?

iii. Whether the deletion of the expression "*in his discretion*" from Article 175 of the Draft Constitution imply that the Governor has

no discretion available in the exercise of his powers under Article 200?

iv. Whether the observations of this Court in ***B.K. Pavitra*** *(supra)* that "*a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200*" could be said to be *per incuriam* for having failed to notice the position of law as laid down by the larger Benches of this Court?

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?

i. Whether the discharge of functions by the Governor under Article 200 of the Constitution in his discretion could be said to be immune from judicial review?

ii. Whether the withholding of assent by the President under Article 201 of the Constitution could also be said to be beyond the scope of judicial scrutiny?

iii. If the aforesaid discharge of functions is subject to judicial review, whether such discharge of functions could be said to be non-justiciable in light of the decisions of this Court in ***Hoechst*** *(supra)*, ***Kaiser-I-Hind*** *(supra)*, and ***B.K. Pavitra*** *(supra)*?

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?

i. Whether the decision of the President to withhold assent under Article 201 of the Constitution could be said to be justiciable? If yes, what is the extent of justiciability that the courts can embark upon while undertaking judicial review of the exercise of powers by the President under Article 201 of the Constitution?

D. ASSENT TO BILLS – HISTORICAL BACKGROUND

37. Article 200 appears in Chapter III of Part VI of the Constitution under the heading Legislative Procedure. Part VI deals with the States and Chapter III deals with the State Legislature. The marginal note attached to Article 200 reads "Assent to Bills" and the article reads as follows:

> *"**200. Assent to Bills. –***
> *When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:*
>
> *Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that*

the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill."

38. Section 75 of the Government of India Act, 1935 (for short, "**the GoI Act, 1935**") upon which the Article 200 has been substantially modelled is reproduced hereinbelow:

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

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

his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly."

39. A perusal of both the aforesaid provisions indicates that Article 200 of the Constitution corresponds to Section 75 of the GoI Act, 1935 except for the following differences:

a. The expression "*in his discretion*" has been omitted from both the substantive part of Article 200 as well as the first proviso thereto.

b. The Governor under Article 200 assents to the bill in his own name unlike Section 75 wherein the assent was to be granted in the name of the Crown.

c. The expression "*if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom*" has been added to the first proviso to Article 200.

d. The second proviso is a further addition to Article 200 and did not exist in Section 75 referred to above.

40. D.D. Basu in his Commentary on the Constitution of India (pp. 6311, 8th Ed., 2009) has observed that the omission of the expression "*in his discretion*" from Article 200 signifies that the Governor must exercise his power under the Article according to the advice of his ministers. Further, the

addition of the expression "*shall not withhold assent therefrom*" indicates that the Governor has no power to veto a reconsidered bill and must assent to it whether it is passed in the original form or with amendments.

41. Article 200 is divided into three parts - the substantive part and two provisos. A perusal of the substantive part of Article 200 indicates that the presentation of a bill to the Governor is mandatory after it is passed by the State legislature. The same is made evident from the use of the expression "*it shall be presented to the Governor*". In the same breath, Article 200 makes it mandatory for the Governor to make one of the following declarations:

a. That he assents to the bill; or

b. That he withholds assent to the bill; or

c. That he reserves the bill for the consideration of the President.

42. It is important to note that the expression "shall" has been used to qualify the three types of declarations that the Governor can make upon presentation of the bill to him. Further, the three options provided in the substantive part of Article 200 are connected by the conjunction "or" which signifies that the three options are mutually exclusive of each other, and the Governor can only choose one of them at a time. In other words, the Governor cannot assent to a bill and also reserve it for the consideration of the President at

the same time. Similarly, the Governor cannot declare that he withholds assent and also reserve the bill for the consideration of the President at the same time. Patanjali Sastri, Chief Justice (as he then was), observed to this effect in ***State of Bihar v. Kameshwar Singh*** reported in **(1952) 1 SCC 528** as follows:

> *"20. […] It is significant that the article does not contemplate the Governor giving his assent and thereafter, when the Bill has become a full-fledged law, reserving it for the consideration of the President. Indeed, the Governor is prohibited from giving his assent where such reservation by him is made compulsory. The Constitution would thus seem to contemplate only "Bills" passed by the House or Houses of Legislature being reserved for the consideration of the President and not "laws" to which the Governor has already given his assent. […]*
>
> *Similarly, Article 31(3) must, in my judgment, be understood as having reference to what, in historical sequence, having been passed by the House or Houses of the State Legislature and reserved by the Governor for the consideration of the President and assented to by the latter, has thus become a law. If it was intended that such a law should have the assent of both the Governor and the President, one would expect to find not only a more clear or explicit provision to that effect, but also some reference in Article 200 to the Governor's power to reserve a measure for the consideration of the President after himself assenting to it. On the other hand, as we have seen, where reservation by the Governor is made obligatory, he is prohibited from giving his assent."*
>
> (Emphasis supplied)

43. The first proviso to Article 200 has no application to Money Bills. For all other bills, it provides that the Governor may, as soon as possible after the presentation of the bill to him for assent, return the bill to the House or Houses along with a message requesting the House or the Houses to reconsider the bill in totality or certain provisions thereof. He may also recommend the introduction of certain amendments to the bill. The first proviso further states that when a bill is returned with such a message, then the House or the Houses must reconsider the bill accordingly and if the bill is passed with or without amendments and presented to the Governor for assent, he shall not withhold assent therefrom.

44. The second proviso to Article 200 provides that if the Governor is of the opinion that a bill which is presented to him for assent would, upon becoming law, so derogate from the powers of the High Court as to endanger the position which that Court is designed to fill by the Constitution, then he must reserve the bill for the consideration of the President and not grant assent to it.

45. The heart of the controversy before us lies in the interpretation of the substantive part of Article 200 and the first proviso to it. The arguments advanced before us coupled with the factual situation which we are confronted with, and the broader constitutional and political consequences

that an interpretation of Article 200 entails, has opened up before us a treasure trove of questions hidden in the seemingly innocuous and plain language used in Article 200.

46. For a better understanding of Article 200, it is necessary that we should first understand the concept of assent to bills, how it has evolved over the centuries and its importance in parliamentary democracies across the globe. We are undertaking this exercise as Article 200 cannot be understood fully without having regard to the context in which it came to be included in the Constitution. While fidelity to the text of the provision holds paramount consideration in its interpretation, the context is equally, if not more, important, more so in light of the fact that Article 200, as its stands today, bears striking resemblance to Section 75 of the GoI Act, 1935 and other important historical documents which were being drafted by Indians during the course of the freedom struggle.

47. In Westminster styled polities, the Parliament consists of a lower House, an upper House and the head of state. The Indian Constitution has also broadly adopted a similar structure, which becomes evident from Articles 79 and 168 respectively. Article 79 provides that the Parliament shall consist of the President and two Houses - the Council of States and the House of the People. Article 168 provides that each State shall have a Legislature which

shall comprise of the Governor and either one or two House(s), as the case may be. In the Westminster system, for a law to be passed by the Parliament, it must receive the approval of all the three elements - the Lower House, the Upper House and the Head of the State.

48. Jessica J. Richardson[2] in her paper titled "Modernisation of Royal Assent in Canada", has traced the historical origins of the practice of granting assent to bills enacted by the Parliament in the United Kingdom. She has explained that the practice of signifying royal assent to bills passed by Parliament began during the reign of Henry VI (1422-71), when the practice of introducing bills in the form of petitions was replaced by bills in the form of complete statutes. This was a time when assent was granted in person. The Sovereign would attend the Parliament in the House of Lords and give his consent in person. This practice continued until 1541, when the task of signifying royal assent was assigned to a Royal Commission in order to spare King Henry VIII the indignity of having to give royal assent to the Bill of Attainder, which provided for the execution of his wife Catherine Howard. It was after this occurrence that the practice of appointing Lords Commissioners responsible for giving royal assent developed. In the United Kingdom, the last instance of a monarch giving royal assent in person was

[2] Jessica J. Richardson, *Modernisation of Royal Assent in Canada*, 27 CAN. PARLIAM. REV.2, 32 (2004), <http://www.revparl.ca/27/2/27n2_04e_Richardson.pdf>.

in 1854 when Queen Victoria personally assented to several bills prior to proroguing the Parliament. However, in Canada, King George VI gave royal assent in person to bills passed by the Canadian Parliament in 1939 during a visit to Canada. The use of a royal assent ceremony continued in the United Kingdom until 1967, when the British Parliament passed the Royal Assent Act, 1967. The said legislation repealed the Royal Assent by Commission Act, 1541 and allowed a simple report of royal assent by the Speakers of the two Houses to give a bill the force of law.

49. In the Canadian context, she explains that the royal assent ceremony was inherited from the United Kingdom tradition and was used prior to Confederation in both Lower and Upper Canada and closely resembled the original ceremony used in the United Kingdom. Prior to adoption of the new procedure in 2002, Canada was the only remaining Commonwealth country to still use the traditional ceremony for royal assent. However, taking inspiration from the practice prevailing in other Commonwealth countries including Australia and New Zealand, as well as several Canadian provinces, the royal assent procedure was modernised by adopting a written declaration procedure.

50. One of the first instances where the concept of assent to bills appears in a documented form in the Indian context is the Constitution of India Bill, 1895

which is also popularly referred to as the Swaraj Bill. The Bill, which is also termed by the academics as the first articulation of a constitutional imagination by Indians, besides incorporating ideas of free speech, equality before law, right to property, etc., also envisaged a machinery of governance and separation of powers, albeit within the British Empire. As regards the legislative structure, the Bill proposed that the Sovereign of Great Britain shall reign and rule over India and the Viceroy shall be the representative of the Sovereign in India. It further envisaged that the Viceroy would be the President of the Parliament and would have the power to veto any law enacted by the Indian Parliament and initiate legislation. Article 97 of the Bill provided that no bill would become law until it received the sanction of the Sovereign. The said provision is reproduced hereinbelow:

> *"97. No Bill shall become law unless it has passed by majority through the Lower House three times and the Upper House three times and unless it has obtained the sanction of the Sovereign."*

51. A few years after the ideation of the Swaraj Bill, the demand for self-government further found expression in the Congress-League Scheme of 1916 which was a result of deliberations of the committees constituted jointly by the Indian National Congress and the All India Muslim League. The document envisioned a federal polity - with Provincial Legislative Councils for the provinces and an Imperial Legislative Council at the

national level. It is pertinent to note that as per the scheme, the Governor was envisaged as the head of the provincial government and any bill passed by the provincial legislature had to mandatorily receive his assent before it became law. Further, the document also conferred upon the Governor-General the power of vetoing any law passed by the provincial legislature. Any bill passed by the Imperial Legislative Council had to receive the assent of the Governor-General before it became law. The relevant provisions in the said document are reproduced hereinbelow:

"I. Provincial Legislative Councils

xxx xxx xxx

9. A Bill, other than a Money Bill, may be introduced in Council in accordance with rules made in that behalf by the Council itself and the consent of the Government should not be required therefor.

II. Provincial Governments

1. The head of every Provincial Government shall be a Governor who shall not ordinarily belong to the Indian Civil Service or any of the permanent services.

xxx xxx xxx

III. Imperial Legislative Council

xxx xxx xxx

9. All Bills passed by the Council shall have to receive the assent of the Governor-General before they become law."

52. In the backdrop of the growing demand for self-government by the Indian National Movement and the Montagu-Chelmsford Report, the Government of India Act, 1919 (for short, "**the GoI Act, 1919**") was enacted and received assent of the British Crown in December, 1919. The legislation introduced dyarchy at the provincial level, by the introduction of the transferred list and the reserved list. The reserved list consisted of the subject matters on which the Governor enjoyed exclusive legislative powers. However, what we wish to draw attention to is the provision contained in the said legislation as regards assent to bills. Section 12 provided that the Governor had four options to choose from when a bill was presented to him for assent - to declare assent, to withhold assent, to return the bill to the council for reconsideration or to reserve the bill for the consideration of the Governor-General. Notably, there was no requirement for the Governor to mandatorily assent to a bill upon its presentation after reconsideration. Further, the Governor had the power to veto any bill passed by the legislative council by a declaration simplicter of withholding of assent. There was also a provision for the lapse of a bill reserved for the consideration of the Governor-General if assent was not granted within a period of six months. Thus, the concept of both absolute and pocket veto could be said to have been available to the Governor and the Governor-General under the provisions of the GoI Act, 1919. The relevant provision is reproduced hereinbelow:

> *"**12. Return and reservation of Bills. –***

(1) Where a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General.

(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply:-

> *(a) The governor, lieutenant-governor or chief commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor- General, return the Bill for further consideration by the council with a recommendation that the council shall consider amendments thereto:*
>
> *(b) After any Bill so returned has been further considered by the council, together with any recommendations made by the governor, lieutenant-governor or chief commissioner relating thereto, the Bill, if re-affirmed with or without amendment, may be again presented to the governor, lieutenant-governor, or chief commissioner:*
>
> *(c) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the governor, lieutenant-governor or chief commissioner, but, if not assented to by the Governor-General within such period of six months,*

shall lapse and be of no effect unless before the expiration of that period either-

(i) the Bill has been returned by the governor, lieutenant-governor or chief commissioner, for further consideration by the council; or

(ii) in the case of the council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

(3) The Governor-General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor- General."

53. A reading of the aforesaid provision also indicates that at the time of drafting Article 200, the framers of the Constitution not only had before them Section 75 of the GoI Act, 1935 but also Section 12 of the GoI Act, 1919 as well as other possible variations about which we shall discuss in the following paragraphs. However, certain features of Article 200, namely, the absence of automatic lapse upon not receiving approval, mandatory requirement for the Governor to not withhold assent to a bill which is presented to him after being reconsidered by the legislature and absence of the expression "*in his discretion*", must be viewed in the context of gradual dilution of the role and

powers of the Governor in provincial governance as the country neared independence.

i. Concept of assent to bills as envisaged by certain historical documents drafted during the freedom struggle.

54. The concept of assent by the Sovereign found mention in Section 75 of the GoI Act, 1935 and Article 200 as it stands today is predominantly modelled according to the version which existed therein. However, before we proceed to discuss Section 75 of the GoI Act, 1935 and how it eventually evolved into Article 200 of the Constitution, we deem it appropriate to briefly shed light on how other aspirational constitutional documents, drafted during the course of the freedom struggle, imagined the practice of assent to bills and made certain modifications to the practice that prevailed in the United Kingdom.

55. The Commonwealth of India Bill, 1925 that was drafted by the National Convention had a lasting impact on the eventual framing of our Constitution as regards the idea of royal assent. Article 39 of the said Bill provided that a bill passed by the Parliament would be presented to the Viceroy for obtaining the King's assent. Similarly, for the provinces, Article 83 provided that the bills passed by the provincial legislature would be presented to the Governor for obtaining the King's assent. However, what is relevant to note

is that the provisions were not elaborate as regards the procedure and scope of powers of the Sovereign while taking a decision on the aspect of assent.

56. However, the Nehru Report of 1928 shortly followed the Commonwealth of India Bill, 1925 and was drafted in response to the dissatisfaction with the Simon Commission. The Report sought to negative the challenge posed by the British that a constitutional document, which is agreeable to all, could not be drawn by Indians, and contained elaborate provisions providing the mechanism for the purpose of assent to bills.

57. As regards the bills passed by the Parliament, it was stipulated in the Nehru Report that a bill would not become an Act until assent was granted by the Governor-General. The Governor-General was provided with three options - to signify assent, to withhold assent or to reserve the bill for consideration by the British Crown. Notably, there was no obligation on the Governor-General to signify assent after a bill was repassed with or without the amendments suggested by him. The relevant provision is reproduced hereinbelow:

> *"21. (i) So soon as any bill, shall have been passed, or deemed to have been passed by both Houses, it shall be presented to the Governor-General for the signification by him, in the King's name, of the King's assent, and the Governor-General may signify such assent or withhold the same or he may reserve the bill for the signification of the King's pleasure.*

(ii) A bill passed by both Houses of Parliament shall not become an Act until the Governor-General signifies his assent thereto in the King's name or in the case of a bill reserved for the signification of the King's pleasure until he signifies by speech or message to each House of Parliament, or by proclamation that it has received the assent of the King in Council. Provided that the Governor-General may, where a bill has been passed by both Houses of Parliament and presented to him for the signification by him of the King's assent, or has been reserved by him for the signification of the King's pleasure, return the bill for reconsideration by Parliament with a recommendation that Parliament shall consider amendments thereto.

(iii) Any bill so returned shall be further considered by Parliament together with the amendments, recommended by the Governor-General, and if re-affirmed with or without amendments, may be again presented to the Governor-General for the signification in the King's name of the King's assent."

58. As regards the provincial legislature, a bill passed by the provincial legislature had to be assented to by the Governor before it would become an Act. The Governor had two options - to declare assent or to withhold assent. Notably, the Governor did not have the option to reserve the bill for the consideration of the Governor-General. However, every bill after receiving the assent of the Governor had to be mandatorily referred to and assented by the Governor-General failing which the Act would have no validity. Even after receiving the assent of the Governor-General, the Act could be

disallowed by the King and would thereupon become void. The relevant provisions are reproduced hereinbelow:

> *"37. When a bill has been passed by a local Legislative Council, the Governor may declare that he assents to or withholds his assent from the bill.*
>
> *38. If the Governor withholds his assent from any such bill, the bill shall not become an Act.*
>
> *39. If the Governor assents to any such bill, he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by the Governor.*
>
> *40. Where the Governor-General withholds his assent from any such Act, he shall signify to the Governor in writing his reason for so withholding his assent.*
>
> *41. When an Act has been assented to by the Governor-General it shall be lawful for His Majesty in Council to signify his disallowance of the Act.*
>
> *42. Where the disallowance of an Act has been so signified, the Governor shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification shall become void accordingly."*

59. In 1944, the All India Hindu Mahasabha adopted the Constitution of Hindustan Free State Act as an aspirational constitutional document. As

regards the procedure of assent by Governor in provinces, the document contained the following provision:

> *"93. (1) So soon as any bill shall have been passed by both Chambers it shall be presented to the Governor for the signification of his assent, and he may signify such assent or withhold the same.*
>
> *(2) A bill passed by both Chambers shall become an Act if the Governor signifies his assent thereto, and that assent has been published by him.*
>
> *(3) In case where the Governor withholds his assent to a bill passed by both Chambers, he shall return the bill for reconsideration with his own recommendations thereto.*
>
> *(4) A bill so returned shall be further considered by both Chambers together with the recommendations made by the Governor, and if it is reaffirmed with or without amendments by both Chambers, it shall be deemed to have been assented to by the Governor, but it shall not become an Act unless and until the President of the Hindusthan Free State has assented thereto and that assent has been signified by the President to and published by the Governor."*

60. A perusal of the above indicates that the Governor had the option of either assenting to or withholding a bill presented before him. However, in the latter case, the Governor was under an obligation to return the bill for reconsideration with his own recommendations, whereupon the provincial legislature was required to reconsider the bill in light of the recommendations made. Upon being passed again, with or without amendments, the bill would be deemed to have been assented to by the

Governor. However, it would become an Act only upon being assented to by the President, who would signify his assent to the Governor. Thus, the President was vested with the power to veto any bill which had not been assented to by the Governor and was passed again after reconsideration with or without the amendments recommended by the Governor. This was in contrast to the position with respect to the Federal Legislature, wherein no veto power was conferred on the President. The relevant provision read as follows:

> *"30. (1) So soon as any bill shall have been passed by both Chambers, it shall be presented to the President for the signification of his assent, and he may signify such assent or withhold the same.*
>
> *(2) A bill passed by both chambers shall not become an Act unless and until the President signifies his assent thereto.*
>
> *(3) In case where the President withholds his assent to a bill passed by both Chambers, he shall return the bill for reconsideration to the originating Chamber with his own amendments thereto.*
>
> *(4) A bill so returned shall be further considered by both Chambers together with the amendments recommended by the President, and if it is reaffirmed with or without amendments by both Chambers, it shall be deemed to have been assented to by the President and shall become an Act."*

61. One more document that we would like to refer to is the "Constitution of Free India: A Draft" authored by M.N. Roy in 1944. The document proposed

a radically different version of assent to bills as distinguished from the scheme prevailing under the GoI Act, 1935 or other contemporaneous aspirational constitutional documents. The document vested no authority in the Governor to withhold assent to a bill passed by the provincial legislature or to veto the same. However, the document vested power in the Supreme People's Legislature, which was a joint sitting of both the chambers of the Federal Legislature, to veto any provincial legislation. However, this veto power was subject to judicial review and the provincial government was given the right to challenge the veto before the Supreme Federal Court. The relevant provisions are reproduced hereinbelow:

> *"**Article 62.***
> *The Supreme People's Council will have the right to veto any provincial legislation in the Federal Union on the ground that it is repugnant to the Federal Constitution or contradicts any particular Federal law. Either on the advice of the Council of Ministers or on his own initiative, the Governor General will recommend the vetoing of a Provincial legislation. The Provincial Government concerned will have the right to appeal to the Supreme Federal Court against the veto.*
>
> *xxx xxx xxx*
>
> ***Article 91.***
> *The Governor shall sign and promulgate all laws made by the Provincial People's Council."*

62. What is interesting to note is that the imagination of a provision as regards assent to bills, when the country was on the brink of becoming independent

from the British rule, was significantly different from the previous versions envisaged in times when the freedom struggle was focused more on obtaining greater degree of self-rule while being under the sovereignty of the British Crown, as can be seen in the versions used in the Nehru Report and the Constitution of India Bill, 1925. The two documents which were drafted in 1944, and are referred to above, indicate that the Governor was vested with lesser powers and discretion, and there was a clear inclination towards a more unitary arrangement insofar as assent to bills was concerned. The ideas of judicial review of exercise of veto by the President against a state legislation, mandatory return of the bills for reconsideration upon withholding of assent, and deemed assent upon reconsideration were being experimented with among others in the immediate lead up to the framing of our Constitution.

63. Besides the aspirational constitutional documents referred to above, it is also pertinent to discuss how assent was envisaged by one of the first indigenous constitutional documents that was implemented in practice as well. Section 15 of the Aundh State Constitution Act, 1939 that was purportedly enacted to grant self-rule to the people of the Aundh princely state, laid down the procedure for assent to bills. The relevant provision read as follows:

> *"15. (a) All bills shall be passed by a majority of members of the Legislative Assembly present and voting and shall*

become law only on receiving the assent of Shrimant Rajasaheb.

(b) If Shrimant Rajasahab, in his discretion, withholds his assent to a bill which has been duly passed by the Legislative Assembly, he shall return it to the Legislative Assembly together with a message requesting that the Legislative Assembly will reconsider the Bill in the light of his recommendations, and when a bill is so returned, the Legislative Assembly shall consider it accordingly.

(c) If the Legislative Assembly accepts the recommendations, the bill shall forthwith become law; but if it rejects the recommendations of Shrimant Rajasaheb, he shall have the right to postpone his assent to the bill till the next session of the Legislative Assembly. He can so postpone the said bill for not more than three times. If the said bill, in its original form, is passed by a simple majority of the members present on all the three times, it is sent for reconsideration, it shall forthwith become law."

64. What is interesting to note in the aforesaid provision is that although it vested Shrimant Rajasaheb, the King, with the discretion to either assent to a bill passed by the legislature or to withhold assent thereto, yet it made it mandatory for him to return the bill to the legislature with a message requesting them to reconsider the bill in light of his recommendations if he opted for withholding assent. Further, after a maximum of three rounds of reconsideration, the bill would become law upon being passed with a majority, regardless of receiving assent of the King or not.

65. On the contrary, the Government of Mysore Act, 1940, gave the King unfettered powers to veto any bill passed by the Legislative Council. The relevant provision reads as follows:

> *"28. (1) When a Bill has been passed by the Legislative Council, it shall be submitted through the Dewan to His Highness the Maharaja for assent with a statement of the opinion expressed by the Representative Assembly on the principles of the Bill or its general provisions.*
>
> *(2) No such Bill shall become law until it has received the assent of His Highness the Maharaja."*

66. Having discussed in detail the inception of the concept of assent to bills in the Indian context and its interaction with the indigenous thought prevailing at the time, we shall now proceed to discuss the provisions pertaining to assent as contained in the GoI Act, 1935 and how it was moulded by the Constituent Assembly into Article 200 of the Constitution.

67. Under the GoI Act, 1935, the Governor was required to act on the aid and advice of the Council of Ministers responsible to the Provincial legislature. However, the Governor continued to have some special responsibilities and he also possessed discretionary powers to act in situations such as prevention of grave menace to the peace or tranquility of the province, safeguarding the legitimate interests of minorities and so on. The Governor could also act in his discretion in specified matters. He functioned under the general

superintendence and control of the Governor-General, whenever he acted in his individual judgement or discretion.

68. It is interesting to note that while the framing of the Constitution was being undertaken by the Constituent Assembly, the GoI Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947 was made applicable for the administration of the country. By way of paragraph 3 of the said order, the expressions "*in his discretion*", "*acting in his discretion*" and "*exercising his individual judgement*" were removed/deleted from wherever they occurred in the GoI Act, 1935. Paragraph 3 read thus:

> *"3.(1) As from the appointed day, the Government of India Act, 1935, including the provisions of that Act which have not come into force before the appointed day, and the India (Central Government and Legislature) Act, 1946, shall, until other provision is made by or in accordance with a law made by the Constituent Assembly of India, apply to India with the omissions, additions, adaptations and modifications directed in the following provisions of this paragraph and in the Schedule to this Order.*
>
> *(2) The following expressions shall be omitted wherever they occur, namely, "in his discretion", "acting in his discretion" and "exercising his individual judgment". [...]"*

69. Article 147 of the Draft Constitution, prepared by the constitutional adviser, Shri B.N. Rau, dealt with assent to bills passed by the provincial legislature and read as follows:

"147. A Bill which has been passed by the Provincial Legislature or, in the case of a Province having a legislative Council, has been passed by both Houses of the Provincial Legislature shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that where there is only one House of the Legislature of a Province and the Bill has been passed by that House the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned the House shall reconsider it accordingly and if the Bill is passed again by the House with or without amendments and presented to the Governor for assent, the Governor shall not withhold assent therefrom."

70. Article 147 as reproduced aforesaid made significant departure from Section 75 of the GoI Act, 1935 as follows:

a. The expression "*in his discretion*" was removed from the substantive part of the provision. However, the said expression continued to be present in the proviso to the substantive part.

b. While Section 75 of the GoI Act, 1935 provided for the sending back of a bill for reconsideration by the legislature in the provinces having both unicameral and bicameral legislatures, Article 147 only provided for such reconsideration in the provinces with a unicameral legislature.

c. Under Section 75, there was no mandate upon the Governor to mandatorily assent to a bill when the bill was presented to him for reconsideration. However, in Article 147, the expression "*shall not withhold assent therefrom*" was added in the first proviso.

71. Four months after the Draft Constitution was submitted by Shri B.N. Rau, the Drafting Committee under the chairmanship of Dr. B.R. Ambedkar submitted the Draft Constitution to the President of the Constituent Assembly in February, 1948. Article 147 of the Draft Constitution submitted by the constitutional advisor was adapted with certain structural modifications as Article 175 of the Draft Constitution, however, in essence the provision remained the same.

ii. <u>Debates of the Constituent Assembly on Article 200 of the Constitution</u>

72. When Article 175 of the Draft Constitution, 1948 was taken up for consideration by the Constituent Assembly, certain amendments were moved by Dr. B.R. Ambedkar that came to be accepted, leading to the adoption of the draft Article 175 as Article 200 of our Constitution. The amendments were:

a. To remove the expression "*in his discretion*" appearing in the first proviso to Article 175;

b. To exclude Money Bills from the purview of the first proviso;

c. To enable the Governor to return the bills in all the States irrespective of whether there was a unicameral or a bicameral legislature.

73. With a view to better understand the intention of the framers of the Constitution, it is of utmost importance that we turn the pages of the debates that took place in the Constituent Assembly.

74. On the 30th of July, 1949, Dr. B.R. Ambedkar moved an amendment, as discussed aforesaid, for the substitution of the first proviso under draft Article 175, which later came to be successfully adopted by the Constituent Assembly. While moving for the substitution and highlighting that predominantly three key changes were sought to be made to the first proviso, he remarked that the words "*in his discretion*" under the draft Article 175 were sought to be deleted because it was felt that "*in a responsible government, there can be no room for the Governor acting on discretion*"[3]. Shri. Brajeshwar Prasad was not whole-heartedly in favor of the changes suggested to the first proviso and contended that they would strip the Governor of the power to veto a bill or reserve it for the consideration of the President, in his own discretion or initiative and he would be able to do so

[3] 9, CONSTITUENT ASSEMB. DEB., (July 30, 1949) 41.

only when so advised by his Cabinet of Ministers. In his opinion, the change also meant that the Governor would not be able to veto a bill that has been passed twice by the Legislative Assembly, which he felt was not acceptable.

75. Shri. Brajeshwar Prasad acknowledged that there are two classes of cases in which a bill can be reserved for the consideration of the President – *One*, where a certain Article of the Constitution requires the same and *two*, when the Governor is advised by his Ministry to do so. However, he advocated for a third category i.e., where the Governor would possess the power, in his discretion, to veto a bill passed by the Legislature, irrespective of whether it was passed once or twice by it. He supported the vesting of discretion in the hands of the Governor so that he could veto unjust and unsound legislation while also ensuring that there is a check on potentially disruptive legislative tendencies. From his standpoint, the fear of disruptive legislation was not imaginary but real in our country and he advocated that his proposal was in consonance with the traditions of the centralized system of Government that existed in our country until independence. He was of the view that the parliamentary form of polity was a new experiment to the facts of life in our country and it was required to be moderated and regulated. Expressing his lack of confidence in the provincial Ministers, he contended that empowering the Governor to act in his discretion would not be so objectionable since the Governor is also the representative of the

Government of India and it is by virtue of this position that his views must prevail over those of the State legislature.

76. On the other hand, during the course of the debate, Shri. Shibban Lal Saxena, addressed the practical realities of assigning such a discretion to the Governor who is a nominee of the President, especially when the party in power in the province may not be the same as the party in power at the Centre. In such a scenario, it was his opinion that, *"it will introduce a very wrong principle to give the Governor this power to go against the express wish of the Assembly and even of the council*"[4].

77. Shri. T.T. Krishnamachari also emphasized that under the newly proposed draft Article 175, more specifically the first proviso, the Governor will not be exercising his discretion in the matter of referring a bill back to the House with a message. The Governor would exercise his power under the first proviso only upon the advice of his Council of Ministers. According to him, the first proviso was to be exercised in situations wherein the House has already accepted and endorsed a provision, but the Ministry was of the opinion that certain modifications are required to be made in the said provision. It is only when such an occasion arises that the procedure

[4] 9, CONSTITUENT ASSEMB. DEB., (Aug. 1, 1949) 61.

envisaged under the first proviso would be resorted to. The Council of Ministers would use the Governor to hold up further proceedings of the bill and remit it to the Lower House with the message informing the legislature about the modifications sought to be made to the bill by the Ministry. He drew attention to the words of Dr. Ambedkar on this aspect and stated as follows:

> *"[...] If he construes that this Amendment is worse than the proviso in the draft Article and that it makes for further dilatoriness in the proceedings of the legislatures in the provinces or the States as the case may be, I would ask him to remember one particular point to which Dr. Ambedkar drew pointed attention, viz., that the Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The governor is no longer vested with any discretion. If it happens that as per Amendment No.17 the Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers. The provision has merely been made to be used if an occasion arises when the formalities envisaged in Article 172 which has already been passed, do not perhaps go through, but there is some point of the Bill which has been accepted by the Upper House which the Ministry thereafter finds has to be modified. Then they will use this procedure; they will use the governor to hold up the further proceedings of the Bill and remit it back to the Lower House with his message."*[5]

78. The first proviso, according to him, was therefore a saving clause which vested power in the hands of the Ministry to remedy a hasty action that they

[5] 9, CONSTITUENT ASSEMB. DEB., (Aug. 1, 1949) 61.

might have undertaken with respect to the bill in question, or, it could also be seen as providing some scope to the Ministry to take certain additional actions that the Ministry feels should be taken in order to meet the popular opinion reflected outside the House in some form or another. Therefore, the operation of the first proviso does not abridge the power of the Legislature or the Ministry responsible to it, rather, it further curtails the Governor's power from the position that was envisaged in the original first proviso, which is now sought to be supplanted.

79. In light of the debate which took place as regards the substitution of the first proviso to draft Article 175, the amendment was put to vote and the same was successfully adopted by the Constituent Assembly.

80. On 17th of October, 1949, T.T. Krishnamachari moved an amendment that a second proviso to Article 175 also be added, which later came to be adopted by the Constituent Assembly. Dr. B.R. Ambedkar elucidated that the second proviso that was proposed to be moved, was a part of the Instrument of Instructions issued to the Governor of the provinces under the GoI, 1935. Paragraph 17 of the Instrument of Instructions read as follows:

> *"Without prejudice to the generality of his powers as to reservation of Bills our Governor shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein specified, i.e. (b) any Bill which in his opinion would, if it became law so derogate from the powers of the High Court*

as to endanger the position that that Court is, by the Act, designed to fulfil."

81. Such a clause was initially supposed to be included in the Fourth Schedule that separately contained instructions to the Governors of the States. However, since it was considered unnecessary to have such a separate Schedule, this particular aspect was sought to be brought in as second proviso to the draft Article 175. A need to incorporate the second proviso was felt because the High Courts were placed under the legislative competence of the Centre as well as the States. In so far as the organization and territorial jurisdiction of the High Court was concerned, the power remained with the Centre. However, with regard to the pecuniary jurisdiction and the jurisdiction in relation to any of the matters which are mentioned under List II, the power rests with different States. Therefore, there could arise a scenario wherein the State legislature would enact a bill which would derogate from the powers of the High Court. For example, passing a bill that reduces the pecuniary jurisdiction of the High Court by raising the value of the suit that may be entertained by the High Court. This would be one method whereby the State legislature would diminish the authority of the High Court. Furthermore, a bill could also affect the subject-matter jurisdiction of a High Court. For example, in enacting any measure under any of the entries contained in List II, say, debt cancellation, it would be open for the provinces or States to say that the decree made by any such

Court or Board shall be final and conclusive, and that the High Court should not have any jurisdiction in the matter at all. In light of such possibilities, it was felt that the second proviso to draft Article 175 must be added.

82. It was the opinion of Dr. B.R. Ambedkar that any such bill or Act as illustrated above would amount to a derogation from the authority that the Constitution confers or intends to confer upon the High Court. This is why it was felt necessary that before such a law becomes final, the President must be given an opportunity to examine whether such a law should be permitted to take effect or not. Such a shield was considered imperative keeping in mind the important constitutional position that the High Courts hold in adjudicating disputes. Dr. B.R. Ambedkar had emphasized on the importance of the second proviso as follows:

> *"I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced."*[6]

[6] 10, CONSTITUENT ASSEMB. DEB., (Oct. 17, 1949) 394.

E. ARTICLE 200 OF THE CONSTITUTION - DEVELOPMENTS POST THE COMMENCEMENT OF THE CONSTITUTION.

If we could roll back History

A century, let's say,

And start from there,

I'm sure that we

Would find things as to-day:

In all creation's cosmic range

No vestige of a change"

~ Robert William Service

83. We are tempted to preface this part of our judgment with the enlightening words of Robert William Service, keeping in mind the history of our country which has been fraught with instances of friction in the federal polity from its inception, with the Governor occupying the center stage in this ongoing saga.

84. As the democratic polity of the country unfolded post-independence, the predominance of a single party at the union and provincial level gave way to emergence of new political factions and regional parties. As a consequence, the position of the Governor, which had mostly been latent

during the era of single-party dominance, started to assume importance. Allegations also came to be levelled by a number of State Governments that the Governor in a number of States was acting as an agent of the Central Government and the objectivity that was expected of the Governor was not being displayed, more particularly when it came to reservation of bills for the consideration of the President or recommendation for the imposition of emergency under Article 356. In light of the aforesaid, certain commissions came to be constituted which submitted their reports after undertaking exhaustive analysis of the working of the constitutional machinery prescribed for Centre-State relations. One of the key foci of these reports was the working of Articles 200 and 201 of the Constitution respectively and the scope of exercise of discretion by the Governors, which we deem appropriate to discuss hereinafter.

i. <u>First Administrative Reforms Commission, 1966</u>.

85. The First Administrative Reforms Commission (the "**ARC**") was established in January 1966 by a resolution of the Ministry of Home Affairs to examine the public administration of the country and make recommendations for reform and reorganization where necessary. An aspect of this exercise was the examination of Centre-State relations particularly

with respect to the need for national integration, and for maintaining efficient standards of administration throughout the country.

86. While examining the various facets of Centre-State relations, the Commission found it apposite to discuss the role of the Governor in the political context which existed back then. Taking note of the skirmishes between the State governments and Governors, the Commission was of the view that the Governor's office ceased to be merely ornamental and ceremonial. This changed role demanded a scrutiny of the discretionary powers of the Governor.

87. As the discretionary powers of the Governor affect some of the vital issues in the functioning of democratic governments in the States, the ARC underscored the importance of evolving guidelines to enable the exercise of such discretionary powers for the purpose of preserving and protecting democratic values. It was noted that such guidelines would serve the purpose of securing uniformity in action and eliminate all suspicions of partisanship and arbitrariness.

88. The ARC, therefore, recommended the following:

> *"Recommendation 9:*
> *We recommend:*

Guidelines on the manner in which discretionary powers should be exercised by the Governors should be formulated by the Inter-State Council and on acceptance by the Union issued in the name of the President. They should be placed before both Houses of Parliament."

89. However, no such guidelines have been formulated by the Inter-State Council till date and none of the Commissions on Centre-State relations constituted thereafter made any recommendations on the issuance of guidelines for exercise of discretion by the Governor.

ii. Rajamannar Commission, 1971

90. The Rajamannar Commission was set up by the Government of Tamil Nadu in 1969 under the chairmanship of Dr. P.V. Rajamannar to look into the question regarding the relationship that should subsist between the Centre and States in a federal set-up. The Commission noted that in the changed political circumstances, there can be no dispute regarding the fact that the Governors have a positive role to play in the stability and progress of States. This requires that the authority of the Governor should be clearly spelt out and the Governors should no longer consider themselves to be instruments of the Centre under compulsion to act on its directions and in its political interests.

91. One of the questions on which the Commission addressed itself was whether the Constitution provides for the exercise of any power by the Governor in his discretion that is, whether the Governor could exercise any of his functions without consulting the Ministry or contrary to the aid and advice tendered by the Council of Ministers.

92. To answer this question, the Commission adverted to the history of the making of the Constitution and concluded that the Constitution does not provide for the issue of any instructions to the Governor, nor does it vest any discretionary powers in express terms in the Governor, except in relation to certain specified matters. While referring to certain judicial pronouncements of this Court as well as Granville Austin's seminal work on the Indian Constitution, the Commission opined that the discretion of the Governor must be limited to those matters in respect of which there are express provisions in the Constitution. The relevant portion of the report is reproduced below:

> *"6. The question as to the discretionary functions of the Governor was considered by the Supreme Court in Ram Jawaya v. State of Punjab (A.I.R. 1955 8.C. 549 at page 556). The Supreme Court held that the Governors were constitutional heads of the executive, and that real executive power was vested in the Council of Ministers. A similar view has been expressed by the Supreme Court in T. M. Kanniyan v. 1.T.O., Pondicherry (A.I.R. 1968 S.C. 687). Again, Granville Austin in his book The Indian Constitution—Cornerstone of a Nation has categorically stated that the*

Governor occupies the same position as the English Monarch and that the Governor has to act in accordance with the advice of his Cabinet in all matters. To place the matter beyond doubt, Article 163 (1) may be modified making it clear that the reference to discretion is only in relation to the matters in respect of which there are express provisions, e.g., Assam."

(Emphasis supplied)

93. The Commission observed that while exercising his functions, the Governor should not be under any pressure from an external authority. To explain the position of discretionary powers of the Governor, the Commission referred to the speech of the former Vice President of India, Shri G.S. Pathak, which reads thus:

> *"He is the constitutional head of the State to which he is appointed, and, in that capacity, he is bound by the advice of the Council of Ministers of the State except in the sphere where he is required by the Constitution, expressly or impliedly, to exercise his discretion. In the sphere in which he is bound by the advice of the Council of Ministers, for obvious reasons, he must be independent of the Centre. 'There may be cases where the advice of the Centre may clash with the advice of the State Council of Ministers. In the sphere in which he is required by the Constitution to exercise his discretion, it is obvious again that it is His discretion and not that of any other authority and therefore his discretion cannot be controlled or interfered with by the Centre."*
>
> (Emphasis supplied)

94. However, in the same vein, it was also noted that the Governor has to function in a dual capacity as (1) the appointee of the central government;

and (2) the constitutional head of the State. This is because the Central Government retains the power to appoint and remove the Governor, therefore, the Governor cannot but look to the Central Government for guidance in the discharge of his duties.

95. The Commission was of the opinion that it is necessary to indicate at least a broad outline of the principles that should guide the Governor in the exercise of discretion, if any, vested in him. It was observed that the evolution of rules and guidelines in this respect is especially important in order to reconcile the actions of the Governor in his capacity as an agent of the Centre and the head of the State Executive.

96. Having discussed the discretion of the Governor in matters of constitutional decision-making at length, the Commission recommended that a specific provision should be inserted in the Constitution to enable the President to issue Instruments of Instructions to the Governors laying down guidelines or principles with reference to which the Governor should act including the occasions for the exercise of discretionary powers.

iii. <u>Sarkaria Commission</u>

97. In June 1983, the Central government headed by the former Prime Minister of India, Ms. Indira Gandhi, formally constituted a commission to examine and review the working of the arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and to recommend such changes or other measures as may be deemed appropriate. The said commission was formed under the chairmanship of a former judge of this Court, Justice R.S. Sarkaria and hence, came to be known as the Sarkaria Commission.

98. The Sarkaria Commission was enjoined with the task of reviewing the Centre-State relationship and consider the importance of unity and integrity of the country for promoting the welfare of the people. One of the facets of such review was to discuss the scope of the role of the Governor and its impact on the federal polity of India.

99. For a number of years after the independence of India, the political scene was dominated by a single party and there was little occasion for strife between the central and state governments. The role of the Governor, therefore, remained latent. However, post-1967, the emergence of new regional political parties led to a discord between the central government and those state governments that came to be led by such new regional parties. These developments engendered political instability in several

states, as a result of which, the Governors were called upon to exercise their discretionary powers more frequently, particularly in recommending President's rule and in reserving State bills for the consideration of the President.

100. The role of the Governor in giving assent to State bills, withholding assent therefrom or reserving such bills for the consideration of the President, thus, assumed importance. By virtue of Articles 200 and 201 of the Constitution respectively, the office of Governor became a major stakeholder for the maintenance of a cordial relationship between the central and state governments. The Sarkaria Commission was, therefore, tasked with providing recommendations regarding the interpretation of the said Articles and amendments therein to strengthen the federal polity of India.

101. To the limited extent of studying the issues arising from the exercise of powers under Articles 200 and 201 respectively, the Commission addressed itself on the following broad points:

(i) Scope of Governor's discretion under Article 200;

(ii) Interplay of Articles 200 and 254 respectively of the Constitution;

(iii) Scope of Union Executive's discretion under Article 201;

(iv) Impropriety of conditional assent by the President;

(v) Essentials for a "reference" of State bills to the President for his consideration;

(vi) Delays in disposal of State bills;

(vii) Withholding of assent by the President.

102. A discussion of the recommendations of the Commission in this regard would be beneficial to our examination of Articles 200 and 201 respectively and the role of the Governor in the contemporary federal polity.

a. Scope of Governor's Discretion Under Article 200

103. The Commission observed that the rule is that the Governor shall perform his functions on the aid and advice of the Council of Ministers of the State and the exercise of discretionary powers by him is the exception. The Commission envisaged that discretionary powers of reservation of a bill under Article 200 should be exercised by the Governor only in rare cases where a bill is patently unconstitutional in his opinion. However, the Governor should not act contrary to the aid and advice of the Council of Ministers merely because he, in his personal capacity, does not favour the policy embodied in the bill. The relevant observations of the Commission are reproduced below:

"5.6.13 We are, therefore, of the view that:

(i) Normally, in the discharge of the functions under Article 200, the Governor must abide by the advice of his Council of Ministers. However, in rare and exceptional case, he may act in the exercise of his discretion, where he is of opinion that the provisions of the Bill are patently unconstitutional, such as, where the subject-matter of the Bill is ex-facie beyond the legislative competence of the State Legislature, or where its provisions manifestly derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation; or clearly violate Fundamental Rights or transgress other constitutional limitations and provisions.

(ii) In dealing with a State Bill presented to him under Article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because, personally, he does not like the policy embodied in the Bill."

104. According to the Commission, the scheme of the Constitution indicates that the Governor's opinion at best, is persuasive. The Governor cannot, in any circumstance, exercise dictatorial powers to override or veto the decisions or proposals of his Council of Ministers. The scope of discretionary powers should be construed in the context of a parliamentary democracy with a responsible government. In such a form of government, the role of a formal head of the State cannot be enlarged at the cost of the real executive, which enjoys the confidence of the people as it is responsible to the State legislature.

105. Discretion, in exercise of powers under Article 200, therefore, should be dictated by reason, actuated by good faith and tempered by caution. Discretionary functions should be performed in public interest and cannot be discharged at the dictation of any outside authority unless so authorized by and under the Constitution.

106. While addressing suggestions of some State governments that the discretionary powers of the Governor must be curtailed or removed as it presents a potential threat to the autonomy of the States, the Commission observed that the makers of the Constitution advisedly refrained from putting such discretionary powers in a straitjacket rigid definition. It noted that the Constitution is ever evolving and the ways in which its provisions and principles may be tampered with or circumvented, cannot be foreseen. Therefore, the office of the Governor should be afforded enough flexibility to react in any situation and his discretion to approach a matter cannot be pre-determined.

b. Interplay of Articles 200 And 254 respectively of the Constitution.

107. Article 246(2) endows the Parliament as well as the State legislatures with the competence to legislate on entries under List III i.e., the concurrent list. The provision under Article 254 is appurtenant to the concurrent exercise of

legislative competence by the Parliament and State legislature insofar as there is any inconsistency or repugnancy between the laws of the respective legislatures.

108. Article 254(1) saves the power of the State legislatures to make laws with respect to matters in the concurrent list from being automatically superseded by the operation of the doctrine of repugnancy. Article 254(2) allows a law enacted by the State legislature and repugnant to the central law on the same subject-matter, to operate and prevail in that State provided that such State law receives the assent of the President.

109. The Commission highlighted that clause (2) of Article 254 is applicable only when the following two conditions are cumulatively met:

(a) There is a valid Union law on the same subject-matter occupying the same field in the Concurrent List to which the State legislation relates.

(b) The State legislation is repugnant to the Union law. That is to say, there is a direct conflict between the provisions of the two laws, or the Union law is intended to be an exhaustive code on the subject-matter in question.

It is upon satisfaction of both these conditions that the Governor can reserve a bill for Presidential consideration under Article 254(2).

110. It was noted by the Commission that the assent by the President to the State bills had been withheld on certain occasions on the ground that the Union was contemplating a more comprehensive legislation on the same subject matter. However, withholding of assent on such a premise at the level of the Union may unnecessarily delay or defeat the measures sought to be taken by the State legislature. Since the Parliament retains the power to amend, vary or repeal such a State legislation, even after its enactment, by passing a subsequent law inconsistent therewith, the Commission recommended that Presidential assent should not ordinarily be withheld on the ground that the Union is contemplating a comprehensive law in future on the same subject-matter.

c. Scope of Union Executive's Discretion under Article 201

111. As per the report of the Commission, a State bill, once reserved for the consideration of the President (upon the aid and advice of the Council of Ministers), is made subject to the procedure prescribed under Article 201 and the Union Executive is entitled to examine it from all angles such as, *inter alia*, conformity to legislative or executive policy of the Union, harmony with the scheme and provisions of the Constitution, *vires* of the bill, etc.

112. On the question of the Union Executive's discretion to withhold assent to a State bill on the ground of non-conformity with its policy, the Commission sounded a note of caution saying that policy considerations should not ordinarily be treated as a valid ground for withholding Presidential assent. Article 201 confers supervisory powers on the Union Executive to enable it to secure a broad uniformity across central and state legislations in the interests of the social and economic unity of the country. However, the said provision cannot act as a measure for the Union Executive to bring to a grinding halt a State bill by withholding assent thereto if such a bill does not conform to its policy in general.

113. Further, the Union Executive is required to exercise utmost caution, circumspection and restraint in the exercise of supervisory powers under Article 201, especially in respect of the bills on subject matters that fall within the State List. In this regard, the Commission recommended that as a matter of convention, the President should not withhold assent only on consideration of policy differences on matters relating, in pith and substance, to the State List, except on the grounds of patent unconstitutionality.

114. The Commission did not make any specific prescription in respect of Article 143 of the Constitution, which enables the President and by extension, the Union Council of Ministers to seek the opinion of the Supreme Court in

respect of bills which may be deemed to be unconstitutional and left the decision up to the President to make such a reference in appropriate cases.

d. Impropriety of Conditional Assent by the President

115. The Commission noted that the scheme of the Constitution providing for reservation of State legislations for the consideration and assent of the President, is intended to subserve the broad purpose of cooperative federalism in the realm of Union-State legislative relations. Therefore, the practice of according assent to a State bill by the President on the reciprocal assurance that the changes suggested by him (or the Union Executive) will be carried out by way of an ordinance, was not considered to be ideal especially when there exists a constitutional remedy under the proviso to Article 201 itself.

116. Since, conditional assent may become a tool for the Centre to dictate its policies to the States by attaching conditions to Presidential assent, the Commission, in cognizance of the impropriety of such a practice, recommended that in cases where the Union Government is of the opinion that some amendments to a State bill are essential before it becomes a law, such bill should be returned through the Governor to the State legislature for reconsideration in terms of the proviso to Article 201.

e. Essentials for a "Reference" of State Bills to the President for his Consideration

117. The Commission, cognizant of the misgivings and irritations in Union-State relations due to delays in the process of securing Presidential assent, recommended that the procedure of making a reference to the President by the State Government through the Governor and the consideration thereof by the Union Government must be streamlined. It was also endorsed that the Governments at both the Centre and State level may benefit from a prior consultation at the stage of drafting of the bill itself and prescribing time-limits for disposal, which ought to be made convention and practice.

118. As regards the suggestion of streamlining the procedures involved in reserving a State bill for consideration of the President, the Commission recommended that every reference from the State should be complete and clearly established. Such reference should set out precise material facts, points for consideration and the reason for making a reference to the President. Accordingly, the Commission recommended the following information to be necessarily provided for ensuring that the reference to the President is self-contained:

> *"5.15.01— To facilitate its speedy examination by the Union Executive, every reference of a State Bill from the State should be self-contained, setting out precisely the material facts, points for consideration and the ground on which*

reference has been made. It should contain information on the following points:

a. *The relevant provisions of the Constitution attracted or applicable, with reasons.*
b. *If the reference is made under Article 254(2), clear identification of the provisions of the Bill which are considered repugnant to, or inconsistent with, the specific provisions of a Union law or an existing law.*
c. *Urgency, if any, of passing the law within a certain time-limit.*
d. *A clear statement that the Bill is being reserved as per the advice of the Council of Ministers, or in the exercise of his discretion by the Governor, with reasons for the same.*
e. *A lucid explanatory note on the intended policy behind the legislation instead of merely referring to the objects and reasons of the Bill.*
f. *An indication whether the Bill was sent for prior scrutiny of the Union Government, and if so, deviations, if any, from the prior reference."*

(Emphasis supplied)

f. Delays in Disposal of State Bills

119. The question whether there was a requirement of introducing time-limits in Article 201 was necessary or not was also looked into by the Commission. It was reiterated that streamlining the procedure of reserving a State bill for Presidential consideration and enabling a mechanism for high-level discussions between the Union and State at the stage of drafting such bill may effectively reduce procedural delays at the level of the Union Government. Nevertheless, it was recommended that the Union and State

Governments should adopt definite timelines for processing State bills and disposing of their references to the President.

120. With regard to prescription of such timelines, the Commission proposed the following timelines to be treated as salutary conventions:

	STAGE OF THE BILL	**PROPOSED TIMELINE**
i.	Reserving the bill for consideration of the President, by the Governor under Article 200 (on the aid and advice of the State Council of Ministers).	Immediately upon presentation of the bill to the Governor.
ii.	Reserving the bill for consideration of the President, by the Governor under Article 200 (in exercise of his discretion in exceptional circumstances).	Within one month from the date on which the bill is presented to the Governor.
iii.	Decision on the bill by the President under Article 201 (in case the proviso to Article 201 is not being exercised).	Within four months from the date on which the reference is received by the Union Government.
iv.	Returning the bill for consideration of the State legislature in case the proviso	Within two months from the date on which

	to Article 201 is exercised by the President.	the original reference is received by the Union Government.
v.	Decision on the bill by the President, once received with clarifications from the State legislature under proviso to Article 201.	Within four months of the date on which the reconsidered bill is received by the Union Government.

121. With a view to ensure that the timelines so suggested are not frustrated by lack of clarity and comprehensiveness in a reference, the Commission underscored the importance of a self-contained communication by the President to the State legislature for clarification or reconsideration of the bill. It was emphasized that clarifications to be sought by way of the proviso to Article 201 should not be piecemeal.

122. While the Commission noted the significance of clear timelines for the exercise of powers under Articles 200 and 201 respectively, it did not recommend any amendments to the said Articles for introducing concrete time periods within the constitutional scheme and left its recommendations in this regard at the stage of conventions only.

g. Withholding of Assent by the President

123. As regards the withholding of Presidential assent, the Commission laid great emphasis that the Union Government ought to communicate to the State government, the reasons therefor. It was noted that the Union Government should enter into the practice of discussing the issues present in the bill with the State Government and making an effort to present its point of view to the State Government with reasons.

h. Recommendations given by the Commission

124. Before concluding the discussion on the aspect of reservation of bills by the Governor for consideration of the President, the Commission noted that needless reservation of bills should be avoided. The constitutional scheme does not envisage indiscriminate reservation of bills, especially when it is being done in his discretion, as the same would be subversive of the federal principle and the supremacy of the State legislature.

125. The Commission classified State bills to be reserved for the consideration of the President as follows:

> *"5.1.05 State Bills reserved for President's consideration under the Constitution, may be classified as follows: —*
>
> ***i. Bills which must be reserved for President's consideration***

In this category come Bills —

(i) which so derogate from the powers of the High Court, as to endanger the position which that Court is by this Constitution designed to fill (Second Proviso to Article 200);

(ii) which relate to imposition of taxes on water or electricity in certain cases, and attract the provisions of Clause (2) of Article 288; and

(iii) which fall within clause (4) (a) (ii) of Article 360, during a Financial Emergency.

ii. Bills which may be reserved for President's consideration and assent for specific purposes

(i) To secure immunity from operation of Articles 14 and 19. These are Bills for—

(a) acquisition of estates, etc. [First Proviso to Article 31A(I)];

(b) giving effect to Directive Principles of State Policy (Proviso to Article 31C).

(ii) A Bill relating to a subject enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or an existing law, by securing President's assent in terms of Article 254(2).

(iii) Legislation imposing restrictions on trade and commerce requiring Presidential sanction under the Proviso to Article 304(b) read with Article 255.

***iii. Bills which may not specifically fall under any of the above categories, yet may be reserved by the Governor for President's consideration under Article 200**."*

(Emphasis supplied)

126. The Commission recommended that bills should be reserved only if required for specific purposes falling in the first two classes as extracted hereinabove.

iv. Punchhi Commission

127. Another Commission on Centre-State relations was constituted by the Government of India in 2007 under the chairmanship of Justice Madan Mohan Punchhi, the former Chief Justice of India. The Commission was tasked with the mandate of reviewing the existing arrangements between the Union and States as per the Constitution of India in regard to powers, functions and responsibilities in all spheres including legislative relations, administrative relations, role of Governors, emergency provisions, etc. and recommending such changes as may be appropriate keeping in view practical difficulties, growing challenges of ensuring good governance and the need for strengthening the unity and integrity of the country.

128. The Commission, *inter alia*, looked at the original scheme of the Centre-State relations as laid down by the Constitution, examined the friction points in the working thereof and reviewed the adequacy of the constitutional arrangements for promoting social welfare and good governance. One aspect of this study involved looking minutely into the role of the Governor in the federal polity of India. The Commission noted that the role of the Governor became important as he had to balance the political considerations between the Centre and State and be as impartial as possible.

129. However, as regional political powers grew at the State level, the role of the Governor came to be a point of contention between the Centre and States with the latter leveling allegations of partiality and lack of objectivity in exercise of the Governor's discretionary powers. As a result, the Commission was enjoined with the task of providing recommendations for better working of the office of the Governor.

a. Role of the Governor

130. The Commission observed that the nature and scope of rights and powers of the Governor should be understood in the context of a Cabinet system of government. Under such system, the Governor performs a multi-faceted role. *First*, as constitutional head of the State, he has a right to be consulted, to warn and encourage. In performance of this role, the Constitution makers ideated the office of Governor to perform the role of a "a friend, philosopher and guide" to his Council of Ministers. *Secondly*, the Governor functions as a sentinel of the Constitution and acts as the Union's representative in the State. As observed by this Court in ***Rameshwar Prasad & Ors. v. Union of India*** reported in **(2006) 2 SCC 1**, the Governor discharges "dual responsibility" to the Union and State.

131. Further, the Constitution affords the Governor only a persuasive role and not dictatorial powers to override or veto the decisions or proposals of his Council of Ministers. The Commission observed that the Governor, at best, has powers of giving advice or counselling for further reflection of the decision taken by the Council of Ministers. The Governor only flags a need for caution for the purpose of bridging the understanding between the Government and opposition (if there are different governments at the central and state level).

132. The Governor is not amenable to the directions of the Union government, nor does the Constitution make him accountable to the Centre for the manner in which he carries out his functions and duties. The office of Governor is an independent constitutional office. The Governor, by virtue of Article 163, however, is bound by the aid and advice of the State Council of Ministers. Therefore, in the event of a conflict between the aid and advice of the State Council of Ministers and the dictates of the Central Government, the scheme of the Constitution indicates that the Governor must adhere to the former.

133. With the broad tenets of the role of the Governor under the constitutional scheme, the Commission, while appraising the existing framework of Centre-State relations, observed that a major point of friction between the

Centre and States is the power of the Governor to reserve any State bill for the consideration of the President, sometimes even for an indefinite period.

b. Discretionary Powers of the Governor

134. Upon a perusal of Article 163(2), the Commission was of the view that the said provision gives the impression that the Governor has a wide and undefined area of discretionary powers. However, the scope of the discretionary powers of the Governor has to be narrowly construed. The language of Article 163(2) cannot be taken to mean that the Governor has a general discretionary power to act against the aid and advice of the Council of Ministers.

135. In continuation to the Sarkaria Commission's views on the question of discretionary powers of the Governor, the Punchhi Commission report also asserts that the area for the exercise of discretion is limited and even in this limited area, the Governor's choice of action should neither be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered with caution.

136. The Commission further emphasized the necessity of prescribing time limits for the exercise of powers under Articles 200 and 201 respectively in order

to ensure that discretionary powers are not exercised by the Governor or the President in a manner that undermines the State legislature and the will of the people.

c. Expediency in Disposal of Bills – Timelines Suggested by the Report of the Commission

137. The Commission suggested that definite timelines ought to be adopted as salutary conventions for the Governor to either provide assent or reserve the bill for the consideration of the President. Similarly, there should be a time limit for the President to take a decision on the State bill under Article 201 of the Constitution. The Commission was of the view that concrete timelines are *sine qua non* for the exercise of powers under Articles 200 and 201 respectively so as to avoid dissensions between the Central and State governments.

138. The Commission noted that the substantive part of Article 200 does not stipulate time period within which the Governor has to either assent, withhold assent or reserve the bill for Presidential consideration. The requirement of expediency is incumbent upon the Governor only when he decides to return the bill to the State legislature for reconsideration. The same was considered to be evident from the expression "*as soon as possible*".

139. The Commission noted that while the expression "*as soon as possible*" is mentioned in Article 200 *albeit* only in the first proviso thereof, there is no such compulsion on the President under Article 201. As a result, the President or the Union Government may kill the bill by not taking a decision on the same, sometimes for the entire duration of the State legislature. This increases the scope for abuse of discretion by the Union government based on political considerations particularly when the ruling party in the State concerned is different from the one enjoying power at the Union level. The lack of a reasonable timeline allows the executive fiat to make inroads into the legislative power of the State thereby thwarting the democratic will of the State legislature. Such invasion of the powers of the State legislature by the Union Executive is questionable in the context of 'basic features' of the Constitution.

140. Therefore, the Commission suggested that a period of six months should be prescribed in Article 201 for the President to decide on assenting or withholding assent to a bill reserved for consideration of the President. In case the President on the aid and advice of the Union Council of Ministers, is unable to give assent to a State bill under Article 201, it is desirable for him to make a reference to the Supreme Court under Article 143 for an opinion. Such reference should be done as a matter of practice in order to

avoid allegations of political bias, while securing the dignity and authority of the State legislature.

d. Recommendations

141. Having considered the challenges in the exercise of powers under Articles 200 and 201 respectively, the Commission reiterated the recommendations of the National Commission to Review the Working of the Constitution ("**NCRWC**"), which are reproduced hereinbelow:

> *"After considering the suggestions given by the Sarkaria Commission, the National Commission to Review the Working of the Constitution gave the following recommendations:*
>
> *(a) Prescribe a time-limit - say a period of four months - within which the Governor should take a decision whether to grant assent or to reserve it for the consideration of the President;*
>
> *(b) Delete the words "or that he withholds assent therefrom". In other words, the power to withhold assent, conferred upon the Governor, by Article 200 should be done away with;*
>
> *(c) If the Bill is reserved for the consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under Article 143 (as it happened in the case of Kerala Education Bill in 1958);*
>
> *(d) When the State Legislature reconsiders and passes the Bill (with or without amendments) after it is returned by the*

Governor pursuant to the direction of the President, the President should be bound to grant his assent;

(e) To provide that a "Money Bill" cannot be reserved by the Governor for the consideration of the President;

(f) In the alternative it may be more advisable to delete altogether the words in Article 200 empowering the Governor to reserve a Bill for the consideration of the President except in the case contemplated by the second proviso to Article 200 and in cases where the Constitution requires him to do so. Such a course would not only strengthen the federal principle but would also do away with the anomalous situation, whereunder a Bill passed by the State Legislature can be 'killed' by the Union Council of Ministers by advising the President to withhold his assent thereto or just by cold-storaging it."

(Emphasis supplied)

142. The report of the Punchhi Commission advocated for the immediate implementation of the above-mentioned recommendations by way of a Constitutional Amendment.

F. INTERNATIONAL JURISPRUDENCE ON ASSENT TO BILLS

143. The tenets of parliamentary democracy demand that while the head of state must act on the advice of ministers, the ministers, in turn, must uphold their responsibility to the people when providing that advice. Indeed, the very *raison d'être* of a democratic government is to uphold the primacy of the Parliament by ensuring executive accountability. This has been aptly put

forth by Nicholas Barber, Professor of Constitutional Law and Theory at the Oxford University, in his work '*Can Royal Assent Be Refused on the Advice of the Prime Minister?*'[7] wherein he argues:

> *"The point of the convention on royal assent is to uphold the primacy of the democratic element of the constitution in the making of law. But just as it would be undemocratic to allow one person – the Monarch – to veto legislation, so too it would be undemocratic to give this power to the Prime Minister. In short, when presented with a bill that has passed through Parliament in a proper manner, the duty of the Monarch is to give assent – irrespective of the advice of her Ministers. There is no room for discretion. On its best interpretation, this is what the convention requires: if the Monarch were to accept the advice of her Prime Minister on this issue, she would be acting unconstitutionally."*

a. United Kingdom

144. The position in the United Kingdom is that once a bill has passed through all parliamentary stages in both Houses, it is poised for the conferment of 'royal assent'. Historically, the Sovereign granted assent to bills in person in the House of Lords, attended by the Lords Commissioners. This formal ceremony was known as the 'Royal Assent ceremony'. The Royal Assent ceremony continued until 1967, when the British Parliament passed the *Royal Assent Act* wherein the requirement of grant of assent in person by the monarch was made voluntary. Although granting assent is a personal

[7] Nicholas Barber, *Can Royal Assent Be Refused on the Advice of the Prime Minister?,* UK CONSTITUTIONAL LAW ASSOCIATION (Apr. 7, 2025, 9:45 PM), https://ukconstitutionallaw.org/2013/09/25/nick-barber-can-royal-assent-be-refused-on-the-advice-of-the-prime-minster/.

prerogative of the monarch, yet it has long been an established convention that the monarch does not withhold it for a bill that has received approval from both Houses. The process of Royal Assent comprises two stages: first, the signification of the royal assent to a bill via the Royal Sign Manual on Letters Patent issued under the Great Seal of the Realm; and secondly, the communication of the King's Assent to both Houses of Parliament. In the United Kingdom (UK), royal assent is regarded as a formality and has not been refused to a bill since Queen Anne's reign in 1707.

145. In Parliament of the UK, the procedure for obtaining Royal Assent begins with officials in the Public Bill Office of the House of Lords that manages and assists the processes relating to the House's consideration of public legislation. First, a list of bills is prepared by the Clerk of the Parliaments. Thereafter, once a date for Royal Assent has been set, all the bills approved by both Houses are presented before the monarch for assent. In this regard, the monarch has no power to withhold assent to a bill, regardless of any instructions from the Government or anyone else.[8] In Scotland, a period of four weeks is allowed before a bill is presented to the Queen for assent, during which any legal objections may be raised.

[8] David Torrance, Royal Assent, HOUSE OF COMMONS LIBRARY (Feb. 26, 2024), HTTPS://RESEARCHBRIEFINGS.FILES.PARLIAMENT.UK/DOCUMENTS/CBP-9466/CBP-9466.PDF.

146. The only ground on which assent may be withheld, that too solely on ministerial advice, is if the bill has failed to comply with mandatory procedural requirements or if there has been a change in government between the bill's approval and its presentation for assent. Section 4 of the *Judicial Committee Act, 1833* provides that the Sovereign may refer a bill to the Judicial Committee of the Privy Council for an advisory opinion on whether such bill contravenes a fundamental constitutional principle. However, the position in the UK does not clarify whether the Sovereign can initiate such a referral independently.

b. Canada

147. Canada's Royal Assent ceremony traces its origins to the United Kingdom. Traditionally, once a bill was passed in identical form by both the Senate and the House of Commons, the Governor General, as the Crown's representative, attended the Parliament to provide Royal Assent to such bill. In absence of the Governor General, a Justice of the Supreme Court of Canada acting as Deputy to the Governor General is presented the bills for Royal Assent. The Governor General signs a Declaration of Royal Assent, witnessed by the Clerk of the Parliaments.

148. Section 3 of the *Royal Assent Act, 2002* (Can) provides that assent may be given 'in Parliament assembled' or through a written declaration, provided

it is witnessed by more than one member from each House. The Act stipulates that the Royal Assent must be given in the Senate Chamber at least twice a year and for the first appropriation bill of each session of the Parliament. In all other cases, such assent may be granted by the Governor General or her Deputy by written consent. At the provincial level, assent is given by the Lieutenant Governor, who is appointed by the Governor General. As per Section 57 of the *Constitution Act, 1867*, when bills are reserved for Queen's pleasure, she acts upon ministerial advice rather than the advice of the Houses.

149. The Supreme Court of Canada in ***Reference Re Amendment of the Constitution of Canada***, reported in **1981 SCC OnLine Can SC 77**, recognized that, by convention, neither the Queen nor the vice-regal representative (equivalent of a Governor in India) may, on their own, refuse assent to a bill passed by both Houses of the Parliament on the grounds of opposition to or disapproval of its policy. The relevant portion of the judgment in reference reads thus:

> *"As a matter of law, the Queen, or the Governor General or the Lieutenant Governor could refuse assent to every bill passed by both Houses of Parliament or by a Legislative Assembly as the case may be. But by convention they cannot of their own motion refuse to assent to any such bill on any ground, for instance because they disapprove of the policy of the bill. We have here a conflict between a legal rule which creates a complete discretion and a conventional rule which completely neutralizes it. But conventions, like laws, are*

sometimes violated. And if this particular convention were violated and assent were improperly withheld, the courts would be bound to enforce the law, not the convention. They would refuse to recognize the validity of a vetoed bill. This is what happened in Gallant v. The King, a case in keeping with the classic case of Stockdale v. Hansard where the English Court of Queen's Bench held that only the Queen and both Houses of Parliament could make or unmake laws. The Lieutenant Governor who had withheld assent in Gallant apparently did so towards the end of his term of office. Had it been otherwise, it is not inconceivable that his withholding of assent might have produced a political crisis leading to his removal from office which shows that if the remedy for a breach of a convention does not lie with the courts, still the breach is not necessarily without a remedy. The remedy lies with some other institutions of government; furthermore it is not a formal remedy and it may be administered with less certainty or regularity than it would be by a court."

150. In ***Galati v. Governor-General of Canada***, reported in **[2015] FC 91**, the Federal Court of Canada was faced with the question of whether the grant of royal assent by the Governor General to the *Strengthening Canadian Citizenship Act, 2014* could be set aside by the court on the ground that enactment of the same was outside the legislative competence of the Parliament. It was contended by the applicants that the Governor General exceeded the scope of his discretion as well as his authority under the Royal Assent Act of Canada by assenting to the said bill. The Federal Court, however, dismissed the application and held that the Governor General's act of affixing royal assent to the bill was a legislative act. Therefore, the issue

of whether the Governor General exceeded his constitutional authority in granting royal assent to the said bill was not justiciable. The relevant portion of the judgment is reproduced below for ready reference:

> *"The courts exercise a supervisory jurisdiction once a law has been enacted. Until that time, a court cannot review, enjoin or otherwise engage in the legislative process unless asked by way of a reference framed under the relevant legislation. To conclude otherwise would blur the boundaries that necessarily separate the functions and roles of the legislature and the courts. To review the Governor General's act of granting royal assent, as the applicants request, would conflate the constitutionally discreet roles of the judiciary and the legislature, affecting a radical amendment of the Constitution Act, 1867 and the conventions which underlie our system of government, notably the right of Parliament to consider and pass legislation. The applicants' arguments turn this principle on its head. On the theory advanced, the judiciary would adjudicate on the constitutionality of proposed legislation before it became law. That line, once crossed, would have no limit."*

151. The views of the Federal Court in ***Galati*** *(supra)* that the grant of royal assent by the Governor-General was a legislative act and hence, non-justiciable was in line with the view of the Court in ***Gallant v. The King***, **[1949] 2 DLR 425** wherein it was noted that the Lieutenant-Governor is a part of the legislature and the act of providing royal assent is also a legislative action.

c. United States of America

152. The *Constitution of the United States*, more particularly, Article I, Section 7, Clause 2 thereof states that once a bill has been passed by the House of Representatives and the Senate, it must be presented to the President. If the President approves, he may sign the bill; otherwise, he may return it with his objections for reconsideration. If, after reconsideration, two-thirds of both the Houses passes the bill, it becomes law. Further, if the President does not sign a bill within ten days of presenting the same, while Congress is in session, the bill automatically becomes law. Therefore, in this limited circumstance, the concept of pocket veto is not available to the President. However, if Congress adjourns while the bill is awaiting assent and the President does not sign the bill within ten days, the bill does not become law.

d. New Zealand

153. The colonial legislative framework of New Zealand under the *Constitution Act, 1852*, vested structured discretion in provincial authorities while maintaining the supremacy of the Crown. Section 27 of the *Constitution Act, 1852* stipulated that every bill passed by the Provincial Council must be presented to the Superintendent who was an elected head of each Provincial Council, for the assent of the Governor who was the representative of the monarch. The Superintendent, in his discretion, could have either granted assent on behalf of the Governor or withheld assent or reserved the bill for the Governor's pleasure. For a bill to become law, Superintendent had to

signify Governor's assent. Further, her Majesty, with the advice of her Privy Council could issue instructions to the Governor to guide him in exercise of his powers to assent to, dissent from, or reserve bills for her Majesty's pleasure. The Governor was required to act in obedience to these instructions.

154. By the introduction of the *Constitution Act, 1986*, the Sovereign began to act on the advice of the Executive Council which is the part of the executive branch of government. It states that a bill passed by the House of Representatives becomes law when the Sovereign or the Governor-General grants assent. Section 3 of the Act states that the power conferred on the Governor-General are royal powers exercised on behalf of the Sovereign. These powers may be exercised either by the Sovereign in person or by the Governor-General. Additionally, any reference in an Act to the Governor-General in Council also includes the Sovereign acting with the advice and consent of the Executive Council. The Prime Minister-designate is appointed as the Executive Councillor and he advises the Governor-General to appoint other Councillors. Section 3A removes any discretion of the Sovereign or the Governor-General, stating that they may exercise a power on the advice and with the consent of the Executive Council.

e. Australia

155. The structure of governance in Australia reflects a nuanced distribution of the Queen's powers through her representatives at both national and state levels. The Queen of Australia is the formal Head of State. At the national level, the Queen's powers and functions *qua* the Government of Australia are exercised by the Governor-General of Australia. At the State level, her powers are exercised by the Governor of the State. As per Section 2(1) of the *Constitution Act, 1889*, the legislative powers were vested in the Sovereign and exercised by her colonial Governors, subject to the advice of legislators. At the national level, Governor-General is not given ministerial advice on assent, the Presiding Officer of the House requests for assent and the Attorney General provides a certificate to the Governor-General regarding whether the bill needs to be reserved for the Queen's assent or regarding any corrections.[9]

156. It is said that the role of the Governor-General is to ensure due process – that the bill was passed in Houses following the procedure. He is not concerned with the contents of the legislation as the act of the Governor-General is executive. However, in the context of Governor (state level), the Court of Appeal in ***Eastgate v. Rozzoli***, reported in **(1990) 20 NSWLR 188**, noted that while giving assent the Australian State Governor acts as a constituent part of the Parliament. If a bill is reserved for Queen's pleasure, she acts

[9] DEPT. OF PRIME MINISTER & CABINET, AUSTL. GOVT., LEGISLATION HANDBOOK (2017).

upon the advice of Australian Commonwealth Ministers. The power to refer bills back to Parliament can be exercised only upon ministerial advice. At the states, the parliamentary officers seek State Governor's assent. Ordinarily, the State Governors assent to bills without any ministerial advice, only South Australia endeavors to provide executive advice to the Governor.

f. Ireland

157. Ireland's constitutional order provides a unique provision enabling the President to refer bills to the Supreme Court for its view on the constitutionality of the bills. Article 26 of the *Constitution of the Ireland* confers a power on the President, who, after consultation with the Council of State, may refer any bill to the Supreme Court for a decision on whether any provisions of the bill are repugnant to the Constitution. Such reference must be within seven days from the presentation of the bill to the President. If the Supreme Court holds that any provision of the bill is repugnant to the Constitution, the President declines to sign such bill.

g. Republic of Singapore

158. The *Constitution of Singapore* establishes a structured framework for the exercise of presidential discretion, setting clear time limits for decision-making while also ensuring safeguards against legislative overreach. Article

21A of the Constitution stipulates the general time limit for the President to exercise his discretionary powers. It provides that when the Constitution grants the President discretion in granting or refusing assent, concurrence, approval, or confirmation, he must signify his decision within the specified period after it is sought. The time period specified for granting assent ranges from thirty days to six weeks. However, it may be extended contingent upon any agreement between the President and the Cabinet.

159. Article 22H applies in cases where the bill or any provision seeks to curtail discretionary powers of the President. If, within thirty days, the President neither withholds assent nor refers the bill to the tribunal for its opinion on whether the bill curtails the President's discretionary powers, then the President is deemed to have assented. Even when the tribunal is of the opinion that the bill does not curtail the discretionary powers conferred on the President, the President is still deemed to have assented.

h. Democratic Socialist Republic of Sri Lanka

160. The *Constitution of Sri Lanka*, more particularly, Article 154H, stipulates that upon the presentation of a statute enacted by the Provincial Council, the Governor shall either assent to it or return it for reconsideration as soon as possible. The Provincial Council may then pass the statute with or without amendments. If the statute is presented to the Governor again, he may

reserve it for reference by the President to the Supreme Court within one month of its second time, seeking a determination as to whether is inconsistent with the Constitution. If the Supreme Court holds the statute to be consistent, the Governor must grant assent. If it is held inconsistent, the Governor may withhold assent. It can be concluded that, upon the first presentation of a bill, the Governor has only two options: granting assent or returning it for reconsideration. On the second presentation, the Governor may only reserve the bill, referring it to the President for submission to the Supreme Court. He does not have the discretion to withhold assent independently.

i. Republic of Kiribati

161. The constitutional framework of Kiribati is similar to the Democratic Socialist Republic of Sri Lanka. It provides powers to withhold assent only in exceptional situations. Section 66 of the *Constitution of Kiribati* allows the Beretitenti, that is the head of the state and head of the government, to withhold assent to a bill only if he believes the bill to be inconsistent with the Constitution. In such a case, the bill is returned to the Parliament for amendment, and if it is presented again and the Beretitenti still believes that the bill is inconsistent with the Constitution, he is required to refer it to the High Court for a declaration. If the Court declares that the bill is not

consistent with the Constitution, the Beretitenti must grant assent forthwith. If the Court declares the bill to be inconsistent, it is sent back to Parliament. The *Constitution of Zimbabwe* under Section 131 provides a time period of twenty-one days to either assent to the bill or refer it for reconsideration.

j. Republic of Fiji

162. The *Constitution of Fiji, 2013* also does not vest discretionary power in the President. While Section 53 of the *Fiji Independence Order, 1970* and *Constitution of Fiji* granted the Governor-General the power to grant assent or withhold assent, the *Constitution of Fiji, 2013*, removed any discretion on the part of the President. Section 48 of the Constitution stipulates that once a bill is passed, the Speaker must present it to the President for assent, which must be granted within seven days; otherwise, the bill is deemed to have received assent.

k. Solomon Islands & Antigua and Barbuda

163. Both the Solomon Islands and Antigua and Barbuda have constitutional provisions that mandate the Governor-General to grant assent to bills passed by Parliament. In the Solomon Islands, Section 59(2) of the *Constitution of the Soloman Islands* provides that when a bill has been passed by the Parliament it shall be presented to the Governor-General who shall assent to

it forthwith on behalf of the Head of the State. Whereas Section 52(2) of the *Constitution of Antigua and Barbuda* states that when a bill is presented to the Governor-General for assent in accordance with this Constitution, he shall signify that he assents thereto.

l. Islamic Republic of Pakistan

164. In our neighboring country, Article 75 of the *Constitution of the Islamic Republic of Pakistan* provides that when a bill is presented to the President, he must either assent within ten days or return it to Parliament with a request for reconsideration. If the bill is passed again by a majority, whether amended or not, the President must grant assent within ten days, failing which it will be deemed to have received assent. Whereas Article 105 stipulates that the Governor shall act in accordance with the advice of the Cabinet or the Chief Minister. The Governor may, however, require the Cabinet or the Chief Minister to reconsider the advice. Following such reconsideration, the Governor must act in accordance with the advice tendered within ten days.

m. Federal Republic of Germany

165. The legislative process in Germany is governed by both federal and state constitutional provisions. Article 76 of the *Basic Law for the Federal Republic of Germany* states that bills are to be introduced in Bundestag

(house elected by the people) by the Federal Government or by the Bundesrat (federal council). The provision grants the Bundesrat a period of six weeks to comment on bills for Federal Government bills. The Federal Government submits the bills, alongwith its views, to the Bundestag within six weeks alongwith its views. Article 78 provides that a bill adopted by the Bundestag become the law if the Bundesrat consents to it. Laws enacted in accordance with the provisions of the Basic Law, after being countersigned, are certified by the Federal President. Furthermore, Section 60, Section V, the *Constitution of Berlin* stipulates that the bills shall be signed by the President of the House of Representatives without delay and then promulgated by the Governing Mayor within two weeks.

n. Italian Republic

166. The legislative process in Italy is shaped by constitutional provisions that define the President's role in the promulgation of laws and the scope of legislative urgency. Article 73 of the *Constitution of the Italian Republic* mandates that laws be promulgated by the President within one month of their approval. However, if the Chambers (the Parliament consists of the Chamber of Deputies and the Senate of the Republic), by a majority vote, declare a bill to be urgent, it shall be promulgated within the time specified by the bill itself. Article 74 empowers the President to request a new deliberation by means of a message stating the reasons for such a request. It

is important to take note that if the Chambers pass the bill once again, then the law must to be promulgated.

o. French Republic

167. In France, the promulgation of legislation is subject to defined constitutional timelines. Article 10 of the *Constitution of October 4, 1958*, stipulates that the President of the Republic must promulgate Acts of Parliament within fifteen days after the final passage of an Act. It also empowers the President to request Parliament to reopen the debate on the Act, or any specific sections thereof, and such a request for reopening of debate shall not be refused.

p. Japan

168. As per the Japanese constitutional framework, the Diet (Parliament of Japan) is the sole law-making organ of the State. Article 59 envisages that if a bill passed by the House of Representatives is rejected by the House of Councillors, it becomes a law when passed a second time by the House of Representatives by a two-thirds majority of the members present. Article 74 states that all laws and cabinet orders must be signed by the competent Minister of State and countersigned by the Prime Minister.

G. ANALYSIS

i. What courses of action are available to the Governor in exercise of his powers under Article 200 of the Constitution?

169. A plain reading of Article 200 of the Constitution indicates that when a bill is passed by the legislature of a State, it is mandatorily required to be placed before the Governor for his assent. This is because without receiving the assent of the President, a bill cannot become an Act. However, when a bill is presented to the Governor for his assent, the Governor is required to make a declaration from the three options available to him under the substantive part of Article 200, that is, to assent, to withhold assent, or to reserve the bill for the consideration of the President.

170. The first proviso prescribes a mechanism whereby the Governor may return a bill, which is not a Money Bill, back to the State legislature requesting them to reconsider the bill or certain provisions thereof or consider the possibility of making certain amendments to it. Once a bill is so returned by the Governor, the State legislature is required to take note of the suggestions made by the Governor and reconsider the bill accordingly. If the bill, after such reconsideration by the State Legislature is again passed and presented to the Governor, then in such circumstances as per the first proviso, the Governor would then be prohibited from withholding his assent to the bill.

171. The second proviso provides for a specific situation wherein the Governor is mandated to reserve a bill for the consideration of the President if, in his opinion, the bill upon becoming law, would so derogate from the powers of the High Court as to endanger the position which the High Court has been designed to fill by the Constitution.

172. One of the principal contentions advanced by the learned Attorney General before us was that the first proviso to Article 200 provides an independent fourth course of action to the Governor besides the three other options available to him under the substantive part of the Article. To put it differently, his argument was that the Governor may either withhold assent to a bill simpliciter, as provided under the substantive part of Article 200, or he may invoke the procedure prescribed under the first proviso and return the bill back to the State legislature along with such a message as is mentioned in the first proviso. In other words, he contended that where the Governor declares a simpliciter withholding of assent, the same would be an absolute veto of the bill, and the State legislature would have no occasion to reconsider the bill in such a scenario. As a corollary the first proviso would have no applicability and the State legislature would not be entitled to reconsider the bill on its own motion.

173. He argued that in cases where the bill suffers from some gross and manifest unconstitutionality, the Governor need not invoke the procedure mentioned in the first proviso and it would be sufficient if he declares a simpliciter withholding of the bill. As a corollary, he submitted that the procedure prescribed under the first proviso may be followed by the Governor when he is of the belief that the bill, which is otherwise constitutional, may benefit from certain amendments and in such a case he may send a message to the State legislature suggesting certain amendments to the bill.

174. In other words, his contention was that simpliciter withholding is to be opted for by the Governor in his position as a custodian of the Constitution in the State, while the procedure prescribed in the first proviso is to be followed by him in his role as a friend, philosopher and guide of the State Government, with a view to improve an otherwise constitutionally innocuous piece of legislation.

175. The aforesaid contention of the Attorney General was met by the petitioner by placing reliance on the recent decision of this Court in ***State of Punjab*** *(supra)* wherein it was held that the option of withholding of assent under the substantive part of Article 200 is attached with the first proviso. The petitioner contended that in light of the said observation, it is not open for

the Governor to undertake any simpliciter withholding of a bill presented to him and he must mandatorily resort to the procedure indicated in the first proviso if he decides to withhold assent to a bill.

176. The Attorney General, on the other hand, raised doubts as regards the correctness of the decision in ***State of Punjab*** *(supra)* and argued that the said decision was rendered without having regard to the earlier decisions given by larger Benches of this Court. In particular, he placed reliance on certain observations made by the Constitution Bench in ***Valluri Basavaiah Chowdhary*** *(supra)* to support his contention.

177. In response, the petitioner argued in favour of the decision in ***State of Punjab*** *(supra)* and submitted that the observations made in ***Valluri Basavaiah Chowdhary*** *(supra)* were made in a case where this Court was not dealing with the interpretation of Article 200 of the Constitution. Thus, the observations made therein as regards Article 200 could be said to be *obiter dicta* at best. Mr. Dwivedi went to the extent of submitting that the observations of this Court being relied upon by the Attorney General cannot be construed as *obiter dicta* as they were mere passing remarks irrelevant to the *lis* before the Court in that case.

178. It is in this backdrop that we are called upon to ascertain whether the observations made in ***Valluri Basavaiah Chowdhary*** *(supra)* can be reconciled with the decision of this Court in ***State of Punjab*** *(supra)*. The consequence of this inquiry would be that it would determine whether the constitutional scheme of Article 200 envisages a simpliciter withholding of assent by the Governor. In other words, if the decision in ***State of Punjab*** *(supra)* is found to be *per incuriam*, it would mean that the Governor under Article 200 has the power of exercising an absolute veto upon any bill which is presented to him for assent.

179. Before going into the question of whether the observations made in ***Valluri Basavaiah Chowdhary*** *(supra)* could be said to be the ratio, obiter or irrelevant to the *lis*, we deem it necessary to reproduce the observations relied upon by the Attorney General in support of his submission:

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

> *The first proviso to Article 200 deals with a situation where the Governor is bound to give his assent when the Bill is reconsidered and passed by the Assembly. The second proviso to that article makes the reservation for consideration of the President obligatory where the Bill would, "if it becomes law", derogate from the powers of the High Court. Thus, it is clear that a Bill passed by a State Assembly may become law if the Governor gives his assent to it, or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. The Governor is, therefore, one of the three components of a State legislature. The only other legislative function of the Governor is that of promulgating Ordinances under Article 213(1) when both the Houses of the State legislature or the Legislative Assembly, where the legislature is unicameral, are not in session. The Ordinance-making power of the Governor is similar to that of the President, and it is co-extensive with the legislative powers of the State legislature."*
>
> (Emphasis supplied)

180. The crux of the controversy as regards whether the first proviso provides an independent course of action to the Governor lies in the use of the expression "*in which case the Bill falls through unless the procedure indicated in the first proviso is followed*". However, what is interesting to note is that this expression did not come to be used for the first time in ***Valluri Basavaiah Chowdhary*** *(supra)*. Much prior to the said decision, Justice S.R. Das (as his lordship then was), in a concurring opinion in ***State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga*** reported in **(1952) 1 SCC 528** observed as follows:

*"**235.** [...] The procedure to be followed after a Bill is passed by the State Assembly is laid down in Article 200. Under that article the Governor can do one of three things, namely, he may declare that he assents to it, in which case the Bill becomes a law, or he may declare that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed, or he may declare that he reserves the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. Under that article the President shall declare either that he assents to the Bill in which case the Bill will become law or that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed. Thus it is clear that a Bill passed by a State Assembly may become a law if the Governor gives his assent to it or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. In the latter event happening, the argument of the learned counsel for the petitioners will require that what has become a law by the assent of the President will, in order to be effective, have to be again reserved for the consideration of the President a curious conclusion I should be loath to reach unless I am compelled to do so. Article 200 does not contemplate a second reservation by the Governor. [...]"*

(Emphasis supplied)

181. The same expression also came to be used by a three-Judge Bench in ***Hoechst*** *(supra)* wherein it was observed thus:

"85. The constitutional position of a Governor is clearly defined. The Governor is made a component part of the legislature of a State under Article 168 because every Bill passed by the State legislature has to be reserved for the assent of the Governor under Article 200. Under that Article,

> *the Governor can adopt one of the three courses, namely: (1) He may give his assent to it, in which case the Bill becomes a law; or (2) He may except in the case of a 'Money Bill' withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for consideration with a message; or (3) He may "on the advice of the Council of Ministers" reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. The first proviso to Article 200 deals with a situation where the Governor is bound to give his assent and the Bill is reconsidered and passed by the Assembly. [...]"*
>
> (Emphasis supplied)

182. This Court in ***State of Punjab*** *(supra)* wherein one of us (J.B. Pardiwala J.) was part of the Bench, observed that the second proviso to Article 200 is in the form of an exception as it restricts the choice that the Governor otherwise has under the substantive part of Article 200. It observed that the use of the expression "*shall not assent to, but shall reserve for the consideration of the President*" makes it abundantly clear that the Governor has no choice but to reserve a bill for the consideration of the President if the bill is of the description given in the second proviso. This Court further held that unlike the second proviso, which is in the form of an exception, the first proviso is in the form of an explanation and the same is made clear from the use of the expression "*may*" in the first proviso. The Court observed that the expression "*may*" has been used because the first proviso attaches with the option of withholding of assent and it is a matter of choice for the Governor if he wants

to withhold assent to a bill or if he wishes to exercise the other two options available to him, namely, declaring assent or reserving the bill for the consideration of the President. Taking note of the expression "*shall not withhold assent therefrom*" used in the first proviso, the Court observed that the expression signified that the first proviso was attached to the option of withholding of assent alone. In lieu of this, the Court held that upon withholding of assent to a bill, the Governor is mandatorily required to follow the procedure prescribed in the first proviso. The relevant observations are reproduced hereinbelow:

> *"20. The present case turns upon how the first proviso is to be construed. In construing the first proviso, it needs to be noted that the substantive part of Article 200 provides the Governor with three options : an option to assent; an option to withhold assent; and an option to reserve the Bill for the consideration of the President. The first proviso opens with the expression "the Governor may" in contrast to the second proviso which begins with the expression "the Governor shall not assent". The "may" in the first proviso is because the first proviso follows the substantive part which contains three options for the Governor. The first proviso does not qualify the first option (where the Governor assents to the Bill) nor the third option reserving the Bill for consideration of the President. The first proviso attaches to the second option (withholding of assent) and hence begins with an enabling expression, "may". By the mandate of the second proviso, there is an embargo on the Governor assenting to a Bill which derogates from the powers of the High Court under the Constitution. The Governor is by the mandate of the Constitution required to reserve such a Bill for consideration of the President.*

21. The second proviso impacts upon the option which is provided by the substantive part of Article 200 to the Governor to reserve a Bill for the consideration of the President by making it mandatory in the situation envisaged there. The option of reserving a Bill for the consideration of the President is turned into a mandate where the Governor has no option but to reserve it for the consideration of the President. The second proviso is, therefore, in the nature of an exception to the option which is granted to the Governor by the substantive part of Article 200 to reserve any Bill for the consideration of the President.

22. A proviso, as is well settled, may fulfil the purpose of being an exception. Sometimes, however, a proviso may be in the form of an explanation or in addition to the substantive provision of a statute. The first proviso allows the Governor, where the Bill is not a Money Bill to send it back to the legislature together with a message. In terms of the message, the legislature may be requested by the Governor to reconsider the entirety of the Bill. This may happen for instance where the Governor believes that the entirety of the Bill suffers from an infirmity. Alternatively, the Governor may request the legislature to reconsider any specific provision of the Bill. While returning the Bill, the Governor may express the desirability of introducing an amendment in the Bill. The desirability of an amendment may arise with a view to cure an infirmity or deficiency in the Bill. The concluding part of the first proviso however stipulates that if the Bill is passed again by the legislature either with or without amendments, the Governor shall not withhold assent therefrom upon presentation. The concluding phrase "shall not withhold assent therefrom" is a clear indicator that the exercise of the power under the first proviso is relatable to the withholding of the assent by the Governor to the Bill in the first instance. That is why in the concluding part, the first proviso indicates that upon the passing of the Bill by the legislature either with or without amendments, the Governor

shall not withhold assent. The role which is ascribed by the first proviso to the Governor is recommendatory in nature and it does not bind the State Legislature.

23. This is compatible with the fundamental tenet of a parliamentary form of Government where the power to enact legislation is entrusted to the elected representatives of the people. The Governor, as a guiding statesman, may recommend reconsideration of the entirety of the Bill or any part thereof and even indicate the desirability of introducing amendments. However, the ultimate decision on whether or not to accept the advice of the Governor as contained in the message belongs to the legislature alone. That the message of the Governor does not bind the legislature is evident from the use of the expression "if the Bill is passed again ...with or without amendments".

24. The substantive part of Article 200 empowers the Governor to withhold assent to the Bill. In such an event, the Governor must mandatorily follow the course of action which is indicated in the first proviso of communicating to the State Legislature "as soon as possible" a message warranting the reconsideration of the Bill. The expression "as soon as possible" is significant. It conveys a constitutional imperative of expedition. Failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression. Constitutional language is not surplusage. In State of Telangana v. Governor of Telangana [State of Telangana v. Governor of Telangana, (2024) 1 SCC 405] this Court observed that "The expression 'as soon as possible' has significant constitutional content and must be borne in mind by constitutional authorities." The Constitution evidently contains this provision bearing in mind the importance which has been attached to the power of legislation which squarely lies in the domain of the State Legislature. The Governor cannot be at liberty to keep the Bill pending indefinitely without any action whatsoever.

25. The Governor, as an unelected Head of the State, is entrusted with certain constitutional powers. However, this power cannot be used to thwart the normal course of law-making by the State Legislatures. Consequently, if the Governor decides to withhold assent under the substantive part of Article 200, the logical course of action is to pursue the course indicated in the first proviso of remitting the Bill to the State Legislature for reconsideration. In other words, the power to withhold assent under the substantive part of Article 200 must be read together with the consequential course of action to be adopted by the Governor under the first proviso. If the first proviso is not read in juxtaposition to the power to withhold assent conferred by the substantive part of Article 200, the Governor as the unelected Head of State would be in a position to virtually veto the functioning of the legislative domain by a duly elected legislature by simply declaring that assent is withheld without any further recourse. Such a course of action would be contrary to fundamental principles of a constitutional democracy based on a Parliamentary pattern of governance. Therefore, when the Governor decides to withhold assent under the substantive part of Article 200, the course of action which is to be followed is that which is indicated in the first proviso. The Governor is under Article 168 a part of the legislature and is bound by the constitutional regime.

26. Insofar as Money Bills are concerned, the power of the Governor to return a Bill in terms of the first proviso is excluded from the purview of the constitutional power of the Governor. Money Bills are governed by Article 207 in terms of which the recommendation of the Governor is required for the introduction of the Bill on a matter specified in sub-clauses (a) to (f) of clause (1) of Article 199."

(Emphasis supplied)

183. Placing reliance on the expression "*unless the procedure indicated in the first proviso is followed*" the learned Attorney General submitted that the decision as regards whether the procedure prescribed under the first proviso is to be invoked or not, is the discretion of the Governor. It is only when the Governor decides to return the withheld bill along with a message that the first proviso would come into play. In other words, if the Governor believes that the bill is constitutionally infirm and beyond any remedial changes, then he may choose not to return the bill along with a message and may simply declare that he is withholding assent to the bill, in which case the bill would "fall through" or lapse.

184. Although the argument is seemingly lucrative and appealing, and the petitioner also could not provide a concrete reply to the same during the course of the arguments and instead took shelter under the semantics of *obiter-dicta* and *ratio-decidendi*, yet we deem it necessary to explain how the argument is short-sighted, half-baked and suffers from an inherent fallacy.

185. As the observation made by this Court in the three decisions referred to above holds that the Bill would fall through unless the procedure prescribed in the first proviso is followed, we first need to understand the procedure that is prescribed in the first proviso. The proviso stipulates that when any

bill, other than a Money Bill, is presented to the Governor for assent, he may, as soon as possible, return it to the State legislature, together with a message. As regards the contents of the message, the proviso stipulates that the Governor may request the House(s) of the State legislature to reconsider the bill or certain parts of it, and also explore the desirability of introducing certain amendments as may be suggested by the Governor in the message. Once the bill is so returned together with the message, the House(s) are required to reconsider the bill in accordance with the recommendations contained in the message of the Governor. If the bill is then passed again by the House(s), with or without amendments, and presented to the Governor, then the Governor cannot withhold assent from such a bill.

186. A close reading of the first proviso reveals that the action of returning the bill to the State legislature by the Governor is qualified by the expression "*as soon as possible*". However, once the bill has been returned to the State legislature by the Governor, there is no such expediency required on part of the State legislature in reconsidering the bill. Further, once the bill is reconsidered and passed again by the State legislature, there is again a mandate on the Governor not to withhold assent to such a bill. The only obligation upon the State legislature is to mandatorily take into consideration the suggestions contained in the message sent by the Governor along with the bill. However, the State Legislature is not under an obligation to

mandatorily introduce any amendments suggested by the Governor and it may proceed to repass the bill without any amendments.

187. Since there is no obligation on the State legislature to repass the bill returned by the Governor under the first proviso, the expression "falls-through" can only refer to those situations where the State legislature elects not to pass the bill for reconsideration again, and in such circumstances causing the bill to lapse. There is nothing in the first proviso which gives the Governor the discretion to initiate the procedural machinery described therein. Therefore, the first proviso, cannot be treated as an independent course of action severable from the option of withholding of assent. The use of the expression "*as soon as possible*" in the first proviso makes it clear that the Constitution has imposed a sense of urgency upon the Governor and expects him to act with expediency if he decides to declare the withholding of assent. At the same time, that the use of the expression "*may*" in the first proviso, as explained in ***State of Punjab*** *(supra)* does not confer a discretion upon the Governor to decide whether to act in accordance with the procedure prescribed in the first proviso. On the contrary, it only denotes that the first proviso would be applicable only when the option of withholding of assent is exercised. In other words, the expression "*may*" is used keeping in mind that there are three options that the Governor may choose from when a bill is presented to him for assent. Therefore, there is no requirement for

construing the expression "*may*" as "*shall*" as was vehemently urged on behalf of the petitioner, and the interpretation provided in ***State of Punjab*** (supra) and further explained by us does not merit construing the use of *"may"* as "*shall*", as it would result in a logical absurdity insofar as it would make the compliance with the procedure laid down in the first proviso mandatory in the exercise of all three options available to the Governor under the substantive part of Article 200 of the Constitution.

188. It is also remarkable to take note of the expression *"if the bill is passed again*" which signifies that the ultimate discretion to decide whether the State legislature wants to repass the bill or not continues to remain the prerogative of the State legislature alone. Similarly, the use of the expression "*with or without amendment"* denotes that even if the State legislature decides to reconsider the bill, the discretion to repass it with or without the amendments suggested by the Governor again continues to be their sole prerogative. In order to obviate any further confusion, we deem it appropriate to clarify that the use of the expression *"shall reconsider the bill accordingly"* does not indicate that it is obligatory for the State legislature to take up the bill for reconsideration. The word *"shall"* used in this expression must be read in conjunction with the word "*accordingly*". The use of "*shall*" in this context is only for the limited purpose that if the State legislature in its discretion does decide to not allow the bill to "fall through"

by taking it up for reconsideration, then the scope of such reconsideration must at the very least encompass the suggestions communicated by the Governor in his message. The word "*shall*" used herein cannot be singled out and construed devoid of its context.

189. The structure of Article 200 is also helpful in discerning the meaning of the content that it holds. There is a substantive part of the provision and there are two provisos to the substantive part. In the substantive part, there are three options for the Governor to choose from, each separated by the conjunction "*or*" thereby indicating the mutual exclusivity of the three options. If the Governor opts for the first option and grants assent to the bill presented to him, the first proviso doesn't come into consideration. Similarly, if the Governor chooses the third option and reserves the bill for the consideration of the President, there is no occasion for the operation of first proviso. The second proviso is overarching in nature and provides that in the situation as described therein, the Governor can only exercise one option, that is, reserve the bill for the consideration of the President.

190. The use of the expression "*shall declare*" in the substantive part of Article 200 indicates that the Governor is required to make a declaration from the three choices provided to him under the substantive part and there cannot be any fourth course of action. As soon as assent is granted, the bill becomes

an Act and there is no scope thereafter for reservation for the consideration of the President or returning back to the State legislature. If reservation for the consideration of the President is declared then thereafter no returning of the bill to the State legislature can take place, unless the President so directs under the proviso to Article 201. Thus, it is only upon the declaration of withholding of assent that the first proviso is animates into action.

191. Another important aspect that may be pointed out is that the observations made in ***Valluri Basavaiah Chowdhary*** *(supra)* and ***Hoechst*** *(supra),* respectively state that except in the case of a Money Bill, the Governor may withhold assent. A bare reading of Article 200 indicates that there is no restriction in the substantive part that prohibits the Governor from declaring that he withholds assent to a Money Bill, and it is only under the first proviso that such a restriction can be found. Therefore, it is only when the option of the withholding of assent in the substantive part of Article 200 is read along with the first proviso that Money Bills could be said to be excluded from the purview of withholding of assent under the substantive part of Article 200. Thus, rather than fortifying the argument of the learned Attorney General, the observations made in ***Valluri Basavaiah Chowdhary*** *(supra)* and reiterated in ***Hoechst*** *(supra)* only reinforce the intricate and inseparable connection between the exercise of the option of withholding of assent by the Governor and coming into operation of the procedure prescribed in the

first proviso. The dictum of the above mentioned two decisions in no way renders the decision in ***State of Punjab*** *(supra) per-incuriam*, and rather bolsters the line of reasoning adopted by this Court therein.

192. Therefore, the use of the expression "*the Bill falls through unless the procedure indicated in the first proviso is followed*" should be construed in the context of the entire procedure described in the first proviso. Seen thus, it would mean that the bill would fall-through if the bill, having been returned by the Governor, is not passed again by the State legislature and presented again to the Governor for his assent. The fallacy of the argument canvassed by the learned Attorney General lies in the very fact that he has construed the observations of this Court, pertaining to compliance with the procedural requirement under the first proviso, to mean that the mechanism under the first proviso can only be initiated upon the desire and discretion of the Governor.

193. This Court in ***Nambudiri*** (*supra)* explained as to how the State legislature may cause a bill to fall through with which they no longer intend to proceed by not reconsidering and repassing it, once it has been returned by the Governor with the deceleration of withholding of assent. This Court held that the stage of assent could only be arrived at after the stage of

reconsideration and repassing by the State legislature has been successfully crossed. The relevant observations read as under: -

> *"16. […] Similarly, when it is said that if the Bill is passed again the Governor shall not withhold assent therefrom it does not postulate the existence of the same House because even if it is the successor House which passes it it is true to say that the Bill has been passed again because in fact it had been passed on an early occasion. Besides, if the effect of Article 196 is that the Bills pending assent do not lapse on the dissolution of the House then the relevant provisions of Article 200 must be read in the light of that conclusion. In our opinion, there is nothing in the proviso to Article 201 which is inconsistent with the basic concept of democratic Government in asking a successor House to reconsider the Bill with the amendments suggested by the President because the proviso makes it perfectly clear that it is open to the successor House to throw out the Bill altogether. It is only if the Bill is passed by the successor House that the stage is reached to present it to the Governor or the President for his assent, not otherwise."*

194. There is one another way of looking at Article 200. The procedure, as prescribed under the scheme of the provision, involves and envisages the actual motion of a bill from one constitutional authority to another. The Article starts with the requirement of the bill having to be mandatorily presented to the Governor after it has been passed by the State legislature. Thereafter, there is an obligation on the Governor to make a choice from one of the three options provided in the substantive part of the Article and also declare such a decision. Here, if assent is declared, then the bill becomes an

Act and the Government may thereafter take steps to notify the same in the official Gazette. If the Governor declares that bill is being reserved for consideration of the President as per the second proviso or otherwise, then the bill travels from the Governor to the President, whereupon Article 201 comes into play. The mechanism provided in the first proviso also envisages the movement of the bill from the Governor to the State legislature and then back to the Governor upon being passed again. The expression "*as soon as possible*" appearing in the first proviso infuses a sense of urgency and expediency in the mechanism of returning of bills by the Governor. It goes without saying that the scheme of Article 200 is characterized by the movement of the bill from one constitutional authority to another and that too with a sense of expediency. It is trite to say that Article 200 occupies an important role of giving the bills passed by the State legislature the authority of an Act. Without the procedure envisaged under Article 200, the bills remain mere pieces of paper, skeletons without any flesh or lifeblood flowing through their veins, mere documentation of the aspirations of the people without any possibility of bringing them to fruition. The only way by which the option of withholding of assent provided in the substantive part of Article 200 can be reconciled with the scheme permeating the remainder of the provision is by reading it in conjunction with the first proviso. It is only when the withholding of assent is tempered with the requirement of following the procedure prescribed in the first proviso that the constitutional

object of ensuring that the law-making machinery at the State level keeps on running unhindered can be fulfilled.

195. Any other reading of the provision that construes the option of withholding of assent without attaching it to the mechanism prescribed in the first proviso would render the very idea of smooth functioning of the law-making process nugatory and would vest with the Governor untrammeled powers of thwarting the legislative machinery and in effect the will and aspirations of the people whose voices the legislature represents.

196. Thus, in light of the aforesaid discussion, it becomes clear that there are only three courses of action available to the Governor to choose from when a bill is presented to him for assent under Article 200. The first proviso is not an independent fourth course of action but intrinsically attached to the option of withholding of assent. In other words, the first proviso is clarificatory and only elaborates the procedure to be followed in case the option of withholding of assent is invoked by the Governor.

197. The use of the expression "*shall*" in the substantive part of Article 200 read with the expression "*as soon as possible*" used in the first proviso indicates that there is no pocket veto available to the Governor while he is exercising the powers under Article 200. As we have also discussed in the subsequent

parts of this judgment, inaction on part of the Governor to take a decision when a bill is presented to him under Article 200 is grossly violative of the constitutional scheme of expediency which permeates the provision.

198. The Governor, in exercise of his powers under Article 200, also does not possess any absolute veto. He is mandated to take a decision from among the three options that are provided in the substantive part of the Article 200. In case of withholding of assent, the Governor is bound to follow the procedure prescribed under the first proviso and assent to the bill if it is ultimately presented to him for assent after being repassed by the State legislature. The Governor may also reserve certain bills for the consideration of the President. However, in no case has the Governor been conferred with the power to veto a bill which is presented to him. He is envisaged as an intermediary stop in the journey of the bill towards becoming an Act. When a bill comes to the Governor, he may forthwith assent to it, or postpone the grant of assent by exercising the option of withholding of assent but only for so long till the bill comes back to him after reconsideration, or he may forward the bill to the President whereupon the procedure prescribed under Article 201 is to be followed. Thus, in none of these cases can the Governor permanently keep a bill with him without according assent to it, nor can he declare a simpliciter withholding of assent thereby killing the bill.

ii. <u>Whether the Governor can reserve a Bill for the consideration of the President 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</u>?

199. As discussed in the preceding issue, the Governor, in exercise of his powers under Article 200, has three options to choose from. The use of the conjunction "*or*" between the three options signifies that the options are mutually exclusive and once one of the options is exercised by the Governor, the other options become unavailable to choose from. ***Kameshwar Singh*** *(supra)* held that there can be no reservation for the consideration of the President once assent is declared and similarly, there is no requirement for the Governor to assent to the bill, once the bill, having been reserved for the consideration of the President, has received his assent.

200. We have also discussed in line with the decision in ***State of Punjab*** *(supra)* that the option of withholding of assent is attached with the first proviso and once the Governor declares the withholding of assent, the entire mechanism which is laid down in the first proviso itself has to follow suit. Thus, the first proviso to Article 200 is a complete code in itself as regards the procedure which is to be followed once the Governor withholds assent and the rest of the article has no applicability thereafter.

201. It is also interesting to note that the expression "*withhold assent*" has been employed in the substantive part of Article 200. The literal meaning of the expression 'withhold' as defined in a number of dictionaries is to keep back; to keep in one's possession what belongs to or is due to others; to hinder; to prevent; to defer; to postpone; to detain; to keep under control; to retain; to keep from doing something; to refrain from doing something. Thus, it would not be incorrect to construe that the option of withholding of assent has been provided to the Governor under the substantive part only with a view to defer or to postpone the grant of assent to a bill. Withholding of assent cannot be construed to be the same as denying of assent or as conferring a power in the Governor to veto a legislation passed by the State legislature, which would be against the very fundamentals of a representative democracy.

202. Further, the scope of this deferment of assent by the Governor has been made subject to the procedure laid down in the first proviso. The procedure laid down in the first proviso ensures that the withholding of assent does not become analogous to a pocket veto. The use of the expression "*if the Bill is passed again by the House or Houses with or without amendment*" in the first proviso clearly indicates that the role of the Governor under the first proviso has been characterized as recommendatory in nature and that his suggestions do not bind the legislature. Further, the expression "*the*

Governor shall not withhold assent therefrom" in the first proviso leaves no scope for the Governor to take any course of action other than discontinuing the withholding of assent, which by necessary implication means to accord assent to the bill. The expression also indicates that there is strict constitutional prohibition against the Governor to not withhold assent to the bill.

203. What follows from the aforesaid discussion is that once the option of withholding of assent is exercised by the Governor, the mechanism under the first proviso is set into motion to the exclusion of everything else envisaged under the article. This is in view of the maxim *Expressio Unius Est Exclusio Alterius* i.e., the expression of one thing is the exclusion of another. Once the mechanism under the first proviso is set into motion and the various stages are complied with, the only possible manner in which the mechanism prescribed under the first proviso can conclude is by the Governor granting assent to the bill. Thus, there is no scope for the Governor to reserve a bill for the consideration of the President once it is presented to him for reconsideration after compliance with the procedure laid down in the first proviso.

204. However, for the sake of completeness, we deem it necessary to discuss a possible scenario wherein the Governor may have the power to reserve the

bill for the consideration of the President even after it is repassed by the State legislature and presented to him for assent. Say, for instance, in a particular case, the Governor withholds assent to a bill which is presented to him and returns it to the House or the Houses together with a message requesting them to reconsider certain aspects of the bill or introduce certain amendments desirable thereto. However, the House or the Houses, in the process of reconsideration, introduce certain changes which were not suggested by the Governor in the message which he sent together with the bill. In such a scenario, the House or Houses cannot be said to have "*reconsidered the Bill accordingly*" which is a mandatory condition prescribed under the first proviso. If the bill which is presented to the Governor for assent in the second round could be said to have been reconsidered by the House or Houses on wholly different and new grounds, and if those changes are of such a nature where a reservation for the consideration of the President may be desirable, then the Governor would not be precluded from reserving the bill for the consideration of the President.

205. However, if the bill is repassed by the House or Houses without amendments, or only with such amendments as were suggested by the Governor in his message, then the procedure prescribed under the first proviso could be said to be fully complied with and the Governor would be

bound to signify his assent thereto and would be precluded from reserving the bill for the consideration of the President.

206. We say so because the procedure laid down in the first proviso cannot be construed as giving the State legislature the unfettered power to introduce changes to the bill which alter its very nature, or which, for instance, fall foul of the second proviso to Article 200. In such a scenario, the Governor would have all the three options which are available to him when a bill is presented to him in the first instance. However, whenever the House or Houses reconsider the bill "accordingly", that is, in accordance with the suggestions of the Governor and pass it with or without amendments, the Governor is bound to act as per the clear constitutional directive laid down in the first proviso.

207. As we shall also discuss later, any reservation of a bill by the Governor for the consideration of the President on the ground that the bill was not reconsidered as per the procedure prescribed in the first proviso would be subject to judicial scrutiny.

208. Coming to the facts of the present case, out of twelve bills which are the subject matter of the present petition, two were reserved by the Governor for the consideration of the President in the first instance of their presentation.

As regards the remaining ten bills, the Governor declared a withholding of assent, however, the bills were returned without any message as is envisaged under the first proviso. What stands out as a glaring omission on the part of the Governor is that the day on which the withholding of assent was declared, the decision in ***State of Punjab*** *(supra)* had already been passed and even the notice in the present petition had been issued. Thus, it was expected of the Governor that he would not declare a simpliciter withholding of assent of the bills without specifying the reasons for such withholding and also without making recommendations as regards the desirability of introducing any amendments by the State legislature while reconsidering the bills.

209. In light of the language of Article 200, and also keeping in mind its interpretation by this Court in ***State of Punjab*** *(supra)*, there was no room for the Governor to declare a simpliciter withholding of assent without taking recourse to the first proviso as that virtually amounts to the exercise of absolute veto by the Governor, a power which is conspicuously absent from our constitutional scheme.

210. In the absence of any message under the first proviso by the Governor, the State legislature was left with no other option but to proceed on the assumption that the bills were required to be reconsidered in its entirety. The

State legislature proceeded on this assumption and the said 10 Bills were reconsidered in a special sitting and were passed without any material changes and presented to the Governor on the same day. Thereafter, the Governor, rather than giving his assent to the Bills, went on to reserve the Bills for the consideration of the President on the ground that the Bills were repugnant to Entry 66 of the List I of the Schedule VII to the Constitution.

211. For the reasons that we have assigned in our foregoing discussion, we are of the view that the Governor could not have reserved the Bills for the consideration of the President once they were reconsidered by the State legislature and presented to him without any amendments, particularly when the Governor sent back the Bills to the State legislature without any message on an earlier occasion. As a natural consequence of the reservation of the bills for the consideration of the President having been found to be in contravention of the procedure prescribed under Article 200 of the Constitution and thus, illegal and void, any subsequent decision taken by the President on those Bills would also be *non-est* and is thus declared to be *void ab-initio*.

iii. <u>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</u>?

212. It was argued by the petitioner that the Governor in exercise of his powers under Article 200 is required to act promptly and the absence of any prescribed time period should not be construed as allowing the Governor the liberty to act on his own free will and volition. It was also submitted that the expression "*as soon as possible*" appearing in the first proviso places an obligation on the Governor to act promptly and with expedience.

213. The petitioner also placed reliance on the recommendations made by the Sarkaria Commission and the Punchhi Commission to argue that the Court should read in some time-limit into the scheme of Article(s) 200 and 201 respectively to prevent inaction on the part of the Governor and the President.

214. Refuting the contention of the petitioner, the learned Attorney General argued that in the absence of any prescribed time-limit in the text of the provision, it would not be open to the Court to read in a time-limit and the only way to do so would be by way of a constitutional amendment. He placed reliance on the decision of this Court in ***Nambudiri*** *(supra)* to argue that this Court had expressly rejected the idea that there is a time limit which circumscribes the exercise of functions of the Governor under Article 200.

215. The arguments advanced before us present an interesting question whether it would be open to the courts to read in a time limit for the exercise of a power by a constitutional authority where no such limit is prescribed by the Constitution. We have expressly held during the course of answering the previous issue that the scheme of Article 200 does not envisage either the exercise of a pocket or an absolute veto by the Governor. The use of the expression "*shall*" in the substantive part indicates that the Governor is under an obligation to choose from one of the three options that are made available to him. By virtue of the first proviso attaching itself to the option of withholding of assent, as discussed earlier, the possibility of an absolute veto is also ruled out as the Governor must assent to the bill once it is presented to him after the procedure prescribed in the first proviso is complied with.

216. However, unlike many countries across the globe wherein a provision for deemed assent upon the expiry of the specified time period has been made, there is no such provision in our Constitution. The only manner in which a temporal imperative has been weaved into the scheme of Article 200 is by the use of the expression "*as soon as possible*" in the first proviso. The said expression, which also appears in Article 111 of the Constitution, was the subject of some debate in the Constituent Assembly.

217. Article 111, which provides for the President's assent to bills passed by Parliament was originally numbered as Article 91 under the Draft Constitution and it provided a time-limit of six-weeks to the President to send back the bill to the House(s) for reconsideration. The Draft article read as follows:

> *"When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:*
>
> *Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly."*

218. During the Constituent Assembly debates, Dr. B.R. Ambedkar moved an amendment to substitute the expression "*not later than six weeks*" with "*as soon as possible*". Further in the debate, Shri Naziruddin Ahmad advocated for a change in the aforesaid amendment and sought to substitute the term "*as soon as possible*" with "*as soon as may be*". His contention rested on the reasoning that the phrase, "*as soon as possible*" which was introduced by Dr. Ambedkar in his amendment in place of the original wording used in Article 91, that is, "*not later than six weeks*", imposed an unduly stringent

obligation upon the President. He was of the opinion that "*as soon as possible*" mandates immediate action, thereby curtailing the President's scope to engage in a careful and deliberate review of the bill presented for assent. He expressed concern that such a rigid constraint could give rise to hasty decisions, devoid of any careful examination of the presented bill. In his view, the formulation ran the risk of undermining the quality of the President's judgment under Article 111. He expressed his opinion as follows:

> *"[...] The Proviso is to the effect that "the President may, as soon as possible, after the presentation of the Bill, return the Bill," and so on. I want to make it "as soon as may be". If we leave it exactly as Dr. Ambedkar would have it, it leaves no margin. 'As soon as possible' means immediately. Possibility which means physical possibility is the only test. It may leave no breathing time to the President. The words 'may be' give him a reasonable latitude. It would mean, "reasonably practicable". This is the obvious implication. That is the only reason why I have suggested amendment*."[10]

219. To avoid the aforesaid possibilities, Shri Naziruddin Ahmad proposed the adoption of "*as soon as may be*", which he interpreted to mean "*as soon as is reasonably practicable*". In his opinion, this change would allow the President greater flexibility and sufficient time to thoroughly examine the provisions of the bill presented to him. Such freedom would prove particularly valuable when the President contemplates returning the bill to

[10] 8, CONSTITUENT ASSEMB. DEB., (May 20, 1949) 192.

the House(s) for reconsideration, especially in circumstances where amendments might be recommended. The essence of Shri Ahmad's amendment was to safeguard the President's ability to render well-reasoned and thoughtful decisions without any rigid time constraints.

220. Shri P.S. Deshmukh expressed his opposition to the amendment proposed by Dr. B.R. Ambedkar, deeming the suggested substitution of the words as unnecessary. He, on the other hand, argued that the original phrasing, particularly the expression "*not later than six weeks*", ought to remain unaltered, as it established a precise time frame for the President to act accordingly. He further argued that this specific time frame mandated that the President must convey his decision to return the bill for reconsideration as expeditiously as possible, and in no event beyond six-weeks. He opined that preserving the words "*not later than six weeks*" was quintessential to ensure timely action, thereby preventing undue delays in the legislative process to send the bills back to the House(s) for reconsideration.

221. Shri H.V. Kamath vehemently opposed the amendment put forward by Dr. Ambedkar. Advocating for expeditious and timely action, he argued that, "*in human nature, if you will permit me to say so, unless there is a compelling sense of duty or service, there is always a tendency to*

procrastinate".[11] It was his opinion that such tendencies to procrastinate must be rooted out by infusing a standard of duty or service to ensure timely action on part of the President. He further opined that there exists no assurance that every President of India will consistently adhere to the principle of timely action in legislative processes. Therefore, according to him, it was very necessary that the "*Constitution should provide specifically a time limit for a contingency of this nature*"[12]. He believed the phrase "*as soon as possible*" to be vague, purposeless and meaningless, and argued that such vague phrases have no place in a provision of such an important nature.

222. In light of the debate which took place on 20th May 1949, the proposed amendment to Article 91 was adopted by the Assembly, thereby substituting the expression "*not later than six weeks*" with "*as soon as possible*" and the same came to be added to the Constitution.

223. What can be postulated from this discussion of the relevant Constituent Assembly debates is that although our constitutional makers expressed their concerns for the possibility of an undue delay in the legislative process on account of the human nature to procrastinate, yet they nevertheless proceeded to adopt the phrase "*as soon as possible*" in the original Article

[11] 8, CONSTITUENT ASSEMB. DEB, (May 20, 1949) 194.
[12] 8, CONSTITUENT ASSEMB. DEB. (May 20, 1949) 195.

91. This adoption and amendment of draft Article 91 reflects a sense of inherent trust reposed by the Constituent Assembly that the President would execute his functions as enshrined under Article 111 of the Constitution in a timely and efficient manner.

224. The expression also came to be adopted *mutatis mutandis* in Article 200. The experience of the working of the Constitution, more particularly, Article 200, has shown that the apprehensions expressed by some of the members of the Constituent Assembly have unfortunately proven to be prophecy. As we have discussed in the preceding paragraphs, one of the prominent grievances of the State governments as recorded by the Sarkaria Commission and Punchhi Commission reports was that the exercise of the power under Article 200 by the Governor, not being a time-bound process, leads to significant legislative delay and that certain bills are withheld in the Governor's secretariat for years.

225. Not taking any action on the bills for an unreasonable and prolonged period of time virtually vests the Governor with the power of pocket veto and the same cannot be held to be permissible within our constitutional scheme. Dr. Singhvi had submitted during the course of his arguments that there is no scope for the Governor to decide not to decide. Article 200, being the final step in the process of the birth of a legislative enactment, the stage wherein

life is breathed into an otherwise lifeless document, cannot be interpreted in a manner which allows the Governor to remain silent and exhibit inaction upon the bills which are submitted to him after having received the approval of the majority of the State legislature.

226. This Court in ***Durga Pada Ghosh v. State of West Bengal*** reported in **(1972) 2 SCC 656** whilst dealing with a writ in the nature of habeas corpus was called upon to examine the meaning and import of the expression "*as soon as may be*" appearing in Article 22(5) of the Constitution and its significance in communication of the grounds of detention and disposal of the representation of the detenu. In the said case, the detenu came to be arrested and put in preventive detention in December, 1971. The detenu moved a representation which was received in early January, 1972. However, his representation came to be considered by the State government therein only in February, 1972 and his detention was confirmed and communicated in March, 1972. The detenu challenged the order of preventive detention passed against him on the ground that there was an inordinate delay of almost two months on part of the State government in considering his representation even though the same had been received in January itself. This Court held that the aforesaid expression must be seen in the context of the scheme underlying Article 22, more particularly, the importance that it occupies in the constitutional set-up as regards the personal freedom of an

individual and in a manner whereby the provision does not lose both its purpose and meaning. The words "*as soon as may b*e" in such context implies anxious care on the part of the authority concerned to perform its duty in this respect, as early as practicable, without avoidable delay. The course of action which is expected from the concerned authority; being communication of the grounds of arrest and disposal of the representation, was required to be considered with a sense of urgency and must be done with due promptitude or expedition and with reasonable dispatch. It was further held that although there is no definite time-limit which can be laid down within which such actions must be done, yet at the same time, whether the appropriate authority had disposed of its obligation as expeditiously as possible ought to be looked into keeping in mind the peculiar facts and circumstances of each case. It further held that such constitutional obligations cannot be ignored or justified on reasons of administrative delay except where it is shown that ample arrangements were made to cope with the situation that led to a delay and a certain degree of priority was accorded. The relevant observations read as under:

> *"7. Now it is not disputed before us that on the question of delay in considering the representation by the State Government no hard and fast rule can be laid down and it is a matter which falls for decision on the facts and circumstances of each case. It may in this connection be pointed out that in Jayanarayan case the writ petition was referred to a Bench of five Judges to consider as to what would be the question of period within which the State*

Government could dispose of the representation of the detenu because it was felt that there was an apparent conflict between Shyamal Chakraborty v. Commissioner of Police, Calcutta and Khairul Haque v. State of West Bengal. After considering the various decisions on the point this Court expressly concluded thus:

> *"No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible for otherwise in words of Shelat, J., who spoke for this Court in the case of Khairul Haque : 'it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning'."*

8. The scheme underlying Article 22 of the Constitution highlights the importance attached in our constitutional set-up to the personal freedom of an individual. Sub-articles (1) and (2) refer to the protection against arrest and detention of a person under the ordinary law. Persons arrested or detained under a law providing for preventive detention are dealt with in sub-articles (4) to (7). Sub-article (5) says that when a person is detained in pursuance of an order under a law providing for preventive detention the grounds on which the order is made have to be communicated to the person concerned as soon as may be and he has to be afforded earliest opportunity to represent against the order. The object of communicating the grounds is to enable the detenu to make his representation against the order. The words "as soon as may be" in the context must imply anxious care on the part of the authority concerned to perform its duty in this respect as early as practicable without avoidable delay.

Similarly, when the representation is made it is in the fitness of things that the said representation should be considered with the same sense of urgency with which the grounds are intended to be communicated to the detenu. That is the only way in which the purpose, for which the earliest communication of the grounds to the person concerned is provided, can be achieved. The representation must, therefore, be considered with due promptitude or expedition and without avoidable delay, in other words with reasonable dispatch. As held by this Court in Jayanarayan case, the representation should be considered as expeditiously as possible. As the question of delay in considering the representation falls for determination on the facts and circumstances of each case the binding force of a past precedent for a later case would largely depend on the degree of close similarity of the circumstances dealt with therein. […]"

(Emphasis supplied)

227. In ***Keisham*** *(supra)* the question that arose before this Court was whether courts can direct the Speaker to decide disqualification petitions pending before it within a reasonable period of time, and this Court speaking eruditely through R.F. Nariman, J., answering the aforesaid question in an affirmative held as under:

(i) **First,** that the Speaker, being the quasi-judicial authority for the purposes of the Tenth Schedule, is duty bound to take a decision on disqualification petitions within a reasonable time. Any failure of the Speaker in exercising his jurisdiction or refraining from deciding such petition within a reasonable time would be an error that would attract

the scrutiny of the courts in judicial review, notwithstanding the exclusive jurisdiction to the exclusion of the courts that has been conferred upon the Speaker in terms of Paragraph 6 of the Tenth Schedule. The relevant observations read as under: -

> *24. It is clear from a reading of the judgment in Rajendra Singh Rana and, in particular, the underlined portions [italicised herein] of paras 40 and 41 that the very question referred by the two-Judge Bench in S.A. Sampath Kumar has clearly been answered stating that a failure to exercise jurisdiction vested in a Speaker cannot be covered by the shield contained in Para 6 of the Tenth Schedule, and that when a Speaker refrains from deciding a petition within a reasonable time, there was clearly an error which attracted jurisdiction of the High Court in exercise of the power of judicial review.*
>
> (Emphasis supplied)

(ii) **Secondly,** it observed that although Paragraph 6 of the Tenth Schedule vests the Speaker with an exclusive jurisdiction to decide disqualification petitions and ousts the reach of courts in such matters, yet it does not mean that there is no scope of judicial review by the courts or that the power to pass any direction(s) to the Speaker acting under the Tenth Schedule does not exist. It was observed that the true purport of such exclusive jurisdiction was only to ensure that no obstacle comes in the way of the Speaker in deciding such petitions

by way of injunctions from the courts. However, it by no means interdicts the exercise of judicial review in aiding a prompt decision on such disqualification petitions to ensure that the Speaker decides these issues within a reasonable period. The relevant observations read as under:

> *"30. A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in para 110 of Kihoto Hollohan are quia timet actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. Paras 110 and 111 of Kihoto Hollohan do not, therefore, in any manner, interdict judicial review in aid of the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period. [...]*"

(iii) **Lastly,** it held that although what would be a 'reasonable period' for deciding such petitions by the Speaker largely depends on the facts of each case yet, where there are no exceptional circumstances, the Speaker should arrive at a decision within an outer time-limit of three-months so that the avowed constitutional objective of anti-defection

under the Tenth Schedule is not defeated. The relevant observations read as under:

> *"30. [...] What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided if the constitutional objective of disqualifying persons who have infracted the Tenth Schedule is to be adhered to. This period has been fixed keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is 5 years and the fact that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for a single day, as found in Rajendra Singh Rana, if they have infracted the provisions of the Tenth Schedule."*
>
> (Emphasis supplied)

228. The aforesaid view was reiterated in ***State of Telangana v. Governor of Telangana*** reported in **(2024) 1 SCC 405** wherein this Court whilst dealing with a similar issue pertaining to the pendency of a few bills before the Governor of Telangana, held that the expression "*as soon as possible*" in Article 200 has significant constitutional content and must be borne in mind by the constitutional authorities. The relevant observations read as under:

> "*2. The first proviso to Article 200 states that the Governor*

may "as soon as possible after the presentation" of the Bill for assent, return the Bill if it is not a Money Bill together with a message for reconsideration to the House or Houses of the State Legislature. The expression "as soon as possible" has significant constitutional content and must be borne in mind by constitutional authorities."

(Emphasis supplied)

229. In ***Ram Chand*** *(supra)* certain parcels of land had been demarcated and declared for compulsory acquisition *vide* a notification, sometime between the years 1959-1965. However, the awards for compensation came to be passed almost fourteen-years later in the year 1980. These awards came to be challenged before this Court on the ground that since the statute in question provides for payment of compensation in respect of the acquisition made at the market value of the land, as it stood, at the time of publication of the notification for declaration, the same necessarily meant that compensation ought to be paid expeditiously and without delay. This Court held that although the legislature by way of an amendment has now prescribed a time-limit for making an award, yet it does not mean that prior to such amendment there was no time-limit for payment of compensation or that an award could be passed by the authorities at their own pace and leisure. It held that where for exercise of any power no time-limit has been prescribed, such power has to be exercised within a reasonable period of time. It further held that *sans* any fixed time-limit, such powers cannot be

exercised or subjected to delay in a manner that violates or circumvents the object of the statute and the constitutional mandate under Article 31A of timely acquisition and adequate compensation, respectively. The relevant observations read as under:

> *"14. The Parliament has recognized and taken note of the inaction and non-exercise of the statutory power on the part of the authorities, enjoined by the provisions of the Act to complete the acquisition proceedings within a reasonable time and because of that now a time-limit has been fixed for making of the award, failing which the entire proceeding for acquisition shall lapse. But, can it be said that before the introduction of the aforesaid amendment in the Act, the authorities were at liberty to proceed with the acquisition proceedings, irrespective of any schedule or time-frame and to complete the same as and when they desired? It is settled that in a statute where for exercise of power no time-limit is fixed, it has to be exercised within a time which can be held to be reasonable. This aspect of the matter can be examined in the light of second proviso to Article 31-A of the Constitution, which in clear and unambiguous terms prohibits making of any law which does not contain a provision for payment of compensation at a rate, which shall not be less than the market value thereof. The Act is consistent with the second proviso to Article 31-A, because it provides for payment of compensation at the market value of the land acquired. But, whether the constitutional and statutory requirement of the payment of the market value to the persons, whose lands have been compulsorily acquired, is not being circumvented and violated by keeping the land acquisition proceedings pending for more than a decade and half, without making the awards and paying the compensation, which has been pegged to the dates of notifications under sub-section (1) of Section 4 of the Act,*

which in the present cases had been issued 14 to 21 years before the making of the awards. [...]"

(Emphasis supplied)

230. In ***A.G. Perarivalan*** *(supra)* the facts germane for our discussion are that the appellant convict therein had filed a mercy petition under Article 161 to the Governor in December, 2015. The State Cabinet recommended the grant of remission to the Governor in 2018. However, the Governor did not take any decision on the mercy petition for two years despite receiving the recommendation of the State Cabinet. Thereafter, upon a direction of this Court, the Governor in 2021, by an order, forwarded the mercy petition of the appellant to the President citing that the Union is the appropriate authority to decide the same. This reference came to be challenged before this Court wherein it was held as under:

(i) **First,** it was held that the "*limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up".* The Court observed that although the Governor is the head of the executive in the State, yet in actuality, it is the Council of Ministers that carries on the executive Government. It held that as per Article 163, the Governor shall exercise his functions provided under different provisions of the

Constitution only under the aid and advice of the Council of Ministers except where he under the Constitution has been expressly authorised to exercise such functions in his discretion. This Court, speaking through L. Nageswar Rao, J., described this relation of the Governor and the Council of Ministers as "*a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part*". The relevant observations read as under:

> *"18. The power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of an offence against any law related to which the executive power of the State extends is vested in the Governor under Article 161 of the Constitution. Article 162 makes it clear that the executive power of the State shall extend to matters with respect to which the legislature of the State has power to make laws. Article 163 of the Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*
>
> *19. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British*

parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The Governor occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part

20. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360, the satisfaction required by the Constitution is not the personal satisfaction of the President or of the Governor but is the satisfaction of the

> *President or of the Governor in the constitutional sense under the Cabinet system of Government. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions.*
>
> *21. Even though the Governor may be authorised to exercise some functions, under different provisions of the Constitution, the same are required to be exercised only on the basis of the aid and advice tendered to him under Article 163, unless the Governor has been expressly authorised, by or under a constitutional provision, to discharge the function concerned, in his own discretion."*

(ii) **Secondly,** it observed that the law is clear and explicit – the advice of the State Cabinet is binding on the Governor when it comes to the exercise of powers under Article 161. In the absence of any other provision under the Constitution or any statute in this regard, the Governor could not have deviated from the binding recommendations of the State Cabinet and referred the mercy petition to the President. It was held that such an action is contrary to the constitutional scheme. The relevant observations read as under:

> *"24. The law laid down by this Court, as detailed above, is clear and explicit. The advice of the State Cabinet is binding on the Governor in matters relating to commutation/remission of sentences under Article 161. No provision under the Constitution has been pointed out to*

us nor any satisfactory response tendered as to the source of the Governor's power to refer a recommendation made by the State Cabinet to the President of India. In the instant case, the Governor ought not to have sent the recommendation made by the State Cabinet to the President of India. Such action is contrary to the constitutional scheme elaborated above. [...] It is relevant to point out that the recommendation made by the State Cabinet was on 9-9-2018, which remained pending before the Governor for almost two-and-a-half years without a decision being taken. It was only when this Court started enquiring about the reason for the decision being delayed, the Governor forwarded the recommendation made by the State Government for remission of the appellant's sentence to the President of India."

(Emphasis supplied)

(iii) **Thirdly,** as regards the inaction of the Governor in deciding the mercy petition for more than two-years, this Court held that although there is a certain degree of immunity with respect to the exercise of powers by the Governor under the Constitution, yet it is an equally settled position that the courts have the power to judicially review the functioning of the Governor on certain grounds. It held that a non-exercise of these powers, such as, under Article 161 is one such ground for the exercise of judicial review as the said provision pertains to the liberty of individuals and any inexplicable delay not on

account of the prisoners, is inexcusable. The relevant observations read as under:

> *"24. [...] It is relevant to point out that the recommendation made by the State Cabinet was on 9-9-2018, which remained pending before the Governor for almost two-and-a-half years without a decision being taken. It was only when this Court started enquiring about the reason for the decision being delayed, the Governor forwarded the recommendation made by the State Government for remission of the appellant's sentence to the President of India.*
>
> *25. We are fully conscious of the immunity of the Governor under the Constitution with respect to the exercise and performance of the powers and duties of his office or for any act done or purported to be done by him in the exercise and performance of such powers and duties. However, as held by this Court in numerous decisions, this Court has the power of judicial review of orders of the Governor under Article 161, which can be impugned on certain grounds. Non-exercise of the power under Article 161 is not immune from judicial review, as held by this Court in Epuru Sudhakar v. State of A.P. Given petitions under Article 161 pertain to the liberty of individuals, inexplicable delay not on account of the prisoners is inexcusable as it contributes to adverse physical conditions and mental distress faced by a prisoner, especially when the State Cabinet has taken a decision to release the prisoner by granting him the benefit of remission/commutation of his sentence."*
>
> (Emphasis supplied)

(iv) **Lastly,** as regards the contention of the respondents that the decision of the Governor to forward the mercy petition to the President was done in exercise of his discretion owing to the irrational recommendation of the Cabinet in line with the ratio of ***M.P. Special Police*** *(supra)*, this Court held that the aforesaid decision would not be applicable, since there is nothing to make out a case of irrational or non-consideration of relevant factors by the State government to warrant the Governor exercising his discretion and deviating from their recommendations as laid down in ***M.P. Special Police*** *(supra)*. The relevant observations read as under:

> *"29. We are afraid that the judgment of this Court in M.P. Special Police Establishment is not applicable to the facts of the present case. No arguments have been put forth to make out a case of non-consideration of relevant factors by the State Cabinet or of the State Cabinet having based its recommendation on extraneous considerations. Moreover, in the said case, the Governor had taken a decision which was subsequently challenged, unlike the present case, where the Governor has merely forwarded the recommendation made by the State Cabinet to the President of India."*

Accordingly, this Court held as under:

> *"38. In conclusion, we have summarised our findings below:*

38.1. The law laid down by a catena of judgments of this Court is well settled that the advice of the State Cabinet is binding on the Governor in the exercise of his powers under Article 161 of the Constitution.

38.2. Non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review by this Court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Governor to this effect.

38.3. The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two-and-a-half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, whereby "the Governor is but a shorthand expression for the State Government" as observed by this Court.

38.4. The judgment of this Court in M.P. Special Police Establishment has no applicability to the facts of this case and neither has any attempt been made to make out a case of apparent bias of the State Cabinet or the State Cabinet having based its decision on irrelevant considerations, which formed the fulcrum of the said judgment. [...]"

(Emphasis supplied)

231. What is discernible from a reading of the decisions discussed above is that despite there being no prescribed time-limit for the Governor to take a decision under Article 200, the provision cannot be read in a manner which allows the Governor to not take action upon bills which are presented to him for assent and thereby delay and essentially roadblock the law-making machinery in the State. As held in ***A.G. Perarivalan*** *(supra),* the inaction of the Governor would be subject to judicial review and in the absence of any cogent reasons for the delay, it would be open to the courts to issue directions for a time-bound decision on a case-to-case basis.

232. In ***Purushothaman Nambudiri*** *(supra),* two questions fell for the consideration of this Court; *first,* whether a bill which has been pending for assent before the President or the Governor could be said to have lapsed with the dissolving or dissolution of the State legislative assembly and *secondly,* whether Article 200 mandates that a bill sent back by the President or the Governor for reconsideration must be looked into by the very same House that originally passed it. Before looking into the effect of the dissolution of the House on bills pending before the Governor for assent, the Court, while examining the effect of prorogation of the House on the bills pending before the State legislature, observed that Article 196 of the Constitution that deals with the introduction and passing of bills in the State legislature reinforces that the parliamentary form of government established under the

Constitution is markedly different from the Parliament in England inasmuch as clause (3) of Article 196 explicitly stipulates that a bill pending in the legislature of a State will not lapse by reason of the prorogation of the House or Houses thereof.

233. Thereafter, the Court observed that Article 196(5) provides for three categories of cases where a bill pending before a Legislative Assembly would lapse upon its dissolution. Those are as follows:

a. A bill pending before the Legislative Assembly of a unicameral State legislature;

b. A bill pending before the Legislative Assembly of a bicameral State legislature; or

c. A bill which originated in the Legislative Assembly and is yet to reach the Legislative Council.

234. In light of the aforesaid, the Court reached the conclusion that since Article 196 only stipulates as to when a bill pending in the State legislature could be said to have lapsed, be it the Legislative Assembly or the Legislative Council, any bill which has been passed by the State legislature and is pending assent of the Governor or President, would be outside the ambit of the doctrine of lapse of pending business as contained in Article 196(5) of the Constitution. Had the intent of the framers of the Constitution been

otherwise, a specific provision to that effect providing for lapse of a bill awaiting assent would have been inserted. The natural corollary of the omission of the aforesaid is that Article 196(5) is exhaustive in nature, and only the circumstances enumerated therein would result in any lapse of a pending bill, as otherwise there was no need for inserting clause (5) in Article 196 after having already provided the situations where a bill would not lapse in clause(s) (3) and (4) of the Constitution respectively.

235. Thereafter, the Court adverted to Articles 200 and 201 of the Constitution respectively in order to determine the effect of dissolution on bills pending the assent of the Governor or the President. Adverting to the procedure prescribed under Articles 200 and 201 respectively, the Court noted that both the Articles do not prescribe a time-limit within which the Governor or President are required to come to a decision on the bill presented to him unlike other provisions in the Constitution where it was felt necessary and expedient to prescribe a time-limit such as Articles 197(1)(b) and (2)(b) respectively. This, in the opinion of the Court, necessarily meant that the omission in prescribing a time-limit within which the Governor or the President should reach a decision under Articles 200 and 201 respectively suggests that the framers of the Constitution knew that a bill pending the assent of the Governor or the President does not stand the risk of getting lapsed on the dissolution of the Assembly. Any other contrary view would

lead to a chilling effect whereby a fair number of bills which may have been passed by the Assembly during the last months of its existence, may be exposed to the risk of lapse, consequent to the dissolution of the Assembly, unless assent is either withheld or granted before the date of the dissolution, which could not have been the intention in the absence of a time-limit under Articles 200 and 201 respectively. The relevant observations read as under:

> *"15. It is clear that if a Bill pending the assent of the Governor or the President is held to lapse on the dissolution of the Assembly it is not unlikely that a fair number of Bills which may have been passed by the Assembly, say during the last six months of its existence, may be exposed to the risk of lapse consequent on the dissolution of the Assembly, unless assent is either withheld or granted before the date of the dissolution. If we look at the relevant provisions of Articles 200 and 201 from this point of view it would be significant that neither Article provides for a time limit within which the Governor or the President, should come to a decision on the Bill referred to him for his assent. Where it appeared necessary and expedient to prescribe a time limit the Constitution has made appropriate provisions in that behalf (vide : Article 197(1)(b) and (2)(b)). In fact the proviso to Article 201 requires that the House to which the Bill is remitted with a message from the President shall reconsider it accordingly within a period of six months from the date of the receipt of such message. Therefore, the failure to make any provision as to the time within which the Governor or the President should reach a decision may suggest that the Constitution-makers knew that a Bill which was pending the assent of the Governor or the President did not stand the risk of lapse on the dissolution of the Assembly. That is why no time limit was prescribed by Articles 200 and 201. Therefore, in our opinion, the scheme of Articles 200 and 201 supports the conclusion that a Bill pending the assent of the Governor*

or the President does not lapse as a result of the dissolution of the Assembly, and that incidentally shows that the provisions of Article 196(5) are exhaustive."

(Emphasis supplied)

236. What is clearly discernible from a plain reading of the aforesaid decision is that the observations as regards the absence of a time-limit under Articles 200 and 201 respectively were made in the context of the impact of dissolution of the State legislature on the bills which were pending assent from the Governor. Applying the doctrine of constitutional continuity of the State legislature as an institution and the absence of any specific time-limit prescribed under Article 200, the Court arrived at a finding that such bills would not lapse by virtue of dissolution of the State legislature. It is important to note that the observations in ***Nambudiri*** *(supra)* were not made in the context of the expediency with which the Governor is expected to act in discharge of his duties under Article 200. Further, while this Court said that there was no prescribed time-limit in Article 200, it held that the reason for this was that the framers of the Constitution knew that such a bill would not lapse automatically with the dissolution of the House. It was never observed or even remotely indicated by this Court that the exercise of power by the Governor under Article 200 was not of an urgent or expedient character and thus, could be exercised even beyond reasonable time.

237. It is crucial to understand that the prescription of a general time-limit by this Court within which the ordinary exercise of power by the Governor under Article 200 must take place, is not the same thing as amending the text of the Constitution to read in a time-limit, thereby fundamentally changing the procedure and mechanism of Article 200. This is because, reading such a time-limit into the provision neither militates against the underlying object of the said provision nor does it alter the procedure that is envisaged therein. On the contrary, it only reinforces the sense of expediency and urgency that has been time and again emphasized since the adoption of the Constitution. The reason why the prescription of a time-limit does not tantamount to an alteration or amendment is because the time-limit that is being prescribed by cannot be understood to be a hanging sword on the Governor whereby even an unavoidable non-compliance would automatically ensue consequences of 'assent'. The nature of such prescription is quite different which may be better explained through the concept of judicial review.

238. For the exercise of judicial review, the existence of a certain set of definitive standards against which the courts can embark upon their scrutiny, is quintessential. Without these standards, the power of judicial review could be said to be ineffective in certain contexts which shall be elucidated upon in the latter parts of the judgment. The doctrine of *stare-decisis* is not just concerned with ensuring that decisions of higher courts or of larger benches

are duly adhered to and questions of law already settled and put to *quietus* by higher judicial authorities are not disturbed. The idea is also to infuse a sense of judicial comity within the intertwined hierarchical courts in the manner of their functioning. Additionally, one of the core precepts of *stare-decisis* is that not only the decisions but the very decision-making process of the courts are predicated upon a discernible standard, often coined as 'judicially manageable standards'. We shall discuss this in more detail in the later parts of this judgment.

239. Any time-limit in the exercise of powers in terms of Article 200 of the Constitution should not be construed as timelines laid within the edifice of the provision, rather should be understood as timelines that would serve as a lodestar for the purpose of exercise of judicial review by the courts, a benchmark tool to aid and enable the courts in ascertaining if any inaction or malfeasance has occasioned in the exercise of such powers. These timelines no doubt demand the earnest adherence by the Governor, however, these being nothing more than tools upon which scrutiny by judicial review is to be premised, remain as prescriptions within the realm of judicial review alone and do not transgress into the legislative bounds or amount to alteration of the text or authority of Article 200 of the Constitution. The reason why these time-lines do not immolate the very fabric of Article 200 is because the said provision even with the infusion of these time-limit still

remains markedly different from its counterpart provisions where such time-limits are legislatively prescribed. For instance, Article 75 of the Constitution of the Islamic Republic of Pakistan or Article I, Section 7 of the U.S. Constitution, where if no decision is taken within the stipulated time-limit by the President then the bills are deemed to have been assented to.

240. Thus, it is important to take note of this very fine but pertinent distinction that the prescription of a time-limit by this Court into Article 200 of the Constitution does not fundamentally change the procedure which has been envisaged. While the reading in of a time-limit under Article 200 would have meant that there would be deemed assent upon failure of the Governor to comply with the said timeline, the prescription of a reasonable time period does not introduce any such mechanism or deeming fiction in Article 200.

241. What emerges from the above is that the fine but pertinent distinction between the time-limits that are expressly prescribed and those that are judicially evolved is only that in the former the consequence of deemed assent emanates from the provision itself whereas in the latter there could be no such consequence except to the extent that the courts judicially reviewing the action or inaction can direct a decision to be taken within a time-bound manner, or in exceptional cases like the one at hand, deem the assent to have

been granted under Article 142 of the Constitution, which we shall again discuss in the later parts of this judgment.

242. When prescribing such a time-limit for the exercise of power under Article 200, we are guided by the inherent expedient nature of the procedure prescribed thereunder and the well-settled legal principle that where no time-limit for the exercise of a power is prescribed, it should be exercised within a reasonable period.

243. What would be a reasonable period would vary from situation to situation, however, in the present case, taking guidance from the timelines that have been prescribed by the Sarkaria and the Punchhi Commission, we have arrived at the view that in the absence of any exceptional circumstances, the Governor would be able to exercise his powers under the Article within the maximum period prescribed by us.

244. While the reading in of an absolute time-limit would have left the Governor with no choice but to comply with it, the prescription of the judicially evolved time-limits by us leaves it open for the Governor to justify the delay caused by providing reasonable grounds. Delay caused by the Governor beyond the prescribed time-limits would be justiciable and the courts, with deference to applicable judicial principles, would be fully competent to

ascertain whether the delayed exercise of power by the Governor under Article 200 was based on any reasonable grounds or not.

245. The prescription of a time-limit is with a view to ensure that the Governor is not conferred with the power of exercising a pocket veto under the scheme of Article 200, and hinder the law-making process in the State without the existence of any reasonable grounds. While the decision in ***Nambudiri*** (*supra)* does not make the prescription of such a time-limit by the Court impermissible, the decisions, adverted to above, vest this Court with sufficient power to ensure that the procedure prescribed under Article 200 is followed by the Governor in a constitutionally permissible manner and in line with the principles of parliamentary democracy keeping in mind the nature of the power. Such an approach also ensures that the State governments are not left remediless in cases of malicious, arbitrary or capricious exercise of power by the Governor under Article 200.

246. We also deem it necessary to prescribe a timeline for the discharge of functions by the Governor under Article 200. The Sarkaria and Punchhi Commissions in their reports adopted this view, keeping in mind the importance of an expeditious decision under Article 200 for the smooth functioning of electoral democracy in the States. An elected government

gets the mandate of the people for a limited period of five-years within which it is expected to legislate on issues pertaining to the electorate. If the Governor, for whatsoever reasons, exhibits reluctance or lethargy in decision making, particularly when it is concerned with the assent to bills, it severely impacts the ability of the government to act upon its mandate and deliver to the people who brought them into power. Any obstacle created by the Governor, whether advertently or inadvertently, severely impacts the perception of the elected government in the subsequent elections and thereby also negatively affecting their chances of coming back into power. The problem is further exacerbated when the political party in power in the State is different from the one at the Centre, and the Governor should be more cautious and non-partisan in the exercise of his functions in such a scenario. Any deliberate inaction on part of the Governor in assenting to bills or reserving them for the consideration of the President, thus, has to be viewed as a serious threat to the federal polity of the country and the aggrieved governments cannot be left remediless, desperately waiting for a decision at the hands of the Governor.

247. This Court in ***State of Punjab*** *(supra)* held that the Constitution terms any inaction on part of the Governor as deplorable and that he cannot indefinitely keep the bills passed by the State legislature on a chokehold. The relevant observations read as under:

> *"24. [...] <u>The Constitution evidently contains this provision bearing in mind the importance which has been attached to the power of legislation which squarely lies in the domain of the State Legislature. The Governor cannot be at liberty to keep the Bill pending indefinitely without any action whatsoever</u>."*
>
> (Emphasis supplied)

248. It is not unusual for this Court to prescribe time-limits for the discharge of certain functions, even in cases where no specific time-limit has been prescribed. Recently, in ***Periyammal (Dead) thr. LRs & Ors. v. Rajamani & Anr. Etc.*** reported in **2025 INSC 329**, a two-Judge Bench of this Court, of which one of us (J.B. Pardiwala, J.) was a part, directed all the High Courts to issue directions to all the District Courts to decide pending execution petitions within a period of six-months without fail. The directions read as follows:

> *"75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by SLP (C) Nos. 8490, 8491 & 8492 of 2020 Page 77 of 78 each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the*

same shall be forwarded to the Registry of this Court with individual reports."

249. We have already discussed that in ***Keisham*** *(supra)*, a three-Judge Bench of this Court fixed an outer time-limit of three-months for the Speaker to decide disqualification petitions under the Tenth Schedule. The Court pertinently observed that the said period was fixed "*keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is five-years*". This Court has also, in a number of decisions, set down and reiterated that the High Courts must pronounce judgments on reserved matters within a period of six-months. Inaction on part of any constitutional authority being subject to judicial review, it is important that there are reasonably laid down standards of justiciability of such inaction, and the timelines prescribed by us serve that purpose. Even the Constituent Assembly had initially laid down a period of six-weeks for the President to take action on bills submitted to him under Article 111. However, that was later changed to account for any exceptional circumstance that may arise in the discharge of functions by the President or the Governor. However, the expression "*six-months*" was replaced with "*as soon as possible*", which though not determinable, envisages an expeditious disposal of bills, unless in cases where some impossibility exists. The prescription of timelines by us balances the objective of expediency as well as the desirability of having some flexibility in cases of existence of an impossibility in discharge of

functions in an expeditious manner. Flexibility in the discharge of a function cannot be allowed to be stretched to an extent that renders the very object underlying such function otiose, resulting into the proverbial snapping of the constitutional machinery.

250. Keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, the following timelines are being prescribed. Failure to comply with these timelines would make the inaction of the Governors subject to judicial review by the courts:

(i) In case of either withholding of assent or reservation of the bill for the consideration of the President upon the aid and advice of the State Council of Ministers, the Governor is expected to take such an action forthwith subject to a maximum period of one-month;

(ii) In case of withholding of assent contrary to the advice of the State Council of Ministers, the Governor must return the bill together with a message within a maximum period of three-months;

(iii) In case of reservation of bills for the consideration of the President contrary to the advice of the State Council of Ministers, the Governor shall make such reservation within a maximum period of three months;

In case of presentation of bill after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one-month.

251. Failure to comply with the timelines prescribed above would make the inaction on part of the Governor amenable to judicial review. We shall also deal with the necessity of expeditiously disposing of the references under Article 201 by the President in subsequent parts of this judgment.

iv. <u>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</u>?

252. Significant time was spent during the course of the arguments on the key issue of the scope of discretion enjoyed by the Governor in exercise of his powers under Article 200, more particularly, as regards the reservation of bills for the consideration of the President.

253. Mr. Rohatgi, learned Senior Counsel, submitted that the act of the Governor amounts to a subversion of the Constitution. He further emphatically submitted that it indeed amounted to a subversion of the Constitution.

254. He also submitted that there was no discretion available to the Governor under the scheme of Article 200 of the Constitution and the only exception to the same was provided in the second proviso to Article 200 itself. In other words, he contended that the Governor could only reserve a bill against the

advice tendered to him by the Council of Ministers, if the bill was of a description as provided in the second proviso. He submitted that in all other cases, the reservation of a bill for the consideration of the President had to take place strictly in accordance with the advice of the Council of Ministers.

255. This argument was also endorsed by Dr. Singhvi, who added that the observations made in ***B.K. Pavitra*** *(supra)* as regards the discretion of the Governor under Article 200 of the Constitution have to be understood in the context of the reservation taking place on the aid and advice of the Council of Ministers.

256. Mr. Dwivedi, placing reliance on the deletion of the expression "*in his discretion*" from both the substantive part of Article 200 as well the first proviso by the Constituent Assembly, proposed an even stricter interpretation of Article 200. He argued that the deletion of the expression "*in his discretion*" indicated that the intention of the framers of the Constitution was crystal clear that the Governor should have no semblance of discretion while exercising his powers under Article 200 and he should act in accordance with the advice rendered by the Council of Ministers. He further submitted that it is not just reservation of the bills for the consideration of the President, but the grant of assent, as well as the decision to send the bill back to the State legislature together with a message upon

the withholding of assent, which must be taken strictly in accordance with the advice of the Council of Ministers.

257. The Attorney General, *per contra*, argued that while exercising his powers under Article 200, the Governor is discharging an important constitutional obligation, and even if he does not exercise individual discretion, he may still act against the aid and advice of the Council of Ministers if he is so required to, in the discharge of his constitutional duties.

258. An answer to the aforesaid question cannot be arrived at without first answering the following sub-questions:

a. How has the office of the Governor been envisaged by the constitutional scheme? In what manner does he play a dual role in the federal polity of the country?

b. Whether the Governor enjoys a certain degree of discretion in discharge of his duties under the Constitution? What is the source of such discretion?

c. Does the deletion of the expression "*in his discretion*" from Article 175 of the Draft Constitution imply that the Governor has no discretion available in the exercise of his powers under Article 200?

a. The Office of the Governor

259. With the enactment of the Government of India Act, 1858, the administration of India transitioned from the East India Company to the British Crown, bringing about a new administrative framework wherein the Governor, as an agent of the Crown, operated under the general supervision of the Governor-General. While this structure prevailed, the Montagu-Chelmsford Reforms of 1919, which culminated into the GoI Act, 1919, marked the early stirrings of responsible government, *albeit* in a nascent form. Despite this shift, the Governor remained central to the provincial administration, continuing to wield significant authority.

260. The GoI Act, 1935, ushered in the era of provincial autonomy and formally required the Governor to act on the advice of the Ministers who were accountable to the provincial legislature by abolishing the system of dyarchy at the provincial level, while introducing it at the central level. However, the Act also conferred upon the Governor certain special responsibilities, such as maintaining peace and tranquility within the province and safeguarding minority interests. These responsibilities necessitated the exercise of discretion by the Governor in specific matters. Further, the autonomy of the Governor in such cases remained subject to the general superintendence and

control of the Governor-General, ensuring oversight over the exercise of his individual judgment.

261. The declaration of Independence brought about a fundamental transformation in the role of the Governor. Until the Constitution came into effect, the provisions of the GoI Act, 1935, as modified by the India (Provisional Constitution) Order, 1947 (for short, the "**Adaptation Order**"), governed the administration of the country. Significantly, the Adaptation Order omitted the expressions 'in his discretion', 'acting in his discretion', and 'exercising his individual judgment' from the Act, signaling a departure from the colonial framework.

262. One of the key decisions that the framers of the Constitution had to take was to decide the mode of selection of the Governor - whether he should be elected by way of a direct election, or selected from a panel of names suggested by the State legislature, or nominated by the President. While in the early days, the Constituent Assembly leaned towards having an elected Governor, as the framing of the Constitution neared its conclusion, there was increasing support in favour of having a Governor nominated by the President. Jawaharlal Nehru attributed this shift of opinion to the bitter experience of partition, which, according to him, opened the eyes of the Constituent Assembly to the dangers of separatism and the need for having

a political structure which focused more on the character of the nation as a Union of States rather than a federation.

b. Constituent Assembly Debates on the mode of Selection of the Governor

263. The speeches made by some of the members of the Constituent Assembly on Article 155 of the Constitution broadly encapsulate the ideas which were debated and rejected before nomination was selected as the mode of appointment for the Governor.

264. Speaking in favour of appointment of Governors by Presidential nomination, Shri. H.V. Kamath was of the opinion that the concept of an elected Governor would undermine the structure of the country as a Union of States, since a Governor elected directly by the people on the basis of adult suffrage would place more emphasis on India being a federation. However, according to him, "*the emphasis today is more upon the Union pattern of our State than upon its Federal aspect*"[13]. He believed that an elected Governor, being a partisan figure, would inevitably clash with the Chief Minister, thereby disrupting the functioning of a cabinet-style government. According to him, the role of a constitutional head should be impartial and symbolic, and the nomination system was better suited to uphold these principles. He further

[13] 8, CONSTITUENT ASSEMB. DEB., (May 30, 1949) 428.

elaborated on the potential tussle that would ensue between an elected Governor and the Chief Minister of the State as follows:

> *"[...] If the Governor were to be elected by the direct vote of all voters in a province he is very likely to be a party-man with strong views of his own, and considering that he will be elected by the whole province—by the entire adult population of the province— he will think that he is a far superior man and a far more powerful man that the Chief Minister or Premier of the State who will be returned from one constituency only, but because he happens to be the leader of the majority party, he will be nominated Premier by the Governor. There will be two conflicting authorities within the State : one is the Premier, whom, under this Constitution which we are considering today, we have invested with executive authority so far as the State is concerned, and the other is the Governor, who, though the Constitution does not confer on him very substantial powers and functions, will arrogate much to himself, because he will say that "I have been elected by the people of the whole province and as such I am persona gratia with the people and not the Chief Minister". Therefore, there will be in the administration of the province at every turn—if not at every turn, then very often—points of conflicts or friction between the elected Governor and the elected Chief Minister. Therefore, I think we have done very wisely in deleting or in doing away with the system of election for the Provincial Governor."*[14]

265. Shri. Hukam Singh, opting for the middle path, acknowledged the difficulties inherent in both pure election and pure nomination for the purpose of appointment of Governors. While agreeing with Shri. H.V. Kamath on the drawbacks of an elected Governor, such as the potential for

[14] 8, CONSTITUENT ASSEMB. DEB., (May 30, 1949) 428-429.

conflict with the Chief Minister and the high costs involved in conducting elections, he proposed a balanced alternative, suggesting that a panel of candidates be nominated by the State legislature and a Governor be chosen from the said panel. This method, while allowing for some discretion would also ensure public accountability since the merits of those individuals who had been recommended in the panel would be publicly available and if the right person was not chosen, then the selection would also be criticized publicly. In his view, this approach would reduce favoritism, enhance transparency, and provide a safeguard against the abuse of power, striking a middle ground between the extremes of election and direct nomination.

266. Shri. Rohini Kumar Chaudhari opposed the nomination of Governors, cautioning that a Centre-appointed Governor belonging to a different political party than the provincial government could lead to discord and undermine provincial autonomy. The friction that would result from adopting a system wherein Governors are elected would also exist, according to him, when a Governor is nominated, since the nominee of the President would not work in harmonious tandem with the Ministry of the State which belongs to a different political party than the one which enjoys power at the Centre. He argued that electing Governors would ensure that they are more attuned to the needs of all communities, including marginalized groups like tribal populations in States where the Governor

would have an even more important role to play. He criticized the reliance on British precedents and advocated for a more democratic process, such as election or selection from a panel, to reflect the will of the people and to also safeguard provincial interests.

267. Shri. Alladi Krishnaswami Ayyar was of the view that since the Governor is merely a constitutional head of the province and the real executive power had been vested in a ministry responsible to the Lower House of the different States, it seemed rather unnecessary, under such circumstances, to adopt the method of election based on universal suffrage for the appointment of the Governors. The nomination of Governors by the President would, in his opinion, mitigate constitutional conflicts and foster harmonious relations between the Governor and the provincial Cabinet. He argued that an elected Governor, deriving authority from universal suffrage, might assert dominance over the Cabinet, leading to significant constitutional risks. He specifically remarked that, "*In the normal working of the Government also there is danger of a clash between the Minister and the Governor, whereas the whole basis of the constitutional structure we are erecting depends upon the harmony between the legislature and the executive, and between the executive and the formal head of the Government*".[15] Drawing inspiration from the

[15] 8, CONSTITUENT ASSEMB. DEB, (May 30, 1949) 431.

Canadian model, he suggested that the President's appointment of Governors, guided by the advice of the provincial Cabinet, would ensure stability and sound governance. Furthermore, according to him, "*Nowhere does the system of election of the Governor exist where the Institution of responsible government is the main feature of the Constitution*".[16] He believed that this system would better serve the interests of the provinces and the nation as a whole.

268. It was his belief that while the method of nomination was the most appropriate one, a convention of appointing Governors in consultation with the State government would grow. This, when read with the other discussions which took place in the Constituent Assembly, indicate that the framers of the Constitution reposed trust that the Governor would not be a cipher of the Central government, would be a person above party politics and would not attempt to override the State government with his actions. He also supported the idea of having nominated Governors on the ground that the intervention of the Governor would be required only in extraordinary situations, and an elected Governor may come in conflict with the provincial Cabinet by trying to override their decisions. His words are reproduced below:

[16] 8, CONSTITUENT ASSEMB. DEB., (May 30, 1949) 431.

"I see no objection to the appointment of the Governor being left to the President of the Union who has necessarily to act on the advice of the Prime Minister and his Cabinet. A convention, of consulting the provincial Cabinet might easily grow up. Such a convention, as the House is aware, has grown up in the appointment of Governors in Canada. In Australia too, though under a different Constitution, a similar convention has grown up and the Governor of a State is appointed on the advice of the provincial Cabinet. […] There is another aspect also which the House might take into consideration. In our Constitution we must try every method by which harmony could be secured between the Centre and the provinces. If you have a person who is not elected by the province or the State but you have a person appointed by the President of the Union with the consent, I take it, of the provincial Cabinet, you will add a close link between the Centre and the provinces and a clash between the provinces and the Centre will be avoided which will otherwise occasionally result. Then there is another point. It is said that the Governor may occasionally have to use his extraordinary powers. This point is more in favour of nomination rather than in favour of election. If the person who is elected on the basis of universal suffrage is to come into clash with the provincial Cabinet and if he is to set himself above the provincial Cabinet, there will be a greater constitutional danger. Even if circumstances arise when intervention by the Governor is necessary it will be only on extraordinary occasions. Even for that intervention a person who is nominated or appointed by the President with the concurrence of the provincial Cabinet is likely to take far greater care than a person who is elected by the people. On the whole, in the interest of harmony, in the interests of good working, in the interests of sounder relations between the provincial Cabinet and the Governor, it will be much better if we adopt the Canadian model and have the Governors appointed by the President with the convention growing up

that the Cabinet at the Centre would also be guided by the advice of the provincial Cabinet."

(Emphasis supplied)

269. Shri. P.S. Deshmukh was of the opinion that there exist a few fundamental considerations which have to be kept in mind while discussing the appointment of the Governor. The first of these fundamental considerations was that, "*if we decide that the Governor should be elected by the province on the basis of adult franchise, then it follows logically that he should be a real executive authority. On the other hand, if you want him to be mere figurehead, if you want him to have exactly the same position as he has today under the 1935 Act and which is exactly the position which is assigned to him under the Draft Constitution, you cannot but have him appointed by the President*."[17]. In light of this, he buttressed his view that Governors must be nominated and not elected. Regarding the concern that adopting a system of nominating the Governor would give undue power to the Prime Minister and the President, he opined that the Prime Minister would also be a popular Prime Minister and that he can only be there as long as he has the support of the Parliament elected by the people at large. Therefore, his view was that we must not hesitate in giving powers of patronage to the Prime Minister or the President. He also expressed concerns about the potential discord

[17] 8, CONSTITUENT ASSEMB. DEB., (May 30, 1949) 433.

between an elected Governor and the Chief Minister or Premier, which could disrupt governance. Apart from the very real possibility of conflicts between the elected Governor and the Chief Minister which necessitated appointment *via* nomination, he argued, on the other hand that, if there was no conflict and there was perfect agreement or collusion between the Governor and the Chief Minister, they could agree in defying the Centre altogether and that would put the Centre in a precarious position where they would be completely blocked out from the States. Therefore, he remarked that, "*But apart from the conflict, if there is no conflict and there is perfect agreement, if these two gentlemen set the Centre at naught, what will be the position?*"[18]. Hence, in his opinion, the appointment of Governors by the President would maintain a balance of power and ensure some degree of Central influence over provincial matters. He further suggested that Governors should serve at the pleasure of the President, thereby eliminating the need for impeachment provisions and also reinforcing the oversight of the Centre.

270. Shri. Hriday Nath Kunzru highlighted the potential for friction between Governors and their Cabinets, specifically with reference to Article 175 of the Draft Constitution, which has now been adopted as Article 200. By drawing comparisons to the Canadian model, he argued that empowering

[18] 8, CONSTITUENT ASSEMB. DEB., (May 30, 1949) 434.

the President to disallow provincial bills directly by overriding the assent of the Governor within a certain prescribed period of time from the date of such assent, rather than relying on the Governors as intermediaries who refer the bill for the consideration of the President, would centralize responsibility with the Central Executive and reduce conflicts at the provincial level. In his view, this approach would align with the principles of responsible government and ensure smoother governance.

271. Pandit Jawaharlal Nehru emphasized the need to foster unity and avoid separatist tendencies within the nation. He believed that an elected Governor could exacerbate provincial divisions and weaken ties with the Centre. In his opinion, "*Nevertheless a certain convention and practice helps or hinders the growth of separatist tendencies. I feel that if we have an elected Governor that would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre.*"[19] He argued that duplicating the electoral process for the office of Governor would be unnecessary and counterproductive, leading to conflicts, wastage of resources, and disruptive tendencies. Supporting the nomination of Governors, he asserted that this approach would align with

[19] 8, CONSTITUENT ASSEMB. DEB., (May 31, 1949) 455.

the parliamentary system of democracy and strengthen the relationship between the provinces and the Centre.

c. Constituent Assembly Debates on the Exercise of Discretion by the Governor

272. The other key question which fell for the consideration of the Constituent Assembly was whether any discretion would be made available to the Governor as the constitutional head of the State. Article 163(1) of the Constitution, which describes the nature of such discretionary powers, reads as follows:

> *"(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."*

273. To understand the true import and the scope of this discretion which exists with the Governor, it would be apposite for us to look into the Constituent Assembly debates pertaining to this Article in some detail. Article 163 which provides for the Council of Ministers to aid and advice the Governor was earlier numbered as Article 143 under the Draft Constitution. Two amendments were sought to be moved to draft Article 143 on the 1st of July 1949; however, those did not gain the approval of the Constituent Assembly

and the original version of draft Article 143 came to be later adopted as Article 163 as we see it today.

274. Of the two amendments, one of which was moved by Shri. H.V. Kamath sought to delete the expression, "*except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion*". Shri. H.V. Kamath was of the opinion that the draft Article had been blindly copied from the GoI Act, 1935, without any mature consideration. He further remarked that, "*There is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise vis-a-vis his ministers, than has been given to the President in relation to his ministers*"[20]. Investing such wide discretionary powers on the Governor was all the more problematic, according to him, since Governors are nominated to their positions and not elected. No departure from the principles of a constitutional government must be favored except for reasons of emergency and therefore, he advocated for these discretionary powers to be done away with.

275. However, Shri. T. T. Krishnamachari pointed out that there existed specific provisions under the Draft Constitution wherein the Governor was in fact empowered to act in his discretion, irrespective of the advice tendered by his

[20] 8, CONSTITUENT ASSEMB. DEB., (Jun. 1, 1949) 489.

Council of Ministers. Therefore, according to him, there were two ways of drafting which would capture the aforesaid underlying idea: *One,* would be to make a mention of this exception under draft Article 143 itself and enumerate the specific scenarios where the Governor would be able to exercise his discretion in the subsequent relevant articles or; *Two*, would be to leave out any mention of this discretionary power under draft Article 143 and only state it in the appropriate article that will follow. In the case of draft Article 143, according to him, it was only that the former method had been followed. Therefore, the general proposition or the default rule would be that "*the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those Articles in the Constitution in which he is specifically empowered to act in his discretion*."[21]

276. As an illustration, Shri. T.T. Krishnamachari referred to draft Article 188 which related to the proclamation of Emergency in States by the Governor under his discretion. It was his opinion that if such a discretionary power can be given under draft Article 188, there is no harm in the mention of discretion under draft Article 143 either. He understood the scheme of the draft Constitution to mean that unless there is a specific mention of

[21] 8, CONSTITUENT ASSEMB. DEB, (Jun. 1, 1949) 491.

discretion under any subsequent Article, the discretionary power mentioned under draft Article 143 cannot at all be exercised.

277. Shri. Brajeshwar Prasad was not in favor of the amendment that was put forth since he was of the opinion that the Governor should be vested not only with the power to act in his discretion but also with the power to act in his individual judgement. He was of the view that there was a dearth of leadership in the provinces wherein competent men were not available and unless the Governor is vested with large powers, it would be difficult to effect any improvement in the provincial administration. He went to the extent of saying that though such a procedure may be considered as undemocratic, it would be in the interest of the country. He remarked that, "*I cannot allow democracy to jeopardize the vital interests of the country […] The masses who ought to be the rulers of this land are down-trodden and exploited in all ways. Under these circumstances there is no way left open but for the Government of India to take the Provincial administrations in its own hands*"[22]. In his opinion, federalism could not succeed in a country which was passing through a transitory period and therefore, he subscribed to the view that power must be vested at the Centre and as a natural corollary, the Governor must be able to act in his discretion.

[22] 8, CONSTITUENT ASSEMB. DEB., (Jun. 1, 1949) 492.

278. Shri. Mahavir Tyagi was also in agreement with the view that the Governor must be granted discretion. In his opinion, the State must be kept linked together with the Centre and the Governor would be the agent who guards the Central policy in the provinces/States. There would be certain subject-matters which affect the whole body politic and the provinces/States cannot be left free of the policy at the Centre. Since the policy which is evoked in the Centre must be followed by all the States, and if the Governors were to be in the hands of the provincial Ministers, then there will be various policies in various provinces and ministers of various types having different party labels and programmes would push their own agenda. Therefore, it was his view that, "*The Governor being the agency of the Centre would be the only guarantee to integrate the various provinces/States*"[23]. According to him, this is why the Governor's discretionary powers should not be interfered with. He went on to remark that democratic trends are like a wild beast and that it goes by the whims and fancies of the parties and the masses. There must be some machinery which would keep this wild beast under control. It is in such a reality that the Governor exercising his discretion acts as a guardian of the Central policy on one side and the Constitution on the other.

[23] 8, CONSTITUENT ASSEMB. DEB., (Jun. 1, 1949) 495.

279. Shri. B.M. Gupta was of the view that if certain powers had to be given to the Governor, our endeavor must be to restrict them as far as possible so that the Governor's position as a constitutional head may be maintained.

280. Shri. Alladi Krishnaswami Ayyar echoed the stance taken by Shri T.T. Krishnamachari. He stated that, in the first place, a general principle under Article 143 is laid down, namely, the principle of ministerial responsibility that the Governor in the various spheres of executive activity should normally act on the advice of his ministers. Then, the Article goes on to carve out an exception as regards the matters under which the Governor is required to exercise certain functions under his own discretion. Therefore, it was his conclusion that as long as there are articles under the Constitution which enable the Governor to act in his discretion, the draft Article 143 as it was framed was perfectly in order. In certain circumstances, this exercise of discretion may be to override the Cabinet or to refer to the President. If later on, the Constituent Assembly were to arrive at the conclusion that those subsequent Articles which enable the Governor to act in his discretion in specific cases must be deleted, it would be open to revise draft Article 143. But as long as there are Articles occurring later in the Constitution which permit the Governor to act in his discretion and not on ministerial responsibility, the present draft Article 143 was drafted rightly.

281. The only other question, in his opinion, was to see whether the Constituent Assembly had to first make a provision under draft Article 143 that the Governor shall mandatorily act on ministerial responsibility and then go on to provide "*Notwithstanding anything contained in Article 143, [...] he can do this*" or that "*Notwithstanding anything contained in Article 143, he can act in his discretion*" in the subsequent relevant Articles. However, he favored the method of drafting that had already been adopted i.e., to provide in draft Article 143 itself that the Governor shall always act on ministerial responsibility excepting in particular or specific cases where he is empowered to act in his discretion. If, of course, the Constituent Assembly came to the conclusion that in no case the Governor shall act in his discretion, and that he shall in every case act only on ministerial responsibility, then there will be a consequential change to this Article.

282. Pandit Thakur Das Bhargava adopted the notion that the Governor "*shall be a guide, philosopher and friend of the Ministry as well as the people in general, so that he will exercise certain functions some of which will be in the nature of unwritten conventions and some will be such as will be expressly conferred by this Constitution.*"[24] The Governor's role would

[24] 8, CONSTITUENT ASSEMB. DEB., (Jun. 1, 1949) 497.

transcend party politics and he would look at the Minister and the State government from a detached standpoint. He would also be able to influence the ministers and members of the legislature in such a manner that the administration would run smoothly. In such a circumstance, to say that he is merely a dummy, an automaton or a dignitary without powers would be gravely wrong. According to his conception of a constitutional Governor, the Governor would have to accept the advice of his ministers in many matters but there may also exist many other matters in which such an advice will either be unavailable or wherein he will not be bound to accept that advice. Another illustration, according to him, of when the Governor would act in his discretion would be under draft Article 147 (Article 167 as it stands today) where the Governor can exercise his power of calling for certain information from the Chief Minister. Under this Article, the Governor is competent to ask the Chief Minister to place any matter before the Council of Ministers which only one minister might have decided. When he calls for such information, he will be acting in the exercise of his discretion and may call for any kind of information with a view to control and restrain the ministry from undertaking irresponsible acts. Therefore, he remarked that, "*In my opinion taking the Governor as he is conceived to be under the*

Constitution, he will exercise very important functions and therefore it is very necessary to retain the words relating to his discretion in article 143"[25].

283. Shri. Rohini Kumar Chaudhuri put forth the alternate view that it is always better to be governed by the will of the people than to be governed by the will of a single person who could act in his discretion. He remarked that, "*If this Governor is given the power to act in his discretion there is no power on earth to prevent him from doing so. He can be a veritable King Stork.*"[26]. Furthermore, the draft Article 143 itself states that wherever the Governor thinks that he is acting in his discretion, he cannot be questioned. According to him, in this day and age, we must not countenance such a state of affairs.

284. While concluding the debate on draft Article 143, Dr. B. R. Ambedkar elaborated that the main and crucial question under this draft Article was whether the Governor must have certain discretionary powers or not. During the course of the debate, it was pointed out that the retention of discretionary powers in the Governor was contrary to responsible government in the States/provinces. It was also stated that the same mimicked the GoI Act, 1935, which was largely assailed as being undemocratic. However, Dr. B. R. Ambedkar was of the undoubted view that "*the retention in or the vesting*

[25] *Ibid*.
[26] 8, CONSTITUENT ASSEMB. DEB., (Jun. 1, 1949) 499.

the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government."[27] He cited Section 55 of the Canadian Constitution which read as follows:

> *"Section 55. –*
> *Where a Bill passed by the House of Parliament is presented to the Governor-General for the Queen's assent, he shall, according to his discretion, and subject to the provisions of this Act, either assent thereto in the Queen's name, or withhold the Queen's assent or reserve the Bill for the signification of the Queen's pleasure."*

285. He conveyed that the Canadians and the Australians had not found it necessary to delete these provisions even in this day and age and that they were quite satisfied with its retention. This, he argued, was demonstrative of the fact that the grant of such a discretion to the Governor is fully compatible with a responsible government. If they had felt otherwise, they had the fullest right to abrogate this provision and would have done so. Therefore, the existence of a provision vesting a certain amount of discretion in the Governor cannot be questioned. Furthermore, the draft Article reads that, "*Except in so far as he is by or under this Constitution*" and not that "*except wherever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers*"[28]. Therefore, the clause is very limited in nature and would have to be read in conjunction with such

[27] 8, CONSTITUENT ASSEMB. DEB., (Jun. 1, 1949) 500.
[28] 8, CONSTITUENT ASSEMB. DEB., (Jun. 1, 1949) 501.

other Articles which specifically reserve the discretionary power for the Governor. It must not be construed as a general clause which gives the Governor the power to disregard the advice of his ministers in any matter in which he finds that he could disregard their opinion.

286. Now moving on to how an Article providing for a certain amount of discretionary powers to the Governor is to be framed, Dr. B. R. Ambedkar elaborated that there are several ways in which the same can be done. One way could be to omit the words from draft Article 143 and to add to draft Articles 175 (presently Article 200), 188, or such other provisions, an express mention which vests the Governor with discretionary power. Those Articles would then mention that notwithstanding draft Article 143, the Governor would have a certain discretionary power. Another way would be to state in draft Article 143 itself that "*except as provided in draft Articles 175, 188 etc*.", the Governor shall act in accordance with the aid and advice of the Council of Ministers with the Chief Minister at the head. However, irrespective of what method of drafting is adopted, the essential point that would remain is that the Governor's discretionary power must be acknowledged in some form.

287. Dr. B. R. Ambedkar was open and quite willing to concede to the position of those members who were of the view that the last portion of clause (1) of

draft Article 143 must be amended to mention the specific Articles under which the Governor shall exercise discretion, if at that stage of the Constituent Assembly debates the provisions intended for such vesting were already determined. The difficulty was that the Constituent Assembly had not yet arrived at a stage where they could discuss draft Articles 175 or 188, nor had they exhausted all the possibilities of other provisions being made which vested the Governor with discretionary power. If all those possibilities were already known, draft Article 143 could have been amended and those specific Articles could have been mentioned or listed out. Therefore, Dr. B. R. Ambedkar was firmly of the view that no wrong could be done if the words as they stood in the draft Article were retained.

288. While acknowledging that there exists a material difference between draft Article 61(1) (Article 74(1) as it stands today) relating to the executive functions of the President *vis-à-vis* his Ministers and the draft Article 143, Dr. B. R. Ambedkar elucidated that it was not the intention of the drafters to vest any discretionary power upon the President. It is because the provincial governments are required to work in subordination to the Central government and in order to ensure that they do act in such subordination, the Governor would reserve certain matters, thereby giving the President an opportunity to see that they are broadly in compliance with the policy of the Central government. Through this mechanism, the President would be able

to ensure that the rules under which the provincial governments are supposed to act, according to the Constitution, are observed. Therefore, the vesting of discretionary powers in the post of the Governor was considered crucial to enable this administrative dialogue between the Centre and the provinces.

289. What flows from a study of the Constituent Assembly debates concerning the appointment of the Governor and the scope of his discretionary powers is that the Governor plays a very crucial role in the political structure of the country. He is the bridge between the governments at the Central and State level, the proverbial buckle which ties the States with the Centre. The Punchhi Commission Report also acknowledged this dual role of the Governor – one as the custodian of the Constitution in the States and a representative of the Union, and the other as the constitutional head of the State and a "*friend, philosopher and guide*" of the State government as well as the people. The position of the Governor and how it differs from that of the President were discussed by Dr. B. R. Ambedkar as we have elaborated in the preceding paragraphs. This difference was also taken note of by Krishna Iyer J., in his opinion in ***Samsher Singh*** *(supra)* as we will discuss subsequently. We are of the firm view that this unique position of the Governor must be kept in mind whenever we set out to interpret any provision of the Constitution pertaining to any gubernatorial powers or

functions. It is not terminologies like "*federal*", "*quasi-federal*" or "*unitary*" which should guide our interpretation of the Constitution. In turn, the words and ideas of the wise artisans, who carefully weaved the fabric of the Constitution with threads borrowed from across the world after dying them in colors uniquely Indian, that we should look towards, when in doubt about the fundamental ideas of our Constitution. The framers of the Constitution were cognizant of the fact that vesting the Centre with excessive powers would not be healthy for the country's polity. In this regard we may refer to the observations made by the Sarkaria Commission – "*there is considerable truth in the saying that undue centralization leads to blood pressure at the Centre and anemia at the periphery. The inevitable result is morbidity, and inefficiency. Indeed, centralization does not solve but aggravates the problems of the people.*" Therefore, the curtailing of the powers of the Governor under the Constitution as distinguished from the GoI Act, 1935 was done keeping in mind that the Centre does not arrogate all powers to itself by utilizing the Governor as an intermediary of the Centre at the State.

290. Arijit Pasayat, J., in his dissenting opinion in the decision of this Court in ***Rameshwar Prasad*** *(supra)*, observed thus on the role of the Governor:

> *"270. As noted above, the Governor occupies a very important and significant post in the democratic set-up. When his credibility is at stake on the basis of allegations that he was not performing his constitutional obligations or*

functions in the correct way, it is a sad reflection on the person chosen to be the executive head of a particular State. A person appointed as a Governor should add glory to the post and not be a symbolic figure oblivious of the duties and functions which he has and is expected to carry out. It is interesting to note that the allegations of favouritism and mala fides are hurled by other parties at the Governors who belonged or belong to the ruling party at the Centre, and if the Governor at any point of time was a functionary of the ruling party. The position does not change when another party comes to rule at the Centre. It appears to be a matter of convenience for different political parties to allege mala fides. This unfortunate situation could have been and can be avoided by acting on the recommendations of the Sarkaria Commission and the Committee of the National Commission to review the working of the Constitution in the matter of appointment of Governors. This does not appear to be convenient for the parties because they want to take advantage of the situation at a particular time and cry foul when the situation does not seem favourable to them. This is a sad reflection on the morals of the political parties who do not lose the opportunity of politicising the post of the Governor. Sooner the remedial measures are taken would be better for democracy.

271. It is not deficiency in the Constitution which is responsible for the situation. It is clearly attributable to the people who elect (sic appoint) the Governors on considerations other than merit. It is a disturbing feature, and if media reports are to be believed, Raj Bhavans are increasingly turning into extensions of party offices and the Governors are behaving like party functionaries of a particular party. This is not healthy for democracy.

272. The key actor in the Centre-State relations is the Governor who is a bridge between the Union and the State. The founding fathers deliberately avoided election to the office of the Governor, as is in vogue in the USA to insulate

the office from linguistic chauvinism. The President has been empowered to appoint him as executive head of the State under Article 155 in Part VI, Chapter II. The executive power of the State is vested in him by Article 154 and exercised by him with the aid and advice of the Council of Ministers, the Chief Minister as its head. Under Article 159 the Governor shall discharge his functions in accordance with the oath to protect and defend the Constitution and the law. The office of the Governor, therefore, is intended to ensure protection and sustenance of the constitutional process of the working of the Constitution by the elected executive and giving him an umpire's role. When a Gandhian economist member of the Constituent Assembly wrote a letter to Gandhiji of his plea for abolition of the office of the Governor, Gandhiji wrote to him for its retention; thus, the Governor had been given a very useful and necessary place in the scheme of the team. He would be an arbiter when there was a constitutional deadlock in the State and he would be able to play an impartial role. There would be administrative mechanism through which the constitutional crisis would be resolved in the State. The Governor thus should play an important role. In his dual undivided capacity as head of the State he should impartially assist the President. As a constitutional head of the State Government in times of constitutional crisis he should bring about sobriety. The link is apparent when we find that Article 356 would be put into operation normally based on the Governor's report. He should truthfully and with high degree of constitutional responsibility, in terms of his oath, inform the President that a situation has arisen in which the constitutional machinery in the State has failed and the Government of the State cannot be carried on in accordance with the provisions of the Constitution, with necessary detailed factual foundation."

(Emphasis supplied)

291. A Constitution Bench of this Court in ***B.P. Singhal v. Union of India*** reported in **(2010) 6 SCC 331** observed that the Governor is neither an employee of the Union nor the agent of the party in power. The relevant observations are extracted below:

> *"40. It is thus evident that a Governor has a dual role. The first is that of a constitutional head of the State, bound by the advice of his Council of Ministers. The second is to function as a vital link between the Union Government and the State Government. In certain special/emergent situations, he may also act as a special representative of the Union Government. He is required to discharge the functions related to his different roles harmoniously, assessing the scope and ambit of each role properly. He is not an employee of the Union Government, nor the agent of the party in power nor required to act under the dictates of political parties. There may be occasions when he may have to be an impartial or neutral umpire where the views of the Union Government and the State Governments are in conflict. His peculiar position arises from the fact that the Indian Constitution is quasi-federal in character."*
>
> (Emphasis supplied)

292. The question of whether the Governor is bound to act on the aid and advice of the Council of Ministers in all circumstances fell for the consideration of this Court in ***Samsher Singh*** *(supra)*. Speaking for the majority, A.N. Ray C.J., observed as follows:

> *"20. Articles where the expression "acts in his discretion" is used in relation to the powers and functions of the Governor are those which speak of special responsibilities of the Governor. These articles are 371-A(1)(b), 371-A(1)(d), 371-A(2)(b) and 371-A(2)(f). There are two paragraphs in the*

Sixth Schedule, namely 9(2) and 18(3) where the words "in his discretion" are used in relation to certain powers of the Governor. Para 9(2) is in relation to determination of amount of royalties payable by licensees or lessees prospecting for, or extracting minerals, to the District Council. Paragraph 18(3) has been omitted with effect from January 21, 1972.

21. The provisions contained in Article 371-A(1)(b) speak of the special responsibility of the Governor of Nagaland with respect to law and order in the State of Nagaland and exercise of his individual judgment as to the action to be taken. The proviso states that the decision of the Governor in his discretion shall be final and it shall not be called in question.

22. Article 371-A(1)(d) states that the Governor shall in his discretion make rules providing for the composition of the Regional Council for the Tuensang District.

23. Article 371-A(2)(b) states that for periods mentioned there the Governor shall in his discretion arrange for an equitable allocation of certain funds, between the Tuensang District and the rest of the State.

24. Article 371-A(2)(f) states that the final decision on all matters relating to the Tuensang District shall be made by the Governor in his discretion.

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28. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.

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

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

of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.

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

(Emphasis supplied)

293. A reading of the observations reproduced above indicates that the Court identified that the Governor was required to act on his discretion when performing his functions, *inter alia,* under Articles 356 and 200 of the Constitution respectively. However, it is pertinent to note that under Article 200, only the reservation of bills falling under the second proviso was observed by the Court to be an exercise which must be undertaken by the Governor independent of the advice of the Council of Ministers.

294. Furthermore, this Court laid down a general rule that the Governor, in the Cabinet form of government envisaged by the Constitution, acts as a constitutional head performing all his functions and exercising all his powers on the aid and advice of the Council of Ministers, except in a limited area. This limited area of discretion, too, is provided by the Constitution under the specific provisions wherein such exercise of discretion is permissible. The

Court gave certain illustrative examples where the expression "*acts in his discretion*" was used and observed that such provisions indicated that a special responsibility on the Governor has been entrusted upon by the Constitution.

295. It is pertinent to observe the observations made by the Court in paragraphs 54, 55 and 56 of ***Samsher Singh*** *(supra)* which are reproduced above. In paragraph 54, while giving illustrations of the provisions where the Governor is expressly required by the Constitution to act in his discretion, the Court made reference to Articles 356 and 200 respectively. In the context of Article 200, the Court observed that the limited area where express discretion has been conferred upon the Governor falls under the second proviso. Thereafter, in paragraph 55, the Court elaborated upon the exercise of discretion by the Governor under Article 356. In paragraph 56, the Court elaborated upon the exercise of discretion under Article 200 and observed that Article 200 "*indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers*". It is important to read the observations made in paragraph 56 along with paragraph 54 of the judgment. A conjoint reading of these two paragraphs, it becomes clear, without a cavil of doubt, that the second proviso to Article 200 is an instance under the Constitution where the Governor has been conferred with the power to act in his discretion and even against the advice of the Council of

Ministers. However, the logical *sequitur* to this is that under Article 200, there is no scope for the Governor acting in his discretion other than the second proviso.

296. Speaking for himself and P.N. Bhagwati J., the redoubtable Krishna Iyer J., in ***Samsher Singh*** *(supra)* observed as follows:

> *"100. The first broad proposition of the appellants is that the President —and the Governor — are not just constitutional cousins of the British Queen, but real wielders of power, bestowed on them expressly by the terms of the text, almost next of kin to their American counterparts with similar designations. The issue is so fundamental that its resolution is necessary to know not only who can declare a probationer's fitness but who can declare a war in national defence or proclaim a breakdown of the State constitutional machinery or assent to a Bill passed by Parliament. For, if under Article 311 the President must be personally satisfied for certain small steps he must surely be individually convinced regarding the far more momentous spectrum of functions he is called upon to discharge under a big bunch of other provisions. And this reasoning regarding disposal of gubernatorial business or discharge of official responsibilities will equally apply to Governors.*
>
> *xxx xxx xxx*
>
> *113. If the 'inner voice' of the founding fathers may be any guide, it is proved beyond reasonable doubt that the President and, a fortiori, the Governor enjoys nothing more and nothing less than the status of a constitutional head in a Cabinet-type Government — a few exceptions and marginal reservations apart.*

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139. Of course, there is some qualitative difference between the position of the President and the Governor. The former, under Article 74 has no discretionary powers; the latter too has none, 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]. These discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor but are remote-controlled by the Union Ministry which is answerable to Parliament for those actions. Again, a minimal area centering round reports to be despatched under Article 356 may not, in the nature of things, be amenable to Ministerial advice. The practice of sending periodical reports to the Union Government is a pre-constitutional one and it is doubtful if a Governor could or should report behind the back of his Ministers. For a Centrally appointed constitutional functionary to keep a dossier on his Ministers or to report against them or to take up public stances critical of Government policy settled by the Cabinet or to interfere in the administration directly — these are unconstitutional faux pas and run counter to Parliamentary system. In all his constitutional 'functions' it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untramelled by the State Ministers' acts and advice. Of course, a limited free-wheeling is available regarding choice of Chief Minister and dismissal of the Ministry, as in the English practice adapted to Indian conditions.

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154. We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional

powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House, but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step. We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement [Constitutional and Administrative Law — by S.A. De Smith — Peguin Books on Foundations of Law] regarding royal assent holds good for the President and Governor in India:

> *"Refusal of the royal assent on the ground that the Monarch strongly disapproved of a Bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course — a highly improbable contingency — or possibly if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent."*

(Emphasis supplied)

297. Interestingly, as can be seen from the paragraphs reproduced above, while describing the limited nature of the scope of exercise of discretion by the President and the Governor, Krishna Iyer, J., referred to an excerpt on how refusal of royal assent to a bill passed by the Parliament could only be done on the advice of the Ministers and not on the personal discretion of the monarch, regardless of how controversial the monarch found the bill to be. He further observed that the discretionary powers of the Governor existed only where they were expressly spelt out in the Constitution, and even the exercise of such discretion was remote-controlled by the Union Ministry.

298. Referring to the decision in ***Samsher Singh*** *(supra)*, Krishna Iyer J., in ***Maru Ram v. Union of India*** reported in **(1981) 1 SCC 107,** again, reiterated the position of the President and the Governor as figureheads in the constitutional scheme. However, he observed that they acted in accordance with the aid and advice of the Council of Ministers "*save in a narrow area of power*" and that the "*Governor vis-à-vis his Cabinet is no higher than the President save in a narrow area which does not include Article 161*", thereby implying that there is a small area of discretion available with the Governor, which however does not include Article 161. The relevant observations are reproduced hereinbelow:

> *"61. [...] It is fundamental to the Westminster system that the Cabinet rules and the Queen reigns being too deeply rooted*

as foundational to our system no serious encounter was met from the learned Solicitor-General whose sure grasp of fundamentals did not permit him to controvert the proposition, that the President and the Governor, be they ever so high in textual terminology, are but functional euphemisms promptly acting on and only on the advice of the Council of Ministers save in a narrow area of power. The subject is now beyond controversy, this Court having authoritatively laid down the law in Shamsher Singh case [Shamsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814]. So, we agree, even without reference to Article 367(1) and Sections 3(8)(b) and 3(60)(b) of the General Clauses Act, 1897, that, in the matter of exercise of the powers under Articles 72 and 161, the two highest dignitaries in our constitutional scheme act and must act not on their own judgment but in accordance with the aid and advice of the ministers. Article 74, after the 42nd Amendment silences speculation and obligates compliance. The Governor vis-à-vis his Cabinet is no higher than the President save in a narrow area which does not include Article 161. The constitutional conclusion is that the Governor is but a shorthand expression for the State Government and the President is an abbreviation for the Central Government."

(Emphasis supplied)

299. A Constitution Bench of this Court while dealing with the issue of discretionary powers of the Governor in ***M.P. Special Police*** *(supra)* and explaining the import of Article 163(2) of the Constitution, observed that even if discretion was not expressly granted upon the Governor by a specific provision of the Constitution, it was open to him to act in his discretion in certain exceptional situations where by reason of threat to democratic

principles, he could not act on the advice of the Council of Ministers. The relevant observations are reproduced hereinbelow:

> *"8. The question for consideration is whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Penal Code, 1860.*
>
> *xxx xxx xxx*
>
> *11. Mr Sorabjee submits that even though normally the Governor acts on the aid and advice of the Council of Ministers, but there can be cases where the Governor is, by or under the Constitution, required to exercise his function or any of them in his discretion. The Constitution of India expressly provides for contingencies/cases where the Governor is to act in his discretion. Articles 239(2), 371-A(1)(b), 371-A(2)(b), 371-A(2)(f) and paras 9(2) and 18(3) of the Sixth Schedule are some of the provisions. However, merely because the Constitution of India expressly provides, in some cases, for the Governor to act in his discretion, can it be inferred that the Governor can so act only where the Constitution expressly so provides? If that were so then sub-clause (2) of Article 163 would be redundant. A question whether a matter is or is not a matter in which the Governor is required to act in his discretion can only arise in cases where the Constitution has not expressly provided that the Governor can act in his discretion. Such a question cannot arise in respect of a matter where the Constitution expressly provides that the Governor is to act in his discretion. Article 163(2), therefore, postulates that there can be matters where the Governor can act in his discretion even though the Constitution has not expressly so provided.*
>
> *12. […] Thus, as rightly pointed out by Mr Sorabjee, a seven-Judge Bench of this Court has already held that the normal*

rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is, however, clarified that the exceptions mentioned in the judgment are not exhaustive. It is also recognised that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognised that there may be situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to Ministerial advice. Such a situation may be where bias is inherent and/or manifest in the advice of the Council of Ministers.

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19. Article 163 has been extracted above. Undoubtedly, in a matter of grant of sanction to prosecute, the Governor is normally required to act on aid and advice of the Council of Ministers and not in his discretion. However, an exception may arise whilst considering grant of sanction to prosecute a Chief Minister or a Minister where as a matter of propriety the Governor may have to act in his own discretion. Similar would be the situation if the Council of Ministers disables itself or disentitles itself.

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32. If, on these facts and circumstances, the Governor cannot act in his own discretion there would be a complete breakdown of the rule of law inasmuch as it would then be open for Governments to refuse sanction in spite of overwhelming material showing that a prima facie case is made out. If, in cases where a prima facie case is clearly made out, sanction to prosecute high functionaries is refused or withheld, democracy itself will be at stake. It would then lead to a situation where people in power may break the law

with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted."

(Emphasis supplied)

300. The decision in this case was a step forward from the general rule laid down by the larger Bench in ***Samsher Singh*** *(supra)*. However, what is essential to note is that the Court did not dilute the general rule laid down earlier, and only allowed for a very limited scope of discretion for the Governor in certain exceptional situations in light of Article 163(2). The extraordinary nature of the exceptional situations envisaged by the Court can be gauged from the use of the expressions "*peril to democracy or democratic principles*", "*bias is inherent and/or manifest in the advice of the Council of Ministers*", "*Council of Ministers disables itself or disentitles itself*" and "*there would be a complete breakdown of the rule of law*". Whenever the situation arises for the Governor to exercise discretion in discharge of a function which is ordinarily to be exercised upon the aid and advice of the Council of Ministers, it is these exceptional circumstances that the Governor must take into account before rejecting the aid and advice tendered to him. Courts too, when judicially reviewing the exercise of discretion by the Governor in such cases, must be guided by the situations as described in the decision in ***M.P. Special Police*** *(supra)*. Article 200, being a provision where the Governor must act on ministerial advice as a general rule, the

aforesaid exposition would squarely apply to this provision as well, thereby severely curtailing any possibility of exercise of discretion by the Governor.

301. Another Constitution Bench of this Court in ***Nabam Rebia*** *(supra)* had the occasion to discuss at length the nature of the position of the Governor in the constitutional scheme, along with the source and scope of his discretionary powers. The Court held that the discretionary powers of the Governor could be traced back to Article 163(1), that is, he could act in exercise of his discretionary powers only where expressly provided for under the Constitution, or where the interpretation of a constitutional provision could not be construed otherwise, or in cases where this Court has declared the exercise of powers to be done by the Governor in his discretion notwithstanding ministerial advice. Further, the Court held that the finality expressed under Article 163(2) was only in respect of those situations where the exercise of discretion by the Governor was permissible under the framework of Article 163(1) and any exercise of discretion beyond the jurisdiction provided by the Constitution would be subject to judicial review. The relevant observations are reproduced hereinbelow:

> *"147.1 [...] Article 163 further warrants that the Governor would exercise his functions, on the aid and advice of the Council of Ministers with the Chief Minister as the head. The above edict is not applicable, in situations where the Governor is expressly required to exercise his functions,*

"[...] by or under this Constitution…", "… in his discretion". The question that will need determination at our hands is, whether the underlying cardinal principle, with reference to the discretionary power of the Governor, is to be traced from Article 163(1) or from Article 163(2). [...] All in all, it is apparent, that the Governor is not assigned any significant role in the executive functioning of the State.

147.2. [...] Insofar as the legislative process is concerned, the only function vested with the Governor is expressed through Article 200 which, inter alia, provides that a Bill passed by the State Legislature, is to be presented to the Governor for his assent. And its ancillary provision, namely, Article 201 wherein a Bill passed by the State Legislature and presented to the Governor, may be reserved by the Governor for consideration by the President. [...] All in all, it is apparent that the Governor is not assigned any significant role even in the legislative functioning of the State.

148. The above position leaves no room for any doubt that the Governor cannot be seen to have such powers and functions, as would assign to him a dominating position, over the State Executive and the State Legislature. The interpretation placed on Article 163(2), on behalf of the respondents, has just that effect, because of the following contentions advanced on behalf of the respondents. Firstly, whenever a question arises, whether in discharging a particular function, the Governor can or cannot act in his own discretion. According to the respondents, the discretion of the Governor, on the above question, is final. Secondly, since the provision itself postulates, that "… the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion …", according to the respondents, makes the Governor's orders based on his own discretion, immune from judicial review. Accepting the above position, will convert the Governor into an all-pervading super-

constitutional authority. This position is not acceptable because an examination of the executive and legislative functions of the Governor, from the surrounding provisions of the Constitution clearly brings out that the Governor has not been assigned any significant role either in the executive or the legislative functioning of the State. The position adopted on behalf of the appellants, on the other hand, augurs well in an overall harmonious construction of the provisions of the Constitution. Even on a cursory examination of the relevant provisions of the Constitution, we are inclined to accept the contention advanced on behalf of the appellants.

149. In our considered view, a clear answer to the query raised above, can inter alia emerge from the Constituent Assembly Debates with reference to draft Article 143, which eventually came to be renumbered as Article 163 in the Constitution. It would be relevant to record that from the queries raised by H.V. Kamath, T.T. Krishnamachari, Alladi Krishnaswami Ayyar, and from the response to the same by Dr B.R. Ambedkar, it clearly emerges that the general principle with reference to the scope and extent of the discretionary power of the Governor, is provided for through Article 163(1). It also becomes apparent from Article 163(1), which provides for the principle of Ministerial Responsibility. The crucial position that gets clarified from a perusal of the Constituent Assembly Debates, arises from the answer to the query, whether the Governor should have any discretionary power at all? The Debates expound, that the retention of discretionary power with the Governor was not, in any way, contrary to the power of responsible Government, nor should the same be assumed as a power akin to that vested with a Governor under the Government of India Act, 1935. And from that, emerges the answer that the retention and vesting of discretionary powers with the Governor, should not be taken in the sense of being contrary to, or having the effect of negating the powers of responsible Government. Significantly, with reference to the Governor's discretionary

powers, it was emphasised by Dr B.R. Ambedkar, that: (CAD Vol. 8, p. 501)

> *"The Hon'ble Dr B.R. Ambedkar.— ... The clause is a very limited clause; it says: 'except insofar as he is by or under this Constitution'. Therefore, Article 163 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his Ministers, in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my Hon'ble friend ...."*

In our considered view, the Constituent Assembly Debates leave no room for any doubt that the Framers of the Constitution desired to embody the general and basic principle, describing the extent and scope of the discretionary power of the Governor, in clause (1) of Article 163, and not in clause (2) thereof, as suggested by the learned counsel for the respondents.

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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. We, therefore, hereby reject the contention advanced on behalf of the respondents, that the Governor has the freedom to determine when and in which situation, he should take a decision in his own discretion, without the aid and advice of the Chief Minister and his Council of Ministers. We accordingly, also turn down the contention, that whenever

the Governor in the discharge of his functions, takes a decision in his own discretion, the same would be final and binding, and beyond the purview of judicial review. We are of the view that finality expressed in Article 163(2) would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of Article 163(1), and additionally, in situations where the clear intent underlying a constitutional provision, so requires i.e. where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms.

155. We may, therefore, summarise our conclusions as under:

155.1. Firstly, the measure of discretionary power of the Governor, is limited to the scope postulated therefor, under Article 163(1).

155.2. Secondly, under Article 163(1) the discretionary power of the Governor extends to situations, wherein a constitutional provision expressly requires the Governor to act in his own discretion.

155.3. Thirdly, the Governor can additionally discharge functions in his own discretion, where such intent emerges from a legitimate interpretation of the provision concerned, and the same cannot be construed otherwise.

155.4. Fourthly, in situations where this Court has declared that the Governor should exercise the particular function at his own and without any aid or advice because of the impermissibility of the other alternative, by reason of conflict of interest.

155.5. Fifthly, the submission advanced on behalf of the respondents, that the exercise of discretion under Article 163(2) is final and beyond the scope of judicial review cannot be accepted. Firstly, because we have rejected the submission

advanced by the respondents, that the scope and extent of discretion vested with the Governor has to be ascertained from Article 163(2), on the basis whereof the submission was canvassed. And secondly, any discretion exercised beyond the Governor's jurisdictional authority, would certainly be subject to judicial review."

(Emphasis supplied)

302. This Court in ***State of Gujarat v. R.A. Mehta*** reported in **(2013) 3 SCC 1** placing reliance on the decision in ***B.P. Singhal*** *(supra)* observed that the expression "*required*" appearing under Article 163(1) indicated that it is only in situations where there is express stipulation or necessary implication that the Governor can act in his own discretion. The term "*required*" also indicates an element of compelling necessity. The Court also observed that Article 200 was one such provision where the Governor is expected to act upon ministerial advice and not in his discretion. The relevant observations are reproduced hereinbelow:

"35. However, the power to grant pardon or to remit sentence (Article 161), the power to make appointments including that of the Chief Minister (Article 164), the Advocate General (Article 165), the District Judges (Article 233), the Members of the Public Service Commission (Article 316) are in the category where the Governor is bound to act on the aid and advice of the Council of Ministers. Likewise, the power to prorogue either House of Legislature or to dissolve the Legislative Assembly (Article 174), the right to address or send messages to the Houses of the Legislature (Article 175 and Article 176), the power to assent to Bills or withhold such assent (Article 200), the power to make

recommendations for demands of grants [Article 203(3)], and the duty to cause to be laid every year the annual budget (Article 202), the power to promulgate ordinances during recess of the Legislature (Article 213) also belong to this species of power. Again, the obligation to make available to the Election Commission, requisite staff for discharging functions conferred upon it by Article 324(1) and Article 324(6), the power to nominate a member of the Anglo-Indian community to the Assembly in certain situations (Article 333), the power to authorise the use of Hindi in proceedings in the High Court [Article 348(2)], are illustrative of the functions of the Governor, qua the Governor.

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49. The exceptions carved out in the main clause of Article 163(1), permit the legislature to entrust certain functions to the Governor to be performed by him, either in his discretion, or in consultation with other authorities, independent of the Council of Ministers. The meaning of the words "by or under" is well settled. The expression "by an Act", would mean by virtue of a provision directly enacted in the statute in question and that which is conceivable from its express language or by necessary implication therefrom. The words "under the Act", would in such context, signify that which may not directly be found in the statute itself, but which is conferred by virtue of powers enabling such action(s) e.g. by way of laws framed by a subordinate law-making authority competent to do so under the parent Act. (Vide Indramani Pyarelal Gupta v. W.R. Natu [AIR 1963 SC 274].)

50. This Court in Rameshwar Prasad (6) v. Union of India [(2006) 2 SCC 1] held : (SCC p. 82, para 57)

> *"57. The expression 'required' found in Article 163(1) is stated to signify that the Governor can exercise his discretionary powers only if there is a*

compelling necessity to do so. It has been reasoned that the expression 'by or under the Constitution' means that the necessity to exercise such powers may arise from any express provision of the Constitution or by necessary implication. The Sarkaria Commission Report further adds that such necessity may arise even from rules and orders made 'under' the Constitution.""

(Emphasis supplied)

d. The decision of this Court in *B.K. Pavitra (supra)* is *per incuriam*

303. Placing reliance on the aforesaid decision in ***Nabam Rebia*** *(supra),* this Court in ***B.K. Pavitra*** *(supra)* while dealing with the reservation of bills for the consideration of the President under Article 200 observed thus:

"66. Where a Bill is not a Money Bill, the Governor may return the Bill for reconsideration upon which the House or Houses, as the case may be, will reconsider the desirability of introducing the amendments which the Governor has recommended. If the Bill is passed again by the House (or Houses as the case may be), the Governor cannot thereafter withhold assent. The second proviso to Article 200 stipulates that the Governor must not assent to a Bill but necessarily reserve it for the consideration of the President if the Bill upon being enacted would derogate from the powers of the High Court in a manner that endangers its position under the Constitution. Save and except for Bills falling within the description contained in the second proviso (where the Governor must reserve the Bill for consideration of the President), a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200. Aside from Bills which are

covered by the second proviso, where the Governor is obliged to reserve the Bill for the consideration of the President, the substantive part of Article 200 does not indicate specifically, the circumstances in which the Governor may reserve a Bill for the consideration of the President. The Constitution has entrusted this discretion to the Governor. The nature and scope of the discretionary power of the Governor to act independent of, or, contrary to aid and advice of Council of Ministers under Article 163 was discussed in Nabam Rebia [Nabam Rebia and Bamang Felix v. Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1] , J.S. Khehar, J. (as the learned Chief Justice then was) held thus : (SCC p. 159, para 154)

> *"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."*

Dipak Misra, J. (as the learned Judge then was), observed thus : (SCC p. 244, para 375)

> *"375. [...] The Governor is expected to function in accordance with the provisions of the Constitution (and the history behind the enactment of its provisions), the law and the rules regulating his functions. It is easy to forget that the Governor is a constitutional or formal head—nevertheless like everybody else, he has to play the game in accordance with the rules of the game—whether it is in relation to the Executive (aid and advice of the Council of Ministers) or the Legislature (Rules of*

Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly). This is not to say that the Governor has no powers—he does, but these too are delineated by the Constitution either specifically or by necessary implication."

67. The Framers carefully eschewed defining the circumstances in which the Governor may reserve a Bill for the consideration of the President. By its very nature the conferment of the power cannot be confined to specific categories. Exigencies may arise in the working of the Constitution which justify a recourse to the power of reserving a Bill for the consideration of the President. They cannot be foreseen with the vision of a soothsayer. The power having been conferred upon a constitutional functionary, it is conditioned by the expectation that it would be exercised upon careful reflection and for resolving legitimate concerns in regard to the validity of the legislation. The entrustment of a constitutional discretion to the Governor is premised on the trust that the exercise of authority would be governed by constitutional statesmanship. In a federal structure, the conferment of this constitutional discretion is not intended to thwart democratic federalism. The State Legislatures represent the popular will of those who elect their representatives. They are the collective embodiments of that will. The act of reserving a Bill for the assent of the President must be undertaken upon careful reflection, upon a doubt being entertained by the Governor about the constitutional legitimacy of the Bill which has been passed.

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71. These decisions are specifically in the context of Article 254. Article 254(1) postulates inter alia, that in a matter which is governed by the Concurrent List, a law which has been enacted by the Legislature of a State shall be void to the extent of its repugnancy with a law enacted by Parliament.

Clause (2) of Article 254 obviates that consequence where the law has been reserved for the consideration of the President and has received assent. Article 254(1) is made subject to clause (2), thereby emphasising that the assent of the President will cure a repugnancy of the State law with a law enacted by Parliament in a matter falling in the Concurrent List. It is in this context, that the decisions of this Court hold that the assent of the President should be sought in relation to a repugnancy with a specific provision contained in a Parliamentary legislation so as to enable due consideration by the President of the ground on which assent has been sought. Article 200 contains the source of the constitutional power which is conferred upon the Governor to reserve a Bill for the consideration of the President. Article 254(2) is an illustration of the constitutional authority of the Governor to reserve a law enacted by the State Legislature for consideration of the President in a specified situation — where it is repugnant to an existing law or to a Parliamentary legislation on a matter falling in the Concurrent List. The eventuality which is specified in Article 254(2) does not exhaust the ambit of the power entrusted to the Governor under Article 200 to reserve a Bill for the consideration of the President. Apart from a repugnancy in matters falling in the Concurrent List between State and Parliamentary legislation, a Governor may have sound constitutional reasons to reserve a Bill for the consideration of the President. Article 200, in its second proviso mandates that a Bill which derogates from the powers of the High Court must be reserved for the consideration of the President. Apart from Bills which fall within the description set out in the second proviso, the Governor may legitimately refer a Bill for consideration of the President upon entertaining a legitimate doubt about the validity of the law. By its very nature, it would not be possible for this Court to reflect upon the situations in which the power under Article 200 can be exercised. This was noticed in the judgment of this Court in Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar,

(1983) 4 SCC 45 : 1983 SCC (Tax) 248] . Excluding it from judicial scrutiny, the Court held : (SCC pp. 100-101, para 86)

> *'86. [...] <u>There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication</u>. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts. In the instant case, the Finance Bill which ultimately became the Act in question was a consolidating Act relating to different subjects and perhaps the Governor felt that it was necessary to reserve it for the assent of the President. We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent.'"*
>
> (Emphasis supplied)

304. This Court in ***B.K. Pavitra*** *(supra)* took the view that the Constitution has entrusted the Governor with the discretion of reserving a bill, presented to him for assent, for the consideration of the President. It also held that the

exercise of the power of reservation of bills for the consideration of the President could be done by the Governor contrary to the aid and advice tendered by the Council of Ministers. The Court observed that such an important responsibility having been conferred upon a constitutional functionary, its discharge was expected to be undertaken upon careful reflection and with statesmanship, and in a manner that does not thwart democratic federalism. On the nature of bills which may be reserved for the consideration of the President, the Court held that it was impossible to lay down with certainty all the situations wherein such a reference may be warranted.

305. We find ourselves in disagreement with the view taken in ***B.K. Pavitra*** *(supra)* that the Constitution confers a discretion upon the Governor insofar as the reservation of bills for the consideration of the President is concerned. We say so because the removal of the expression "*in his discretion*" from Section 75 of the GoI Act, 1935 when it was being adapted as Article 200 of the Constitution, clearly indicates that any discretion which was available to the Governor under the GoI Act, 1935 in respect of reservation of bills became unavailable with the commencement of the Constitution. The views expressed by the members of the Constituent Assembly, which are recorded in the debates that took place on Article 175 of the Draft Constitution, also

indicate the same[29]. We are also of the view that the same is also in alignment with the fundamental tenets of responsible government in a parliamentary democracy. The only exception to the general principle of the Governor adhering to the aid and advice tendered by the Council of Ministers can be traced to Article 163(1) and the second proviso to Article 200.

306. Pertinently, the Court in ***B.K. Pavitra*** *(supra)* failed to take into consideration the larger Bench decisions in ***Samsher Singh*** *(supra)* and ***M.P. Special Police*** *(supra)*. As we have discussed above, paragraphs 54 to 56 of the decision in ***Samsher Singh*** *(supra)* make it clear beyond any doubt that there is no express requirement under the Constitution for the exercise of discretion by the Governor in discharge of his functions under Article 200, except to the limited extent of the second proviso where the expression "*in his opinion*" is employed for the Governor. This is also apparent from the conscious decision of the Constituent Assembly in removing the expression "*in his discretion*" while enacting Article 200. Thus, the only express stipulation where the Governor may exercise discretion for reservation of bills is in the second proviso to Article 200. Even when looked at from the perspective of necessary implication, the discretion of the Governor in reserving the bills for the consideration of the President can be

[29] 9, CONSTITUENT ASSEMB. DEB. (Aug 1, 1949) 59-62; 10, CONSTITUENT ASSEMB. DEB. (Oct. 17, 1949) 392-394.

said to be present only in those cases where the Constitution has envisaged a mandatory approval of the Government, before the law can become enforceable in the State. The Sarkaria Commission mentioned three categories where reservation of a bill for the consideration of the President is envisaged:

a. ***First,*** where the bill pertains to the second proviso of Article 200, Article 288(2) or Article 360(4)(a)(ii) of the Constitution, reservation for the President is a mandatory condition as the bill will not become effective without his assent;

b. ***Secondly,*** where the bill pertains to Articles 31A(1) or 31C, presidential assent is compulsory for securing immunity from the operation of Articles 14 and 19. Similarly, where the law is repugnant to a Union legislation on a Concurrent list subject-matter, presidential assent is required to make the law effective in the State. Further, laws made under Article 304(b) would not be enforceable if they were introduced without the previous sanction of the President and having been introduced and passed by the State legislature, have not received the assent of the President. This position can be derived from a reading of Article 255;

c. ***Thirdly,*** there may be laws falling outside the aforesaid categories which may be reserved by the Governor for the President. However, the scope of discretion in such category of laws would be extremely limited and only when an exceptional situation of the nature described by this Court

in ***M.P. Special Police*** *(supra)* and in ***Nabam Rebia*** *(supra)* as explained by us in paragraph 300 of this judgment arises that there would be scope for the Governor to reserve the bill for the consideration of the President.

307. While construing the role of the Governor in the context of Article 200, we must keep in mind that such a role has been envisaged not to supplant the opinion of the Council of Ministers, but to infuse it with his wisdom. The role of a friend, philosopher and guide which a Governor is to play under the Constitution is played by him at various stages of administrative and legislative functioning of the State. Article 167 makes it mandatory for the Chief Minister to share with the Governor, *inter alia*, the proposals of legislations that the government wishes to introduce in the State legislature. This means that the Governor is made well aware of any legislation that the State government is planning to enact much before it is introduced in the State legislature and sent to him for assent. Thus, the advisory role of the Governor is best played by engaging with the Council of Ministers even before the legislation is introduced in the State legislature. He is well within his rights, and in fact, it is his bounden duty to put to use his experience and wisdom by making constructive suggestions to the Cabinet regarding the legislative proposals. The Council of Ministers would also do good to take into consideration the advice of the Governor and deliberate upon it so that the legislation and ultimately, public interest is benefitted.

308. However, once the bill is passed by the State legislature, and presented to the Governor for assent, he must act on the aid and advice of the Council of Ministers as a general rule and only in exceptional situations which have been illustrated in paragraph 300 of this judgment, should he reserve it for the consideration of the President. A look at Rule 48 of the Tamil Nadu Government Business Rules, 1978 makes it clear that once a draft bill is approved by the Minister-in-Charge, a copy of it is supplied to the Governor. Rule 48 reads thus:

> *"48. (1) If the tentative draft Bill is approved by the Minister in charge, it shall be circulated to the other Ministers and a copy supplied to the Governor and unless the Chief Minister directs otherwise, the tentative draft Bill shall be brought before a meeting of the Council. Proposals for any substantial or important amendments in the draft Bill after its approval shall also be dealt with similarly."*

309. After circulation of the bill to the Governor, any suggestions made by the Governor may be looked into and incorporated. Thereafter, a final copy of the bill as approved by the Law Department is also circulated to the Governor. Rule 51(b) which provides for it reads thus:

> *"b) The originating Department shall also prepare a notice of motion to introduce a Bill and shall, after obtaining the signature of the Minister in charge, forward the notice to the Secretary to the Chamber of the Legislature to which it is proposed to introduce the Bill. The department will be in charge of the Bill in all its subsequent stages. The originating*

department, shall while giving notice of motion to the Assembly or Council Department submit a copy of the Bill as finalised by the Law Department to the Governor."

310. As our discussion on the Constituent Assembly debates also reveals, the option of withholding of assent, was believed by the framers, would be invoked in very rare circumstances where the Council of Ministers discover some error in the legislation or desire to incorporate certain changes to it so as to meet with the popular opinion outside the House. The framers did not expect that the Governor would, as a matter of routine, declare the withholding of assent to bills casually. The deletion of the expression "*in his discretion*" from the first proviso is also an unmistakable indication of the intent of the framers in vesting no discretion in the Governor as regards the withholding of assent and returning of the bill along with suggestions for the introduction of amendments.

311. ***B.K. Pavitra*** *(supra)* made a reference to paragraph 375 of the decision in ***Nabam Rebia*** *(supra)* to support the idea that the Governor is entrusted with discretion in the exercise of his powers under Article 200. However, it is pertinent to note that in the said paragraph, the Court observed that *"The Governor is expected to function in accordance with the provisions of the Constitution (and the history behind the enactment of its provisions)"*. The history behind the enactment of Article 200 is loud and clear and speaks for

itself as regards the intention of the framers of the Constitution, as we have discussed in detail.

312. What also needs to be remembered is that whenever a provision of the Constitution prescribes for the assent of the President for the purpose of enforceability or securing immunity, any State government would, in all likelihood, advice the Governor to reserve the bill for the consideration of the President. Even the Tamil Nadu Government Business Rules, 1978 prescribe the procedure for pre-consultation with the Central government whenever a subject-matter falling in the Concurrent list or certain other constitutional provision, is being legislated upon. As we have also discussed, the position settled by ***Kaiser-I-Hind*** *(supra)* is that the reference to the President needs to be detailed and specific so as to enable him to undertake an effective "*consideration*" of the reserved bill. In the practical working of a Cabinet form of government, it is the Council of Ministers who would be best equipped to make such detailed references to the President, and the Governor would act as the bridge connecting the two. It is only in rare cases, where in spite of the evident requirement for the President's assent in order to make the bill effective as an Act (as observed in paragraph 86 of ***Hoecsht*** *(supra)*), the Council of Ministers has failed to advice the Governor to reserve the bill for the President, should the Governor decide to reserve the bill on his own motion.

313. Reference must also be made at this point to the observation made by this Court in ***Valluri Basavaiah Chowdhari*** *(supra)* wherein it was observed thus:

> *"19. The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State legislature has to be reserved for the assent under Article 200. Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may, except in the case of a "Money Bill", withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. The first proviso to Article 200 deals with a situation where the Governor is bound to give his assent when the Bill is reconsidered and passed by the Assembly. The second proviso to that article makes the reservation for consideration of the President obligatory where the Bill would, "if it becomes law", derogate from the powers of the High Court. Thus, it is clear that a Bill passed by a State Assembly may become law if the Governor gives his assent to it, or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. The Governor is, therefore, one of the three components of a State legislature. The only other legislative function of the Governor is that of promulgating Ordinances under Article 213(1) when both the Houses of the State legislature or the Legislative Assembly, where the legislature is unicameral, are not in session. The Ordinance-making power of the Governor is similar to that of the President, and*

it is co-extensive with the legislative powers of the State legislature."

(Emphasis supplied)

314. As discussed earlier, D.D. Basu has also taken a similar view in his commentary on the Constitution of India[30]. The position prevailing in a number of international jurisdictions as discussed in the preceding parts of this judgment, also lends credence to this view.

315. The deletion of the expression "*in his discretion*" both from the substantive part of Article 200 as well as from the first proviso to it signifies that the intention of the framers of the Constitution was to ensure that the ordinary exercise of the Governor's function under Article 200 was to be in accordance with the aid and advice tendered to him by the Council of Ministers. The view expressed by Shri. Brajeshwar Prasad that the Governor should be conferred with some veto to negate an unsound legislation was expressly rejected by the Constituent Assembly. Further, it was explained by Mr. T.T. Krishnamachari that the first proviso was in the form of a saving clause where the Council of Ministers could ask the Governor to hold up a bill in which certain errors were discovered subsequent to its passage in the House(s), or to suitably respond to the popular sentiment expressed after such passage. Pertinently, during the course of the debates, it was observed

[30] 5, DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 6318 (LexisNexis 2009).

by Dr. B. R. Ambedkar that in a responsible form of government, there can be no room for the Governor to act in his discretion.

316. The deletion of the words "*in his discretion*" from Section 75 of the GoI Act, 1935 before adapting it as Article 200 of the Constitution must be understood in the right context. The GoI Act, 1919 introduced an element of provincial autonomy in the administration of the country, however, the Governor remained at the center of administration having reserve as well as emergency powers. With the advent of the GoI Act, 1935, the dyarchy at the provincial level was abolished, but the Governor, as the agent of the British Crown, continued to have the discretion to veto any legislation passed by the provincial legislature. The Governor could also in his discretion reserve any bill for the consideration of the Governor-General. This power of the Governor was to be essentially exercised in accordance with the directions of the Governor-General. However, with the dawn of independence, and the framing of the Constitution, the model of governance which was adopted allowed the States to be supreme in their respective fields, with certain powers having been reserved for the Union to ensure the integrity of the nation and uniformity of policy in certain key areas. The Governor was no more required to have an all-pervasive control over the State and their responsibility towards the Union was to the extent of ensuring that the administration in the State was being done in conformity with the principles

enshrined in the Constitution. It is in this context that the power of the Governor to submit a report to the President under Article 356 and also the power under Article 200 to reserve a bill for the consideration of the President, is to be understood.

317. The Governor under the constitutional scheme is no longer envisaged as the Governor under the GoI Act, 1935, having the ultimate power to veto any legislation and subvert the collective will of the people being expressed through the legislature. If the power to withhold assent to bills or to reserve them for the consideration of the President is construed as falling within the exclusive discretionary domain of the Governor, who would be free to decide a course of action notwithstanding the aid and advice of the Council of Ministers, it would have the potential of turning him into a super-constitutional figure, having the power to bring to a complete halt, the operation of the legislative machinery in the State. The Governor cannot be vested with such a power, the exercise of which would enable him to collude with the Union Cabinet and ensure the death of any and all legislation initiated by the State merely by reserving it for the consideration of the President, who under Article 201 is not bound to give assent to any legislation reserved for his consideration.

318. Thus, we are of the view that the Governor does not possess any discretion in the exercise of his functions under Article 200 and has to mandatorily abide by the advice tendered to him by the Council of Ministers. The only exceptions to this general rule are as follows:

a. Where the bill is of a description as provided under the second proviso to Article 200;

b. Where the bill is of a nature covered by Articles 31A, 31C, 254(2), 288(2), 360(4)(a)(ii) etc. wherein assent of the President is a condition precedent before the bill can take effect as law or is necessary for the purpose of securing immunity against the operation of some constitutional provision;

c. Where the bill is of a nature that, if allowed to take effect, then it would undermine the Constitution by placing the fundamental principles of a representative democracy in peril as described in ***M.P. Special Police*** *(supra)*.

319. Exception (a) as mentioned above is one which is expressly provided by the Constitution to fall within the ambit of discretionary powers of the Governor. Exception (b) flows from a reading of those provisions which require the mandatory assent of the President to a bill passed by the State legislature and thus are to be construed in light of the observations made in ***Nabam Rebia*** *(supra)* as instances "*where such intent emerges from a*

legitimate interpretation of the provision concerned, and the same cannot be construed otherwise." Exception (c) has to be construed and understood in the context of the observations made by this Court in ***M.P. Special Police*** *(supra)* as covering such "*situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to Ministerial advice.*"

v. <u>Whether the exercise of discretion by the Governor in discharge of his functions under Article 200 of the Constitution could be said to be subject to judicial review? If yes, what are the parameters for such judicial review</u>?

"Be your ever so high, the law is above you"

~ Thomas Fuller

320. We have extensively discussed in the preceding section that the Governor under the scheme of Article 200 would, as a general rule, be expected to act on the aid and advice of the Council of Ministers as provided for under Article 163(1). The deletion of the expression "*in his discretion*" by the framers of the Constitution during the course of adapting Section 75 of the GoI Act, 1935 into Article 200, is a clear indication of their intent to make the ordinary exercise of powers of the Governor under Article 200 subject to the aid and advice of the Council of Ministers. However, the aforesaid ordinary exercise of power by the Governor is subject to certain exceptions

where the Governor may act in his own discretion, contrary to the advice of the Council of Ministers. There are two broad circumstances under which it would be permissible for the Governor to act in his own discretion under Article 200:

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

b. Where the Governor is by necessary implication required to act in his own discretion. This would include:

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

(ii) Situations where the exceptional conditions as described in ***M.P. Special Police*** *(supra)* and ***Nabam Rebia*** *(supra)* are applicable i.e., the State Council of Ministers has disabled or

disentitled itself; possibility of complete breakdown of the rule of law or by reason of peril to democracy/democratic principles respectively, as a consequence of which an action may be compelled which, by its nature is not amenable to ministerial advice.

321. The question which naturally follows is whether the exercise of discretion by the Governor, in the exceptional situations as discussed aforesaid, would be amenable to judicial review. The importance of this question lies in the high constitutional importance of the role which the Governor plays under Article 200. The Governor, by choosing to act in his discretion under Article 200, has the power to thwart the entire legislative machinery of the State by reserving a bill for the consideration of the President. He also has the power to significantly delay the grant of assent to a bill by withholding assent and returning the same to the State legislature under the first proviso to Article 200 of the Constitution.

322. It was contended by the petitioner that no exercise of power under the Constitution could be said to be beyond the scope of judicial review as every authority, howsoever high, is expected to perform its functions within the constitutional framework. It was submitted that if the exercise of powers by the Governor under Article 200 is held to be outside the scope of judicial

review, then that would render him to be a super-constitutional figure in the State, who would be able to override the legislature and the government elected by the people, at his whims and fancies and without any checks and balance.

323. Refuting the contention of the petitioner, the Attorney General for India placed reliance on the decisions of this Court in ***Hoechst*** *(supra)*, ***Kaiser-I-Hind*** *(supra)*, and ***B.K. Pavitra*** *(supra)* to argue that the grant of assent under Articles 200 and 201 respectively has been previously held to be non-justiciable by this Court.

324. Essentially, the questions that fall for our consideration are as follows:

(i) **First,** whether the discharge of functions by the Governor under Article 200 of the Constitution, in his discretion could be said to be immune from judicial review?

(ii) **Secondly,** whether the withholding of assent by the President under Article 201 of the Constitution, could also be said to be beyond the scope of judicial scrutiny?

(iii) **Thirdly,** if the aforesaid discharge of functions is subject to judicial review, whether such discharge of functions could be said to be non-justiciable in light of the decisions of this Court in ***Hoechst*** *(supra)*, ***Kaiser-I-Hind*** *(supra)*, and ***B.K. Pavitra*** *(supra)*?

325. ***Samsher Singh*** *(supra)* in paragraph 54 observed that "*The discretion conferred upon the Governor means that as the constitutional or formal head of the State the power is vested in him*". We have also discussed in detail, in the preceding sections, that the source of all discretion for the Governor is to be found within Article 163(1) of the Constitution alone. Thus, what falls for us to decide is whether the exercise of this constitutional power by the Governor could be said to be amenable to judicial review where such exercise is assailed on the ground that it transgresses the boundaries set by the Constitution. This Court has had the occasion of discussing the concept of judicial review in a catena of cases. We are of the view that for a better exposition and enlightenment on this issue, it would be prudent and beneficial to make a reference to all these decisions.

326. In ***Maru Ram*** *(supra)* this Court speaking eruditely through the inimitable Krishna Iyer, J., observed that all public power including constitutional powers of pardon, commutation and release under Articles 72 and 161 of the Constitution respectively, cannot run riot or be exercisable irrationally or arbitrarily. Any action under these provisions must be informed by the finer canons of constitutionalism. In his words, "*the rule of law, under our constitutional order, transforms all public power into responsible, responsive, regulated exercise informed by high purposes and geared to*

people's welfare". It held that all the powers entrusted by the Constitution must, in its exercise, eschew any form of arbitrariness and stem from an intelligible and well-reasoned criterion that is predicated on an earnest purpose. It further categorically held that – "*while constitutional power is beyond challenge, its actual exercise may still be vulnerable"* – to judicial review. In the last, Krishna Iyer, J., further cautioned that such power ought not to be vulgarized or abused by personal vanity and the notions of those exercising such powers. The relevant observations read as under:

> *"62. An issue of deeper import demands our consideration at this stage of the discussion. Wide as the power of pardon, commutation and release (Articles 72 and 161) is, it cannot run riot; for no legal power can run unruly like John Gilpin on the horse but must keep sensibly to a steady course. Here, we come upon the second constitutional fundamental which underlies the submissions of counsel. It is that all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power. We proceed on the basis that these axioms are valid in our constitutional order.*
>
> *63. The jurisprudence of constitutionally canalised power as spelt out in the second proposition also did not meet with serious resistance from the learned Solicitor-General and, if we may say so rightly. Article 14 is an expression of the egalitarian spirit of the Constitution and is a clear pointer that arbitrariness is anathema under our system. It necessarily follows that the power to pardon, grant remission and commutation, being of the greatest moment for the liberty of the citizen, cannot be a law unto itself but must be informed by the finer canons of constitutionalism. [...] It is the pride of our constitutional order that all power, whatever its source,*

must, in its exercise, anathematise arbitrariness and obey standards and guidelines intelligible and intelligent and integrated with the manifest purpose of the power. From this angle even the power to pardon, commute or remit is subject to the wholesome creed that guidelines should govern the exercise even of presidential power.

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65. Pardon, using this expression in the amplest connotation, ordains fair exercise, as we have indicated above. Political vendetta or party favouritism cannot but be interlopers in this area. The order which is the product of extraneous or mala fide factors will vitiate the exercise. While constitutional power is beyond challenge, its actual exercise may still be vulnerable. Likewise, capricious criteria will void the exercise. For example, if the Chief Minister of a State releases everyone in the prisons in his State on his birthday or because a son has been born to him, it will be an outrage on the Constitution to let such madness survive. [...]

Push this logic a little further and the absurdity will be obvious. No constitutional power can be vulgarised by personal vanity of men in authority. Likewise, if an opposition leader is sentenced, but the circumstances cry for remission such as that he is suffering from cancer or that his wife is terminally ill or that he has completely reformed himself, the power of remission under Articles 72/161 may ordinarily be exercised and a refusal may be wrong-headed. If, on the other hand, a brutal murderer, bloodthirsty in his massacre, has been sentenced by a court with strong observations about his bestiality, it may be arrogant and irrelevant abuse of power to remit his entire life sentence the very next day after the conviction merely because he has joined the party in power or is a close relation of a political high-up. [...]"

(Emphasis supplied)

327. This Court, speaking through nine-Judges in ***Indra Sawhney v. Union of India*** reported in **(1992) Supp (3) SCC 217** held that the yardstick of subjecting an act or a decision to judicial review is not whether it is a legislative act or an executive decision on a policy matter but whether it violates any constitutional guarantee or the rights under Part III of the Constitution. The Court further held that the doctrine of political thicket does not apply in the Indian constitutional framework. It is not that the courts avoid entering into a political question because of the doctrine of separation of power, but because of desirability of avoiding entering into a political question. The relevant observations are reproduced hereinbelow:

> *"557 [...] The political questions doctrine, however, does not mean, that anything that is tinged with politics or even that any matter that might properly fall within the domain of the President or the Congress shall not be reviewable, for that would end the whole constitutional function of the court" [Samuel Krislov : The Supreme Court in the Political Process, p. 96]. Under our Constitution, the yardstick is not if it is a legislative act or an executive decision on a policy matter but whether it violates any constitutional guarantee or has potential of constitutional repercussions as enforcement of an assured right, under Chapter III of the Constitution, by approaching courts is itself a fundamental right. The "constitutional fiction" of political question, therefore, should not be permitted to stand in way of the court to, "deny the Nation the guidance on basic democratic problems" [C. Herman Pritchett : The American Constitution, p. 154 (quoted in The Judicial Review of Legislative Acts by Dr Chakradhar Jha, p. 355)] . Avoidance of entering into a*

political question may be desirable and may not be resorted to, "not because of doctrine of separation of power or lack of rules but because of expediency" [Charles Gordon Post, pp. 129-130 : The Supreme Court Questions (quoted in 'The Judicial Review of Legislative Acts' by Dr Chakradhar Jha, p. 351)] in larger interest for public good but legislatures, too, have, "their authority measured by the Constitution". Therefore absence of norms to examine political question has rarely any place in the Indian constitutional jurisprudence [...]"

(Emphasis supplied)

328. Further, this Court in ***B.P. Singhal*** *(supra)* upon examining a catena of decisions on the scope and evolution of the power of judicial review of the courts observed that, although under the English Law, the prerogative powers of the monarch such as the power to make treaties, grant mercy or to dissolve the parliament etc. are traditionally not subject to judicial review due to the very nature of such powers falling outside the expertise and competence of the courts, yet such preclusion of the power of judicial review is by no means a blanket rule. It observed that even prerogative powers, insofar as the questions of legality, rationality or procedural propriety are concerned, would always be amenable to judicial review, because the safeguarding of such considerations in the exercise of any prerogative powers is the domain, responsibility and duty of the courts as the *sentinel on the qui vive*. Placing reliance on the decision of this Court in ***State of Rajasthan v. Union of India*** reported in **(1977) 3 SCC 592** it held that the

courts, as the protector and ultimate interpreter of the Constitution, not only have the power but an obligation to determine the power conferred on each branch of the government, the extent and limits of such powers and whether the exercise of such power exceeds those limits or not, irrespective of whether such powers are the exclusive prerogative of any one branch of the government or such questions are inherently political in complexion. The relevant observations read as under:

> *"72. The traditional English view was that prerogative powers of the Crown conferred unfettered discretion which could not be questioned in courts. Lord Ruskill attempted to enumerate such prerogative powers in Council of Civil Service Unions v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] : (AC p. 418)*
>
> > *"[...] Prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others are not, I think, susceptible to judicial review because their nature and subject-matter are such as not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded or the armed forces disposed in a particular manner or Parliament dissolved on one date rather than another."*
>
> *However, the contemporary English view is that in principle even such "political questions" and exercise of prerogative power will be subject to judicial review on principles of legality, rationality or procedural impropriety. [See decision of House of Lords in: R. (Bancoult) v. Secy. of State for*

Foreign & Commonwealth Affairs (No. 2) [(2009) 1 AC 453 (HL)] .] In fact, De Smith's Judicial Review (6th Edn. 2007, p. 15) states:

> *"Judicial review has developed to the point where it is possible to say that no power—whether statutory or under the prerogative—is any longer inherently unreviewable. Courts are charged with the responsibility of adjudicating upon the manner of the exercise of public power, its scope and its substance. As we shall see, even when discretionary powers are engaged, they are not immune from judicial review."*

73. In State of Rajasthan v. Union of India [(1977) 3 SCC 592] , this Court (Bhagwati, J. as he then was) held: (SCC pp. 660-62, para 149)

> *"149. ... But merely because a question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. ... the Court cannot fold its hands in despair and declare 'Judicial hands off'. So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. ... This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the*

> *essence of the rule of law. ... Where there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the Court to intervene. Let it not be forgotten, that to this Court as much as to other branches of Government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the Court. ... The Court cannot and should not shirk this responsibility, [...]"*

In the said decision, Chandrachud, J. (as he then was) observed thus: (SCC p. 645, para 132)

> *"132. [...] They may not choose to disclose them but if they do, as they have done now, they cannot prevent a judicial scrutiny thereof for the limited purpose of seeing whether the reasons bear any rational nexus with the action proposed. I am inclined to the opinion that the Government cannot claim the credit at the people's bar for fairness in disclosing the reasons for the proposed action and at the same time deny to this Court the limited power of finding whether the reasons bear the necessary nexus or are wholly extraneous to the proposed action. The argument that 'if the Minister need not give reasons, what does it matter if he gives bad ones' overlooks that bad reasons can destroy a possible nexus and may vitiate the order on the ground of mala fides."*

329. Furthermore, ***B.P. Singhal*** *(supra)* categorically held that unlike England, all powers that have been conferred upon the President and the Governor by the Constitution are not a matter of prerogative but a constitutional

responsibility and its exercise, a matter of performance of an official duty of the highest sanctity, and thus, unquestionably amenable to judicial review. It observed that the sufficiency of the attending facts and circumstances necessitating the exercise of such powers is to be decided by the President or the Governor. However, the question of whether such exercise is predicated upon all relevant cogent materials and falls within the limitations of the constitutional scheme and is not a result of an arbitrary or *malafide* exercise, would be subject to the judicial review of the courts. Placing reliance on ***Maru Ram*** *(supra)* it held that the exercise of such powers by the President only carries with it a notional presumption of a careful and proper exercise based on objective considerations, but, by no stretch of imagination can it be construed to confer an immunity from judicial review. It further explained, in the context of Article 72 of the Constitution, the standard of judicial review that the courts are expected to apply when scrutinizing the exercise of such power by the President. It held that where reasons have been given for the exercise of such power, there the courts may interfere only if the reasons are based on irrelevant or extraneous considerations. However, where no reasons have been given, there the courts may interfere only if the exercise is vitiated by a flawed understanding of the ambit of such power by misjudgment or is otherwise arbitrary, discriminatory or *malafide*. The relevant observations read as under: -

"76. This Court has examined in several cases, the scope of judicial review with reference to another prerogative power—power of the President/Governor to grant pardon, etc. and to suspend, remit or commute sentences. The view of this Court is that the power to pardon is a part of the constitutional scheme, and not an act of grace as in England. It is a constitutional responsibility to be exercised in accordance with the discretion contemplated by the context. It is not a matter of privilege but a matter of performance of official duty. All public power including constitutional power, shall never be exercisable arbitrarily or mala fide. While the President or the Governor may be the sole judge of the sufficiency of facts and the propriety of granting pardons and reprieves, the power being an enumerated power in the Constitution, its limitations must be found in the Constitution itself. The Courts exercise a limited power of judicial review to ensure that the President considers all relevant materials before coming to his decision. As the exercise of such power is of the widest amplitude, whenever such power is exercised, it is presumed that the President acted properly and carefully after an objective consideration of all aspects of the matter. Where reasons are given, the Court may interfere if the reasons are found to be irrelevant. However, when reasons are not given, the Court may interfere only where the exercise of power is vitiated by self-denial on wrong appreciation of the full amplitude of the power under Article 72 or where the decision is arbitrary, discriminatory or mala fide (vide Maru Ram v. Union of India [(1981) 1 SCC 107 : 1981 SCC (Cri) 112] , Kehar Singh v. Union of India [(1989) 1 SCC 204 : 1989 SCC (Cri) 86] , etc.)."

(Emphasis supplied)

330. In ***Keisham*** *(supra),* this Court had held that a Speaker acting under the Tenth Schedule of the Constitution would be duty bound to decide the

disqualification petitions made before him within a reasonable time and that any failure in exercising this jurisdiction conferred upon him or reluctancy in acting in a time-bound manner would be a fit ground for the courts to engage in an exercise of judicial review of his actions, irrespective of the fact that it is the Speaker who has the prerogative to adjudicate such petitions. It held that even where the jurisdiction of the courts to embark upon an examination on the merits of such prerogative powers has been ousted, the same does not curtail or inhibit the power of judicial review over the manner of exercise or non-exercise of such prerogative powers.

331. Similarly, in ***A.G. Perarivalan*** *(supra)*, this Court reiterated that any inexplicable or inexcusable non-exercise of a prerogative or sovereign power would be amenable to judicial review and that the manner of exercise of such powers by the Governor could not be said to be impervious to judicial scrutiny.

332. From the above exposition of law, it becomes clear as a noon day, that no exercise of power under the Constitution is beyond the pale of judicial review. Thus, we find no reason to exclude the discharge of functions by the Governor or the President under Articles 200 and 201 of the Constitution respectively.

333. It could be argued that the decision taken by the Governor under Article 200 would be shielded from the scrutiny of the courts by virtue of the immunity accorded under Article 361 of the Constitution. However, in this regard, we may only refer to the observations made by this Court in ***Rameshwar Prasad*** *(supra)* which leaves no doubt that the immunity enshrined in Article 361 of the Constitution does not preclude or prohibit the courts in any manner from looking into the actions of the Governor which by necessary implication would include his actions under Article 200 as well. The relevant observations are as follows:

> *"173. A plain reading of the aforesaid article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any court for the exercise and performance of their powers and duties. Most of the actions are taken on the aid and advice of the Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions. Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by the Union of India or the State, as the case may be. Even in cases where personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made [...]"*
>
> (Emphasis supplied)

334. The High Court of Madras in ***S. Ramakrishnan v. State of Tamil Nadu*** reported in **2020 SCC OnLine Mad 5207** was *in seisin* of a similar issue involving a bill passed by the State Legislative Assembly which remained pending for two months before the Governor for grant of assent. When the High Court posed a question as regards the inaction on the part of the Governor, the Advocate General referred to Article 361 of the Constitution. The Court interpreted Article 361 in light of Article 200 and observed that the protection granted to the Governor under the Constitution was to perform his constitutional duties expeditiously. It also underscored the obligation of the courts to perform their constitutional duties and subjecting unconstitutional actions to judicial scrutiny in public interest. The relevant observations are as follows:

> "*6. A perusal of Article 200 - Assent to Bills, would reveal that the Constitutional Authority has to take a decision, if a Bill is presented for Assent, as soon as possible. The protection has been given by the Framers of the Constitution, with hope and trust in the Appointees that they would perform their constitutional functioning promptly and there would not be any situation, wherein they would be called for to give explanation or they will be questioned by the Court of law.*
>
> *7. 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. It is well settled law that "Extraordinary situation requires extraordinary remedies". When public interest requires, this Court has to do its constitutional duties and to address the situation. However, this Court is of the opinion that such a situation would not arise to pass any order in this matter*."
>
> (Emphasis supplied)

335. Thus, what is discernible from above is that the discharge of functions by the President or the Governor as constitutional and formal heads is undoubtedly subject to judicial review by virtue of it being an exercise of their constitutional powers. However, could it at the same time be said that nevertheless it would be improper for the courts to examine such actions of the President or the Governor as the actions are essentially political in nature and hence non-justiciable for the reason that no judicial standard can be evolved for the scrutiny of such actions. In this regard, we may make reference to certain decisions rendered by this Court as well as few landmark decisions of other international jurisdictions.

336. In ***Minerva Mills v. Union of India*** reported in **(1980) 3 SCC 625**, this Court held that the jurisdiction of courts is not ousted merely because a question has a political colour. Every constitutional question, irrespective of the political complexion or make thereof, falls within the jurisdiction of the courts. The Court held that whether the legislature or the executive has acted within the limits of its authority or not, is for the courts to decide. The relevant observations are as follows:

> *"98. It is axiomatic that if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities. But merely because a question has a political complexion, that by itself*

is no ground why the court should shrink from performing its duty under the Constitution, if it raises an issue of constitutional determination. There are a large number of decisions in the United States where the Supreme Court has entertained actions having a political complexion because they raised constitutional issues: vide Gomellion v. Lightfoot [364 US 339 (1960) : 5 L Ed 2d 110] and Baker v. Carr [369 US 186 (1962) : 7 L Ed 2d 663]. The controversy before the court may be political in character, but so long as it involves determination of a constitutional question, the court cannot decline to entertain it. This is also the view taken by Gupta, J., and myself in State of Rajasthan v. Union of India [(1977) 3 SCC 592 : AIR 1977 SC 1361]. I pointed out in my judgment in that case and I still stand by it, that merely because a question has a political colour, the court cannot fold its hands in despair and declare "judicial hands off". So long as the question is whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so. I have said before, I repeat again that the Constitution is supreme lex, the paramount law of the land, and there is no department or branch of government above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority and whether it has done so or not is for the court to decide. The court is the ultimate interpreter of the Constitution and when there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the court to intervene. Let it not be forgotten, that to this Court as much as to other branches of government, is committed the conservation and furtherance of constitutional values. The court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the court [...]"

(Emphasis supplied)

337. The nine-Judge Bench decision of this Court in ***S.R. Bommai*** *(supra)* observed that the concept of justiciability is not synonymous with judicial review. It noted that even while exercising the power of judicial review, courts can decline to exercise such power as being non-justiciable. It categorically observed that though judicial review may be avoided on questions of political nature, yet legal questions camouflaged with a political cloak will be justiciable. The relevant observations have been reproduced hereinbelow:

> *"201. Judicial review must be distinguished from justiciability. The two concepts are not synonymous. The power of judicial review goes to the authority of the court, though in exercising the power of judicial review, the court in an appropriate case may decline to exercise the power as being not justiciable. The Constitution is both the source of power as well as it limits the power of an authority, ex necissitate. Judiciary has to decide the source, extent, limitations of the power and legitimacy in some cases of the authority exercising the power. There are no hard and fast fixed rules as to justiciability of a controversy [...]*
>
> *xxx xxx xxx*
>
> *258. Justiciability is not a legal concept with a fixed content, nor is it susceptible of scientific verification. Its use is the result of many pressures or variegated reasons. Justiciability may be looked at from the point of view of common sense limitation. Judicial review may be avoided on questions of purely political nature, though pure legal questions camouflaged by the political questions are always justiciable. The courts must have judicially manageable standards to*

decide a particular controversy. Justiciability on a subjective satisfaction conferred in the widest terms to the political coordinate executive branch created by the constitutional scheme itself is one of the considerations to be kept in view in exercising judicial review [...]"

(Emphasis supplied)

338. This Court in ***A.K. Kaul v. Union of India*** reported in **(1995) 4 SCC 73** also elucidated the distinction between judicial review and justiciability. It observed that, in a written Constitution, the bounds within which the various organs of the State are delineated, the same implicitly casts a duty upon the courts to test the validity of every action of such constitutional organ, through judicial review, to ensure that such exercise of power is within the confines of the Constitution. It thus, held that the power of judicial review of the courts would be available in respect of exercise of all powers by any authority under the Constitution unless expressly excluded. It further held that, although judicial review is the norm, yet the unavailability of judicially manageable standards in certain aspects of the power, whose exercise is in question, may render the judicial review of such exercise of power non-justiciable. It explained that justiciability refers to the question whether a particular field could be said to fall within the purview of the power of judicial review. The relevant observations are as follows:

"12. It is, therefore, necessary to deal with this question in the instant case. We may, in this context, point out that a distinction has to be made between judicial review and justiciability of a particular action. <u>In a written constitution</u>

the powers of the various organs of the State are limited by the provisions of the Constitution. The extent of those limitations on the powers has to be determined on an interpretation of the relevant provisions of the Constitution. Since the task of interpreting the provisions of the Constitution is entrusted to the Judiciary, it is vested with the power to test the validity of an action of every authority functioning under the Constitution on the touchstone of the Constitution in order to ensure that the authority exercising the power conferred by the Constitution does not transgress the limitations placed by the Constitution on exercise of that power. This power of judicial review is, therefore, implicit in a written constitution and unless expressly excluded by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. Justiciability relates to a particular field falling within the purview of the power of judicial review. On account of want of judicially manageable standards, there may be matters which are not susceptible to the judicial process. Such matters are regarded as non-justiciable. In other words, during the course of exercise of the power of judicial review it may be found that there are certain aspects of the exercise of that power which are not susceptible to judicial process on account of want of judicially manageable standards and are, therefore, not justiciable."

(Emphasis supplied)

339. This Court in ***Epuru Sudhakar v. Govt. of A.P.*** reported in **(2006) 8 SCC 161**, speaking in the context of Articles 72 and 161 of the Constitution respectively, observed that the determining factor in deciding whether a sovereign or prerogative power would be subject to judicial review is the subject-matter of such power and not its source. It held that the exercise of every prerogative power is subject to the rule of law and the rule of law

cannot be made subservient to political expediency. The Court defined that 'manageable standards' refer to certain discernible standards expected in a functioning democracy. It also held that exercise of any prerogative power cannot be placed in a straitjacket formula and manageable standards would vary depending on the nature of the power. The relevant observations are as follows:

> *"66. Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence. The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter. It can no longer be said that prerogative power is ipso facto immune from judicial review. An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds. The Rule of Law is the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central plan in the Rule of Law. Every prerogative has to be subject to the Rule of Law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of Law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as*

the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future."

xxx *xxx* *xxx*

69. In conclusion, it may be stated that, there is a clear symmetry between the constitutional rationale for review of statutory and prerogative power. In each case, the courts have to ensure that the authority is used in a manner which is consistent with the Rule of Law, which is the fundamental principle of good administration. In each case, the Rule of Law should be the overarching constitutional justification for judicial review. The exercise of prerogative power cannot be placed in straitjacket formula and the perceptions regarding the extent and amplitude of this power are bound to vary. However, when the impugned decision does not indicate any data or manageable standards, the decision amounts to derogation of an important constitutional principle of Rule of Law."

(Emphasis supplied)

340. In ***Regina (Miller) v. Prime Minister*** **(Lord Advocate and others intervening)** reported in **[2019] 3 WLR 589**, the Supreme Court of the United Kingdom was dealing with the justiciability of the power of prorogation. It was held that, although the courts cannot decide political questions, yet, the fact that a dispute arises from a matter of political controversy would not restrain the courts completely from looking into it, in exercise of judicial review. It further noted that almost all decisions by the executive have a political hue to them, yet, the courts in the past have

exercised a supervisory jurisdiction. The Court held that a threat to parliamentary sovereignty constitutes as a significant ground for justiciability of prerogative powers.

341. In the seminal decision of ***Baker v. Carr***, reported in **1962 SCC OnLine US SC 40**, the Supreme Court of the United States of America examined whether questions of legislative apportionment were essentially political questions and hence, not justiciable. The Court in this case laid down six heavily overlapping *indicia* of a non-justiciable matter. These were as follows: (i) a textually demonstrable constitutional commitment of the issue to another political branch; or (ii) a lack of judicially discoverable and manageable standards for resolving it, or (iii) a need to make an initial policy determination clearly for non-judicial discretion, or (iv) the impossibility of a decision by the court without expressing lack of respect due to co-ordinate branches of Government; or (v) an unusual need for unquestioning adherence to a political decision already made; or (vi) the potentiality for embarrassment from multifarious pronouncements by various departments on one question. It was emphatically held that, save the aforesaid considerations, no other issue is liable for dismissal on ground of a lack of justiciability.

342. Before proceeding further, we deem it appropriate to refer to all the aforesaid decisions of this Court where the justiciability of assent has been discussed. The first in line is the Constitution Bench decision in ***Kameshwar Singh*** *(supra)* where M.C. Mahajan, J., (as his lordship then was), in the context of Article 31A of the Constitution, observed that the assent of the President, once given to a bill reserved for his consideration, is non-justiciable. The relevant observations are as follows:

> *"266. [...] The provisions of Article 31(2) therefore, do not stand repealed by Article 31-A. On the other hand, they are kept alive. The difference is that persons whose properties fall within the definition of the expression "estate" in Article 31-A are deprived of their remedy under Article 32 of the Constitution and the President has been constituted the sole judge of deciding whether a State law acquiring estates under compulsory power has or has not complied with the provisions of Article 31(2). The validity of the law in those cases depends on the subjective opinion of the President and is not justiciable. Once the assent is given, the law is taken to have complied with the provisions of Article 31(2)."*
>
> (Emphasis supplied)

343. The aforesaid observations would indicate that the grant of assent by the President to a State legislation falling under Article 31A was held to be non-justiciable only on the ground that the first proviso to Article 31A confers the power on the President to take a decision as regards whether assent is to be granted or not.

344. The next decision where the justiciability of assent was discussed is the decision of the three-Judge Bench in ***Hoechst*** *(supra)* wherein, *inter alia*, one of the grounds of challenge to the legislation under consideration was that since the subject matter of the bill fell under List II of the Seventh Schedule, there was no occasion for the Governor to have reserved the bill for the consideration of the President. It is on this ground that the subsequent grant of assent by the President was called into question. Negativing the contention, the Court observed thus:

> *"86. There is no provision in the Constitution which lays down that a Bill which has been assented to by the President would be ineffective as an Act if there was no compelling necessity for the Governor to reserve it for the assent of the President. A Bill which attracts Article 254(2) or Article 304(b) where it is introduced or moved in the Legislative Assembly of a State without the previous sanction of the President or which attracted Article 31(3) as it was then in force, or falling under the second proviso to Article 200 has necessarily to be reserved for the consideration of the President. There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper*

> *assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts. In the instant case, the Finance Bill which ultimately became the Act in question was a consolidating Act relating to different subjects and perhaps the Governor felt that it was necessary to reserve it for the assent of the President. We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent."*
>
> (Emphasis supplied)

345. It is important to note that the aforesaid observations were made by this Court in response to the argument that the grant of assent by the President, in a case where it was not necessary for the Governor to reserve the bill for the consideration of the President, would vitiate the assent given by the President. On the contrary, the case at hand involves a totally different factual situation wherein the State Government is aggrieved by the reservation of bills by the Governor in exercise of his discretion and not in accordance with the aid and advice of the Council of Ministers. The further grievance of the petitioner is that such reservation of bills by the Governor is not guided by constitutional principles but is impelled by lack of *bonafides* and political reasons. The applicability of the *ratio* laid down in the aforesaid decisions of ***Kameshwar Singh*** *(supra)* and ***Hoechst*** *(supra)* and also the other decisions of this Court as regards the questions of justiciability and judicial review, would have to be decided keeping in mind the peculiar facts of the case at hand which we have been called upon to deal with.

346. The decision in ***Hoechst*** *(supra)* was referred to in the decision of this Court in ***Bharat Sevashram Sangh v. State of Gujarat*** reported in **(1986) 4 SCC 51** wherein one of the challenges to the validity of the legislation was that the bill had received conditional assent from the President, and such partial or conditional assent not being permissible under the Constitution, was thus erroneous in law. While the Court referred to the observations made in ***Hoechst*** *(supra)*, it also looked into the materials on record and arrived at a conclusion that there was no infirmity in the grant of assent by the President. Therefore, it cannot be said that the decision of the Court was based on the non-justiciability of assent alone as the Court arrived at the finding after the actual satisfaction on the validity of assent upon a perusal of the relevant materials. The relevant observations are reproduced below:

> *"6. The contention relating to the alleged invalidity of the assent given by the President is formulated by the learned counsel for the petitioners/appellants thus. The Bill was passed by the legislature of the State on February 15, 1973 and it was immediately thereafter forwarded to the Governor for his assent. The Governor reserved the Bill for the consideration of the President under Article 200 of the Constitution and the subsequent events according to the learned counsel showed that the President did not either give his assent or withhold his assent as contemplated under Article 201 of the Constitution but he gave a qualified or conditional assent which was not contemplated under Article 201 of the Constitution. It is argued that since the President did not give absolute assent but only a qualified or conditional assent the Bill in question had not become a law.*

In reply to these averments in the petitions the Under Secretary to the Government of Gujarat, Education Department has stated in his counter-affidavit that the Bill was presented to the Governor of Gujarat after it was passed by the Assembly. The Governor of Gujarat reserved the Bill for the consideration of the President under Article 200 of the Constitution since he felt that in view of clause 33 of the Bill which provided for taking over of the management of a school for a limited period in public interest it was necessary to reserve the Bill for the consideration of the President. Accordingly the Bill was referred to the President. At the meeting held in the Ministry of Home Affairs, Government of India on August 3, 1973 to discuss the Bill it was suggested by the representatives of the Central Government that the provisions of the Bill which did not exclude institutions established or administered by the minorities from their scope were repugnant to Article 30 of the Constitution and therefore the Bill should be suitably amended. It was also suggested to the representatives of the State Government that it would be better to carry out the requisite amendments by promulgating an ordinance. Accordingly the draft of the ordinance which was ultimately promulgated as Ordinance 6 of 1973 was forwarded for the instructions of the President under Article 213(1) of the Constitution. Thereafter the draft of the Ordinance and the Bill were both considered by the President and he assented to the said Bill and issued instructions as required by the proviso to Article 213 of the Constitution for the promulgation of the said Ordinance on September 28, 1973. Accordingly the said Bill became law on its publication on the very same day. The Ordinance was issued on September 29, 1973. In the circumstances it cannot be said that the assent which was given by the President was conditional. The records relating to the above proceedings were also made available to the court. On going through the material placed before us we are satisfied that the President had given assent to the Act and it is not correct to say that it was a qualified assent. The Act which was duly published in

the official Gazette contains the recital that the said Act had received the assent of the President on September 28, 1973. Moreover questions relating to the fact whether assent is given by the Governor or the President cannot be agitated also in this manner. [...]"

(Emphasis supplied)

347. ***Hoechst*** *(supra)* was also referred to and relied upon by this Court in ***B.K. Pavitra*** *(supra)* wherein it was observed that owing to the sovereign nature of the power of the Governor to reserve a bill for the consideration of the President under Article 200, it would not be possible for this Court to reflect upon the situations in which such a power of reference may be exercised by the Governor. It was further observed by the Court that the decision in ***Hoechst*** *(supra)* has excluded the exercise of this power from the scope of judicial scrutiny. The relevant observations read as under: -

"71. [...] The eventuality which is specified in Article 254(2) does not exhaust the ambit of the power entrusted to the Governor under Article 200 to reserve a Bill for the consideration of the President. Apart from a repugnancy in matters falling in the Concurrent List between State and Parliamentary legislation, a Governor may have sound constitutional reasons to reserve a Bill for the consideration of the President. Article 200, in its second proviso mandates that a Bill which derogates from the powers of the High Court must be reserved for the consideration of the President. Apart from Bills which fall within the description set out in the second proviso, the Governor may legitimately refer a Bill for consideration of the President upon entertaining a legitimate doubt about the validity of the law. By its very nature, it would not be possible for this Court to reflect upon the situations in which the power under Article 200 can be

exercised. This was noticed in the judgment of this Court in Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] [...]

72. Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] is an authority for the proposition that the assent of the President is non-justiciable. Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] also lays down that even if, as it turns out, it was not necessary for the Governor to reserve a Bill for the consideration of the President, yet if it was reserved for and received the assent of the President, the law as enacted cannot be regarded as unconstitutional for want of "proper" assent.

73. The above decisions essentially answer the submissions which were urged by Dr Dhavan. The law as propounded in the line of precedents adverted to above must negate the submissions which were urged on behalf of the petitioners. Once the Bill (which led to the Reservation Act, 2018) was reserved by the Governor for the consideration of the President, it was for the President to either grant or withhold assent to the Bill. The President having assented to the Bill, the requirements of Article 201 were fulfilled. The validity of the assent by the President is non-justiciable. [...]"

(Emphasis supplied)

348. We find it difficult to express our agreement with the view taken in ***B.K. Pavitra*** *(supra)* that the exercise of power to reserve a bill for the consideration of the President by the Governor is beyond the pale of judicial scrutiny, even in cases where it is exercised in his own discretion and against

the aid and advice of the Council of Ministers. We have discussed in the previous sections of this judgment that the Governor under Article 200 is ordinarily expected to act in accordance with the aid and advice of the Council of Ministers, and it is only in certain very exceptional situations that he should resort to the exercise of discretion. Further, the limits of such discretion are to be derived from Article 163(1). The exercise of such discretion by the Governor, if excluded from judicial scrutiny, would militate against the fundamental constitutional principle that exercise of all power must be within the confines of the Constitution. Absolute exclusion of judicial scrutiny would also confer upon the Governor an absolute power to disregard the will of the people expressed through the State legislature and government. While it is true that there may be situations in which the exercise of discretion by the Governor under Article 200 would be permissible, this does not imply that this Court would be precluded from determining the legality and propriety of the exercise of such discretion in a given case. In fact, it is owing to the impossibility of the task of exhaustively charting out such situations wherein discretion would be allowed to be exercised, that it becomes all the more crucial for the power of judicial review to exist with the courts. This would keep in line any *bonafide* action on the part of the Governor which is disguised under the garb of legitimate exercise of discretion.

349. The two-fold observations in ***B.K. Pavitra*** *(supra)* vesting the Governor with unfettered discretion to reserve bills for the consideration of the President under Article 200, and at the same time excluding such exercise of discretion from judicial scrutiny essentially has the effect of safeguarding the actions of the Governor in a lead casket which cannot be permeated even in cases of breach of the constitutional framework within which the Governor is expected to function.

350. The Constitution Bench in ***Kaiser-I-Hind*** *(supra)* had the occasion to consider in detail whether the assent of the President sought with regard to a State law would be limited only to the repugnancy of the laws to which the attention of the President was drawn to whilst seeking his assent or would such assent be *qua* all other laws enacted by the Parliament to which the State law in question may also be repugnant to. In other words, whether the assent granted by the President to a State legislation would be deemed to be an assent *qua* all earlier enactments made by the Parliament on the subject. This Court whilst answering the aforesaid question in the negative, held that the "*consideration*" by the President and his "*assent*" under Article 254(2) is limited to the proposal made by the State government and, the State legislation would prevail only *qua* the laws for which repugnancy was pointed out and the "*assent*" of the President was sought for. The Court, *inter alia*, held that the words "*reserved for consideration*" indicate the

requirement of an active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by the Parliament and the necessity of having such a law in the State, keeping in mind the peculiar facts, the attending circumstances and the backdrop in which such law was made by the State government. Similarly, the word "*consideration*" indicates the requirement of careful thinking and due application of mind regarding the necessity of having a State law which is repugnant to the law(s) made by the Parliament. Lastly, the term "*assent*" implies an expressed agreement of mind to what is proposed by the State i.e., knowledge of the President as to the repugnancy between the State law and the earlier law(s) made by Parliament on the same subject-matter, as well as agreement to the reason and attending circumstances, regarding the necessity of having such State law.

351. As regards justiciability, it was held by the Court that the examination of the records to ascertain the extent to which assent was sought for, would not amount to deciding whether assent was rightly or wrongly given. Thus, it could not be said that the Court was determining the validity of the assent granted by the President. The relevant observations made by M.B., Shah J.,, speaking for the majority, are reproduced below:

> *"25. In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by Parliament, there is no question of*

deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the record, for which assent was sought, would not mean that the Court is deciding whether the assent is rightly, wrongly or erroneously granted. The consideration by the Court is limited to the extent that whether the State has sought assent qua particular earlier law or laws made by Parliament prevailing in the State or it has sought general assent. In such case, the Court is not required to decide the validity of the "assent" granted by the President. In the present case, the assent was given after considering the extent and nature of repugnancy between the Bombay Rent Act and the Transfer of Property Act as well as the Presidency Small Cause Courts Act. Therefore, it would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by Parliament for which no assent was sought for nor which was reserved for the consideration of the President.

xxx xxx xxx

29. We further make it clear that granting of assent under Article 254(2) is not exercise of legislative power of the President such as contemplated under Article 123 but is part of the legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court."

(Emphasis supplied)

352. Doraiswamy Raju, J., in a concurring opinion, laid strong emphasis on the requirement that a reference to the President for the purpose of Article 254(2) must be precise and specific as regards the extent of protection sought for the State legislation. He observed that keeping in mind the serious

implications of the grant of assent of the President to a repugnant State law, the making of such reference to the President cannot be exercised in a routine manner. He further observed that the non-justiciability of the assent of the President would not preclude the constitutional courts from examining the sufficiency and justifiability of the predominance sought for the State legislation over the Central legislation. The relevant observations are reproduced below:

> *"72. [...] The exception engrafted in clause (2) to enable the State law to prevail in that State, the legislature of which has enacted it, notwithstanding its repugnancy, as above, as long as both the laws deal with a concurrent subject, will enure to its benefit, "if it has been reserved for the consideration of the President and has received his assent", under the said provision of the Constitution of India. Thus, the sweep of mandate and serious nature of the result flowing from the assent renders, in my view, the very exercise of power by the President and the attendant formalities whereof, as of great significance and vitally important, and not a mere routine or mechanical exercise. Despite such assent having been obtained, power of Parliament to enact, at any time, any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State, with the assent envisaged under clause (2) of Article 254 has also been conserved and preserved in the proviso to the said clause. In substance, Parliament has undisputed power to undo the effect or consequences flowing from the Presidential assent obtained under clause (2), by enacting a subsequent law creating once more a "repugnancy" and thereby override or repeal impliedly, to the extent of such repugnancy, the State law.*

73. The assent of the President envisaged under Article 254(2) is neither an idle or empty formality, nor an automatic event, necessitated or to be given for the mere asking, in whatever form or manner and whether specific, vague, general or indefinite — in the terms sought for to claim that once sought and obtained as well as published, a curtain or veil is drawn, to preclude any probe or contention for consideration that what was sought and obtained was not really what should and ought to have been, to claim the protection envisaged under clause (2) in respect of a particular State law vis-à-vis or with reference to any particular or specified law on the same subject made by Parliament or an existing law, in force. The repugnancy envisaged under clause (1) or enabled under clause (2) to get excepted from under the protective coverage of the assent obtained from the President, is such that there is a legislation or legislative provision(s), covering and operating on the same field or identical subject-matter made by both the Union and the State, both of them being competent to enact in respect of the same subject-matter or legislative field, but the legislation by Parliament has come to occupy the entire field. Necessarily, in the quasi-federal structure adopted for the nation, predominance is given to the law made by Parliament and in such circumstances only the State law which secured the assent of the President under clause (2) of Article 254 comes to be protected, subject of course to the powers of Parliament under the proviso to the said clause. Therefore, the President has to be apprised of the reasons at least as to why his assent is being sought, the need or necessity and the justification or otherwise for claiming predominance for the State law concerned. This itself would postulate an obligation, inherent in the scheme underlying as well as the very purpose and object of seeking the assent under clause (2) of Article 254, to enumerate or specify and illustrate the particular Central law or provision with reference to which the predominance is desired. The absence of any standardized or stipulated form in which it is to be sought for,

should not detract the State concerned, to disown its obligation to be precise and specific in the extent of protection sought having regard to the serious consequences which thereby inevitably follow i.e. the substitution of the Union law in force by the State law, in the territorial limits of the State concerned, with drastic alteration or change in the rights of citizen, which it may, thereby bring about.

74. The mere forwarding of a copy of the Bill may obviate, if at all, only the need to refer to each one of the provisions therein in detail in the requisition sent or the letter forwarding it, but not obliterate the necessity to point out specifically the particular Central law or provisions with reference to which, the predominance is claimed or purported to be claimed. The deliberate use of the word "consideration" in clause (2) of Article 254, in my view, not only connotes that there should be an active application of mind, but also postulates a deliberate and careful thought process before taking a decision to accord or not to accord the assent sought for. If the object of referring the State law for consideration is to have the repugnancy resolved by securing predominance to the State law, the President has to necessarily consider the nature and extent of repugnancy, the feasibility, practicalities and desirabilities involved therein, though may not be obliged to write a judgment in the same manner, the courts of law do, before arriving at a conclusion to grant or refuse to grant or even grant partially, if the repugnancy is with reference to more than one law in force made by Parliament. Protection cannot be claimed for the State law, when questioned before courts, taking cover under the assent, merely asserting that it was in general form, irrespective of the actual fact whether the State claimed for such protection against a specific law or the attention of the President was invited to at least an apprehended repugnancy vis-à-vis the particular Central law. In the teeth of innumerable Central laws enacted and in force on concurrent subjects enumerated in List III of the Seventh Schedule to the

Constitution, and the hoard of provisions contained therein, artificial assumptions based on some supposed knowledge of all those provisions and the presumed regularity of official acts, cannot be blown out of proportion, to do away with an essential exercise, to make the "assent" meaningful, as if they are empty formalities, except at the risk of rendering Article 254 itself a dead letter or merely otiose. The significant and serious alteration in or modification of the rights of parties, both individuals or institutions resulting from the "assent" cannot be overlooked or lightly brushed aside as of no significance, whatsoever. In a federal structure, peculiar to the one adopted by our Constitution it would become necessary for the President to be apprised of the reason as to why and for what special reason or object and purpose, predominance for the State law over the Central law is sought, deviating from the law in force made by Parliament for the entire country, including that part of the State. When this Court observed in Gram Panchayat of Village Jamalpur v. Malwinder Singh [(1985) 3 SCC 661] that when the assent of the President is sought for a specific purpose the efficacy of the assent would be limited to that purpose and cannot be extended beyond it, and that if the assent is sought and given in general terms so as to be effective for all purposes different considerations may legitimately arise, it cannot legitimately be contended that this Court had also declared that reservation of the State law can also be by mere reference to Article 254(2) alone with no further disclosures to be made or that with mere forwarding of the Bill, no other information or detail was either a permissible or legalized and approved course to be adopted or that such course was held to be sufficient, by this Court, to serve the purpose of the said article. The expression "general terms" needs to be understood, in my view, a reference to a particular law as a whole in contrast to any one particular or individual in the said law and not that, it can be even without any reference whatsoever. The further observation therein, (SCC p. 669, para 12)

> *"not only was the President not apprised in the instant case that his assent was sought because of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but, his assent was sought for a different, specific purpose altogether",*

would belie any such claim. Per contra, it would only reinforce the principle that the consideration as well as the decision to accord consent should be a conscious one, after due application of mind, relevant and necessary for the purpose. Though, submission of a thesis on the various aspects of repugnancy involved may not be the requirement, the reservation for "consideration" would necessarily obligate an invitation of the attention of the President as to which of the pre-existing Central enactments or which provisions of those enactments are considered or apprehended to be repugnant, with reference to which the assent envisaged in Article 254(2) is sought for. This becomes all the more necessary also for the reason that the repugnancy in respect of which predominance is sought to be secured must be shown to exist or apprehended, on the date of the State law and not in a vacuum to cure any and every possible repugnancy in respect of all laws — irrespective of whether it was in the contemplation or not of the seeker of the assent or of the President at the time of "consideration" for according assent.

75. This Court has, no doubt, held that the assent accorded by the President is not justiciable, and courts cannot spell out any infirmity in the decision arrived at, to give the assent. Similarly, when the President was found to have accorded assent and the same was duly published, it cannot be contended that the assent was not really that of the President, as claimed. It is also not given to anyone to challenge the decision of the President according assent, on merits and as to its legality, propriety or desirability. But that is not the

same thing as approving an attempt to draw a blanket or veil so as to preclude an examination by this Court or the High Court as to the justifiability and sufficiency or otherwise of the protection or predominance claimed for the State law over the law made by Parliament or the existing law, based upon the assent accorded, resulting at times in substantial alteration, change or modification in the rights and obligations of citizen, including the fundamental rights. When the Constitution extends a form of protection to a repugnant State law, permitting predominance and also to hold the field in the place of the law made by the Centre, conditioned upon the reservation of the State law for consideration of the President and obtaining his assent, it is to be necessarily viewed as an essential prerequisite to be effectively and meticulously fulfilled before ever availing of the protection and the same cannot be viewed merely as a ceremonial ritual. If such a vitally essential procedure and safeguard is to be merely viewed as a routine formality which can be observed in whatever manner desired by those concerned and that it would be merely enough, if the assent has been secured howsoever obtained, it would amount to belittling its very importance in the context of distribution of legislative powers and the absolute necessity to preserve the supremacy of Parliament to enact a law on a concurrent topic in List III, for the entire country. It would also amount to acceptance of even a farce of compliance to be actual or real compliance. Such a course could not be adopted by courts except by doing violence to the language, as well as the scheme, and the very object underlying Article 254(2).

76. Different provisions of the Constitution envisage the grant of assent by the President as well as the Governor of a State. Article 111 provides for the assent of the President to a Bill passed by the Houses of Parliament, in the same manner in which Article 200 empowers the Governor of a State in respect of a Bill passed by the Legislative Assembly or by the Houses of the legislature where there is a

Legislative Council in addition to the Assembly. Parliament for the Union consists of the President and two Houses as the legislature of States consists of the Governor and the House or Houses, as the case may be (vide Articles 79 and 168). The policy-making executive power of the Union also vests with the President, as the executive power of the State vests with the Governor, and those powers have to be exercised with the aid and advice of the Council of Ministers, for the Union headed by the Prime Minister and for the State to be headed by the Chief Minister. The President or the Governor, as the case may be, as and when a Bill after having been passed is presented, may accord assent or as soon as possible thereafter return the Bill to the Houses with a message requesting to reconsider the Bill or any provisions thereof, including the introduction of any amendment as recommended in his message and if thereafter the Houses on reconsideration of the Bill, pass the Bill again with or without amendment and present the same for the assent, the President/Governor, as the case may be, shall not withhold his assent. Being an exercise pertaining to expression of political will, apparently, the will of the people expressed through the legislation passed by their elected representatives is given prominence by specifically providing for a compulsory consent or assent. The same could not be said with reference to the "assent" of the President envisaged under Articles 31-A, 31-C, 254(2) and 304(b) of the Constitution. In my view, the "assent" envisaged in these articles by the very nature and character of the powers conferred constitute a distinct class and category of their own, different from the normal "assent" envisaged under Articles 111 of the President or Article 200 of the Governor. Article 201 also would indicate that even when for the second time the Houses of the State Legislature pass the Bill and present for "consideration", there is no compulsion for the President to accord assent. Therefore, the reservation of any Bill/Act for the "consideration" of the President for according his assent, keeping in view, also the avowed object

envisaged under Article 254(2), renders it qualitatively different from the ordinary assent to be given by the President to a Bill passed by Parliament or that of the Governor to a Bill passed by the legislature(s) of the State concerned.

77. The assent of the President or the Governor, as the case may be, is considered to be part of the legislative process only for the limited purpose that the legislative process is incomplete without them for enacting a law and in the absence of the assent the Bill passed could not be considered to be an Act or a piece of legislation, effective and enforceable and not to extend the immunity in respect of procedural formalities to be observed inside the respective Houses and certification by the presiding officer concerned of their due compliance, to areas or acts outside and besides those formalities. The powers actually exercised by the President, at any rate under Articles 31-A, 31-C, 254(2) and 304(b) are a special constituent power vested with the Head of the Union, as the protector and defender of the Constitution and safety valve to safeguard the fundamental rights of citizens and federal structure of the country's polity as adopted in the Constitution. A genuine, real and effective consideration would depend upon specific and sufficient information being provided to him inviting, at any rate, his attention to the Central law with which the State law is considered or apprehended to be repugnant, and in the absence of any effort or exercise shown to have been undertaken, when questioned before courts, the State law cannot be permitted or allowed to have predominance or an overriding effect over that Central enactment of Parliament to which no specific reference of the President at all has been invited to. This, in my view, is a must and an essential requirement to be satisfied; in the absence of which the "consideration" claimed would be one in a vacuum and really oblivious to the hoard of legislations falling under the Concurrent List in force in the country and enacted by Parliament. To uphold as valid the claim for any such blanket

> *assent or all-round predominance over any and every such law — whether brought to the notice of the President or not, would amount to legitimization of what was not even in the contemplation or consideration on the basis of some assumed "consideration". In order to find out the real state of affairs as to whether the "assent" in a given case was after a due and proper application of mind and effective "consideration" as envisaged by the Constitution, this Court as well as the High Court exercising powers of judicial review are entitled to call for the relevant records and look into the same. This the courts have been doing, as and when considered necessary, all along. No exception therefore could be taken to the High Court in this case adopting such a procedure, in discharge of its obligations and exercise of jurisdiction under the Constitution of India."*
>
> (Emphasis supplied)

353. It is pertinent to note that it was observed by Doraiswamy, J., that the assent of the President under Article 254(2) is not of the same nature as the assent of the President or the Governor under Article 111 and 200 of the Constitution respectively. He placed strong emphasis on the use of the expression "*consideration*" in Article 254(2) to hold that such a consideration by the President would be meaningless in the absence of a clear and specific reference made to him pointing out the repugnancy between the Central law and the proposed State law.

354. While the observations made in ***Kaiser-I-Hind*** *(supra)* as regards the import of the expression "*consideration*" were in the context of Article 254(2), the

same would apply to every bill reserved for the consideration of the President under Article 201 as the expression "*consideration*" finds a mention in Article 201 as well. Thus, the reservation for the consideration of the President must be accompanied by a reference which contains specific details as regards the purpose why the consideration of the President is sought.

355. The reason why this Court in ***Kaiser-I-Hind*** *(supra)* insisted that the requirement of delineating the reasons necessitating the reservation of a bill by the Governor rests upon the State government is because it is the State through its Council of Ministers who are objectively better equipped in doing so, by virtue of the fact that the genesis of such bills is normally spearheaded by the Council of Ministers. Their close involvement in the deliberations that culminated into the bill, their crucial role as part of the members of the house of legislature and them being reposed with the responsibility of overall governance and well-being of the State, provides them the necessary expertise to assign robust reasons in making a reference. The State Council of Ministers being uniquely positioned to understand the legislative requirements of the State, the policy imperatives prevailing therein, and the socio-economic conditions demanding redressal, can better voice the reasons that ought to accompany such a reference which the Governor otherwise may not be capable of reasonably and comprehensively ascertaining if not for the aid and advice of the council of ministers.

356. It is in this background that we are of the view that the Governor would be duty bound to give careful deference to the aid and advice of the State Council of Ministers and only in the limited of exceptional circumstances may he deviate from such advice tendered to him, subject to the reference being in tune with the aforesaid principles enunciated in the preceding paragraphs.

357. We have given some thought to the observations made in the aforesaid decisions as regards the non-justiciability of the assent of the President. As per the settled principles of parliamentary democracy across the world, the grant of assent to legislations is construed as a power of the head of state which is to be exercised only upon the aid and advice of the Council of Ministers. As per Articles 74(2) and 163(3) of the Constitution respectively, the question whether any, and if so what, advice was tendered by the Ministers to the President or the Governor, shall not be inquired into by any court. A perusal of Articles 111, 200 and 201 respectively makes it clear that no reasons are required to be provided by the President or the Governor for according assent to bills. However, if the President or the Governor exercise the option of withholding of assent under Article 111 or 200 respectively, then there is a requirement to communicate the reasons for such withholding in the form of a message to the House or Houses of the legislature. Similarly,

as has been discussed with great emphasis in ***Kaiser-I-Hind*** *(supra)*, if there is any reservation of Bills for the consideration of the President by the Governor, then the same must be reflected by way of a specific and clear reference providing details as to why the reservation has been made so as to enable the President to "consider" the desirability of according assent to the bill so reserved.

358. The grant of assent to a bill is an exercise which generally takes place on the aid and advice of the Council of Ministers, and assenting to the bill is the only practically possible course of action available to the constitutional heads in most of the common law jurisdictions. The grant of assent may not be justiciable because, there exists an unavailability of any material upon which the courts may be able to undertake a judicial scrutiny. However, the same would not be the case as regards the withholding of assent or reservation of the bill for the consideration of the President, which can only be exercised upon furnishing of detailed reasons for the same.

359. The majority opinion of the Court in ***Kaiser-I-Hind*** *(supra)* held that the legislative procedure to be followed before the enactment of a legislation would always be amenable to judicial review and thus it would be open to the Courts to examine the reference which is made by the State government to the President seeking his assent. Applying the same logic, it could be said

that the reservation of bills by the Governor for the consideration of the President is also part of legislative procedure and thus the Courts would not be precluded from examining such reference to determine its legality and its constitutional veracity.

360. In the Canadian decision in ***Galati*** *(supra)* the grant of royal assent to a bill was held as non-justiciable on the ground of separation of powers, the grant of assent having been characterised as a legislative act. However, it must be kept in mind that the characterisation of the grant of assent as a legislative act was in the context of the well settled constitutional convention of a responsible government that assent must be granted in accordance with the advice of the Prime Minister. Further, as we have discussed in the preceding paragraphs, it is not the source of power, but the contents thereof which determine the scope of judicial review under the Constitution.

361. On the contrary, Anne Twomey writes that in cases where a Constitution is prescriptive, and a constitutional breach is involved, a court is more likely to hold the breach to be a justiciable issue, even if it relates to the grant of assent to a bill. She refers to the opinion of Millhouse, J. in ***Re Constitutional Reference No 1 of 2008*** reported in **[2009] 1 LRC 453**, which held that where a country has a written Constitution, the courts always have the jurisdiction to remedy breaches of the Constitution. The said

decision was also accepted by the Court of Appeal of Vanuatu in ***Republic of Vanuatu v Carcasses*** reported in **[2010] 2 LRC 264** which held that while a court will not otherwise inquire into or adjudicate upon issues arising in Parliament, it would be empowered to interpret and determine whether there has been a breach of a constitutional right.

362. As described in ***Kaiser-I-Hind*** *(supra)*, the role of the President under Article 201 is a *sui-generis* one, tailor made to fit the quasi-federal constitutional scheme. The role of the Governor in reserving bills for the consideration of the President is also intrinsically linked with this constituent role of the President. It was also observed that the grant of assent is considered a legislative act only for the limited purpose that without it a bill cannot become law and also for extending immunity to certain formalities to be followed within the legislature. This immunity does not extend to other aspects of the legal procedure which fall beyond the ambit of these limited formalities. Thus, compliance with the prescribed legislative procedure leading up to assent is open to judicial scrutiny in appropriate cases. Further, as we have discussed in the preceding paragraphs, the reservation of bills for the consideration of the President by the Governor is warranted only in certain limited situations.

363. The observations in the aforesaid decisions as regards the non-justiciability of the assent of the President under Article 201 cannot be construed to mean that the withholding of assent and reservation of bills by the Governor under Article 200, as well as withholding of assent by the President under Article 201 are beyond the scope of judicial review. The observations of non-justiciability of assent of the President under Article 201 can be explained in light of the assent under Article 201 being predominantly a matter of federal policy of the Union government. On certain subject matters prescribed in various provisions of the Constitution, and on subject matters falling in the Concurrent List, the Constitution has accorded primacy to the Centre over the States. On issues of repugnancy, for illustration, it is only on the approval of the President, that a State law which is repugnant to a Central legislation can become enforceable. No obligation is placed on the President to grant assent under Article 201 and it is to be decided by the President on the aid and advice of the Union Council for Ministers. It is in view of this position and for the limited extent of judicially manageable standards of evaluation that the assent under Article 201 has been described as non-justiciable.

364. However, the same is not the case when the courts have to consider the withholding of assent or reservation of bills by the Governor under Article 200. Our discussion on the scope of discretion available to the Governor

makes it clear that the Governor exercises discretion in a very limited domain when discharging his functions under Article 200. He may reserve the bills for the consideration of the President only for achieving certain predetermined purposes and his personal views, disliking for the policy, or the views of the Union government are not grounds on which he may reserve a bill under Article 200. The nature of constitutional function prescribed for the Governor under Article 200 being such, the exercise of such function can be subjected to judicial review on the standard of being within constitutional bounds. Reserving a bill for the consideration of the President is a part of the legislative procedure and must invariably be subjected to judicial review in cases where the constitutionally prescribed procedure is not complied with, or misused.

365. The discharge of functions by the President under Article 201 stands on a different footing than that of the Governor under Article 200. While there is no political hue to the limited discretion conferred upon the Governor under Article 200, and any exercise of such discretion has to be solely on constitutional grounds, the grant of assent under Article 201 has an element of political hue by virtue of the fact that the President under Article 201 has been given the prerogative to decide whether the grant of assent in certain cases would be desirable or not. However, at the same time, what must be remembered is that it is only in those areas where the primacy has been given

to the Union would this political consideration be permissible. Additionally, this political hue is not owing to the difference in opinion or political views of the governments at the Centre and the State but is attributable to the desirability of vesting the Union government to exercise certain discretion in matters pertaining to broader issues where uniformity in national policy may be desirable. In such a case, the scope of justiciability under Article 201 would be limited to questions of arbitrariness, *malafides* and inaction.

366. As a logical *sequitur* of the above, any exercise of Article 201 in a manner which does not align with this fundamental object underlying Article 201 would be liable to a greater degree of judicial scrutiny. Thus, wherever a bill which falls within the exclusive domain of the State legislature is being referred to the President for his consideration on the ground that it attracts one of the exceptional situations where the Governor may exercise his discretion as mentioned in paragraph 300 of this judgment, it would not be open to the President to withhold assent without ascribing reasons as regards the doubt raised by the Governor to such a bill. In such a case, the ideal course for the President would be to obtain legal opinion as regards the bill, in appropriate cases, by making reference to this Court under Article 143, and only thereafter declare the grant or withholding of assent. Where the grounds of withholding of assent are not concerned with policy areas in which the Union has primacy, the courts would have a greater degree of

judicial scrutiny. We say this because on questions of legality, it is the constitutional courts which have been conferred with the power of arriving at a final decision and the object of Article 201 is not to thwart the legislative procedure of the States by withholding of assent even in areas falling within the exclusive domain of the States on grounds of legality.

367. We summarise our findings on the judicial review of the exercise of power by the Governor under Article 200 and by the President under Article 201 of the Constitution as follows:

a. Where the Governor reserves a bill for the consideration of the President in his own discretion and contrary to the aid and advice tendered to him by the State Council of Ministers, it shall be open to the State Government to assail such an action before the appropriate High Court or this Court. Such a challenge can broadly be made on the following grounds:

(i) Where the reservation is on the ground that the bill is of a description falling under the Second Proviso to Article 200 of the Constitution, it may be assailed on the ground that the bill or any provision thereof does not so derogate from the powers of the High Court so as to endanger the position which that court is designed by the Constitution to fill. The Governor while reserving a bill on this count shall be expected to provide clear

reasons and also point to the specific provision(s) of the bill which, in his opinion, attract the Second Proviso. This question being purely of a legal nature would be completely justiciable and the competent court would be, after a proper adjudication, fully authorized to approve or disapprove of such reservation by the Governor. If such a challenge finds favour with the competent court, then, subject to any other considerations, it would be a fit case for the issuance of a writ in the nature of mandamus to the Governor for appropriate action. If, however, the challenge should fail then the mechanism envisaged under Article 201 of the Constitution will spring into action.

(ii) Where the reservation is on account of the bill attracting any provision of the Constitution wherein the assent of the President is a condition precedent for the proper enactment and enforceability of such a bill as a law (such as under Article 364A2) or for the purpose of securing any immunity (such as under Article 31A) or overcoming any repugnancy that may exist *qua* a Central Legislation (under Article 254(2)), then the Governor is expected to make a specific and clear reference to the President properly indicating the reasons for such reservation and inviting his attention as described in ***Kaiser-I-***

Hind *(supra)*. Such a reservation can be assailed by the State Government, if the reference made by the Governor either fails to indicate the reasons for such reservation as discussed above or that the reasons indicated are wholly irrelevant, *mala-fide*, arbitrary, unnecessary or motivated by extraneous considerations. Then such a reservation would be liable to be set aside. This question being purely of a legal nature would be completely justiciable and the competent court would be after a proper adjudication fully authorized to approve or disapprove of such reservation by the Governor. If such a challenge finds favour with the competent court, then, subject to any other considerations, it would be fit case for issuance of a writ in the nature of mandamus to the Governor for appropriate action. If however, the challenge should fail then the mechanism envisaged under Article 201 of the Constitution will spring into action.

(iii) Where the reservation of a bill by the Governor for the consideration of the President is on the grounds of peril to democracy or democratic principles or on other exceptional grounds as mentioned in ***M.P. Special Police*** *(supra)* and ***Nabam Rebia*** *(supra)* then the Governor would be expected to

make a specific and clear reference to the President properly indicating the reasons for entertaining such a belief by pinpointing the specific provisions in this regard and the consequent effect that may ensue if such a bill were to be allowed to become a law. The Governor while making such a reference should also indicate his subjective satisfaction as to why the aforesaid consequences that may ensue cannot be possibly curtailed or contained by taking recourse to the constitutional courts of the country. It shall be open to the State Government to challenge such a reservation on the ground of failure on part of the Governor to furnish the necessary reasons as discussed aforesaid or that the reasons indicated are wholly irrelevant, *mala-fide*, arbitrary, unnecessary or motivated by extraneous considerations. This being a question completely capable of being determined by the constitutional courts, would be fully justiciable.

(iv) Reservation of a bill on grounds other than the ones mentioned above, such as personal dissatisfaction of the Governor, political expediency or any other extraneous or irrelevant considerations is strictly impermissible by the Constitution and would be liable to be set-aside forthwith on that ground alone.

This will also encompass reservation of a bill by the Governor after having already exercised the option of withholding of assent in terms of Article 200 except in such exceptional circumstance as mentioned in paragraph 204 of this judgment.

(v) Where the Governor exhibits inaction in making a decision when a bill is presented to him for assent under Article 200 and such inaction exceeds the time-limit as has been prescribed by us in paragraph 250 of this judgment then it shall be open to the State Government to seek a writ of mandamus from a competent court against the Governor directing expeditious decision on the concerned bill as is the mandate of the Constitution, however, it is clarified that the Governor may successfully resist such a challenge on providing sufficient explanation for the delay caused.

b. Where the Governor reserves a bill for the consideration of the President and the President in turn withholds assent thereto then, it shall be open to the State Government to assail such an action before this Court. Such a challenge can broadly be made on the following grounds:

(i) Where a State bill has been reserved by the Governor for the consideration of the President on the ground that assent

of the President is required for the purpose of making the bill enforceable or securing some immunity therefor, then in such cases the withholding of assent by the President would be justiciable to the limited extent of exercise of such power in an arbitrary or *malafide* manner. Owing to the political nature of the assent of the President in these categories of bills, the courts would impose a self-restraint.

(ii) Where a State bill has been reserved by the Governor, in his discretion, for the consideration of the President on the ground that the bill appears to be patently unconstitutional for placing the principles of representative democracy in peril, the withholding of assent by the President would, in ordinary circumstances, involve purely legal and constitutional questions and therefore be justiciable without any impediments imposed by the doctrine of political thicket. In such cases, it would be prudent for the President to obtain the advisory opinion of this Court by way of a reference under Article 143 and act in accordance with the same to dispel any apprehensions of bias, arbitrariness or *mala fides*.

(iii) Where the President exhibits inaction in making a decision when a bill is presented to him for assent under Article 201 and such inaction exceeds the time-limit as has been prescribed by us in paragraph 391 of this judgment then it shall be open to the State Government to seek a writ of mandamus from this Court.

368. We summarise our findings on the judicial review of the exercise of power by the President under Article 201in withholding assent to a bill as follows:

a. Where the bill which is under consideration is pertaining to a provision of the Constitution where primacy has been given to the Union government in taking a decision keeping in consideration the desirability of having certain uniform standards of national policy, then the limited grounds of judicial review would be based on arbitrariness, *malafides*, etc.

b. Where the bill which is under consideration pertains to a subject matter or domain within which State legislature has been accorded primacy, and the reservation of the bill is by the Governor contrary to the aid and advice of the State Council of Ministers, then in exercise of judicial review the courts would be competent to look into the reasons for withholding of assent and whether they are

legally tenable or not, besides the grounds of *malafides* and arbitrariness, etc.

369. We clarify that the possible situations illustrated by above are not meant to be exhaustive and in the specific facts of a given case, the courts may evolve new standards of judicial scrutiny to ensure that the constitutionally prescribed procedure is adhered to in letter and spirit.

vi. <u>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</u>?

370. As we have discussed, Article 200 provides three courses of action to the Governor when a bill is presented to him - to assent, to withhold assent or to reserve the bill for the consideration of the President. If he declares assent, then the bill becomes an Act of the State legislature. If he withholds assent, then the procedure prescribed under the first proviso springs into motion. However, the procedure which is to be followed once a bill is reserved for the consideration of the President is provided in Article 201 of the Constitution. Article 201 was adopted without any debate in the Constituent Assembly on 01st August, 1949. It reads as follows:

> *"**201. Bills reserved for consideration.***

When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration."

371. A plain reading of Article 201 indicates that once a bill is reserved by the Governor for the consideration of the President, the President has two options to choose from - he may either assent to the bill, which would bring the legislative process to a conclusion and the bill would become an act, or he may withhold his assent to the bill.

372. The proviso to Article 201 provides that in case of bills other than money bills, the President may direct the Governor to return the bill to the State legislature together with a message as is mentioned in the first proviso to Article 200. Once the bill is so returned, the State legislature is required to reconsider the bill in light of the suggestions of the President within a period of six months and if the Bill is passed again, with or without amendments, it shall be presented again to the President for his consideration.

373. There are some features of Article 201 which are markedly different from Articles 111 and 200. The proviso to Article 111 as well as the first proviso to Article 200 mandate the President and the Governor respectively to assent to a bill which has been reconsidered by the Parliament and State legislature respectively and presented to them for the second time. However, the proviso to Article 201 does not place any such obligation on the President to mandatorily accord assent to a bill which is placed before him after reconsideration by the State legislature. This is evident from the absence of the expression "*shall not withhold assent therefrom*" in the proviso to Article 201. This is also brought out from the difference between the language employed in Articles 111 and 200 vis-a-vis that employed in Article 201. The first proviso to Article 111 uses the expression "*and if the Bill is passed again by the Houses with or without amendment and presented to the President* ***for assent***". Similarly, the first proviso to Article 200 also uses the expression "*and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor* ***for assent***". However, the proviso to Article 201 uses the expression "*and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President* ***for his consideration***". Instead of the expression "*for assent*", the proviso to Article 201 uses the expression "*for his consideration*" thereby indicating that the President is not bound to accord

assent to a bill even when it is presented to him for the second time. In other words, the object behind presentation of the bill for the second time after reconsideration under Articles 111 and 200 respectively is to obtain assent, whereas under Article 201, the object of the presentation is to yet again present the bill for the consideration of the President.

374. Further, the proviso to Article 201 places an obligation on the State legislature to reconsider the bill in accordance with the suggestions of the President within a period of six months from the date of receipt of the message containing the suggestions. There is no similar obligation on the Parliament or the State legislature to reconsider the bill within a stipulated time period under Articles 111 and 200 respectively. This absence of this six-month time period under Articles 111 and 200 respectively could also be seen as an indication of the primacy which is accorded to the Parliament and State Legislature as regards the bill which is presented for assent under the said provisions. They may choose to repass the Bill after taking into account the message which has been sent without being bound by the rigours of a time-limit. This is because it is they who ultimately decide whether the bill would see the light of day or not, as far as Articles 111 or 200 are concerned. As discussed by us in the preceding paragraphs, under Articles 111 and 200 respectively, the bill would only "*fall through*" if the Parliament or the State Legislature chooses or elects not to repass the concerned bill after it has been

returned to them and the trust of expediency has been reposed on the constitutional head of the country and State, being the President and the Governor respectively. However, under Article 201, the prescription of the time-limit of six months for the State legislature to reconsider the bill returned to them, is indicative of the fact that the requirement to act expediently is also placed on the State legislature.

375. Any symptoms of lethargy exhibited by the State legislature which is the recipient of a bill sent after the procedure under Article 201 is adopted, is viewed strictly by the Constitution. Here, inaction by the State legislature or delayed action by them in terms of repassing of the bill would cause the bill to "fall through" instead. The consequences of the failure to act promptly and in a punctual manner is more grave and severe for the State legislature under Article 201 since the premise is that the occasion for the reservation of a bill for the consideration of the President by the Governor may arise where a constitutional provision makes the assent of the President a condition precedent to a State legislation becoming enforceable or for the purpose of conferring some immunity upon the State legislation. Such a requirement can be found in Articles 31A, 31C, 254(2), 288(2), 360(4)(a)(ii) etc. The second proviso to Article 200 also makes reservation for the consideration of the President mandatory. As we have also discussed, there may be certain other legitimate situations where the Governor may, in

exercise of his discretion, reserve a bill for the consideration of the President. The matters attracting the aforesaid provisions require the procedure in Article 201 to be initiated since they pertain to areas wherein the Centre could be said to have precedence or an edge over the State governments. This is because the considerations herein involve questions pertaining to the larger economic policy of the Union, safeguarding the fundamental rights of citizens and maintaining the integrity of the country as a whole. For example, the uniformity of policy across States for matters falling under the Concurrent List would be a valid arena wherein the interest of the Union might need to be paid heed to in comparison with those of the States. Hence, a higher degree of the power of scrutiny of the President would be implicit in such matters and he, having consulted the Union Council of Ministers, could be said to have the final say which has the effect of overriding those wishes of the State legislature.

376. The special object fulfilled by Article 201 and the important position it occupies in maintaining the quasi-federal structure of the country has been explained in detail by this Court in ***Kaiser-I-Hind*** *(supra)* as follows:

> *"76. [...] The same could not be said with reference to the "assent" of the President envisaged under Articles 31-A, 31-C, 254(2) and 304(b) of the Constitution. In my view, the "assent" envisaged in these articles by the very nature and character of the powers conferred constitute a distinct class and category of their own, different from the normal "assent"*

envisaged under Articles 111 of the President or Article 200 of the Governor. Article 201 also would indicate that even when for the second time the Houses of the State Legislature pass the Bill and present for "consideration", there is no compulsion for the President to accord assent. Therefore, the reservation of any Bill/Act for the "consideration" of the President for according his assent, keeping in view, also the avowed object envisaged under Article 254(2), renders it qualitatively different from the ordinary assent to be given by the President to a Bill passed by Parliament or that of the Governor to a Bill passed by the legislature(s) of the State concerned.

77. [...] The powers actually exercised by the President, at any rate under Articles 31-A, 31-C, 254(2) and 304(b) are a special constituent power vested with the Head of the Union, as the protector and defender of the Constitution and safety valve to safeguard the fundamental rights of citizens and federal structure of the country's polity as adopted in the Constitution. A genuine, real and effective consideration would depend upon specific and sufficient information being provided to him inviting, at any rate, his attention to the Central law with which the State law is considered or apprehended to be repugnant, and in the absence of any effort or exercise shown to have been undertaken, when questioned before courts, the State law cannot be permitted or allowed to have predominance or an overriding effect over that Central enactment of Parliament to which no specific reference of the President at all has been invited to. This, in my view, is a must and an essential requirement to be satisfied; in the absence of which the "consideration" claimed would be one in a vacuum and really oblivious to the hoard of legislations falling under the Concurrent List in force in the country and enacted by Parliament. [...]"

(Emphasis *supplied*)

377. Dr. K.C. Markandan writes that Article 201 seeks to serve the same purpose in the legislative sphere as Article 365 seeks to do in the administrative sphere, namely, make the Constitution "unfederal" in character, to establish the fact that the distribution of legislative power between the Centre and the States is not on an exclusive basis but that the exercise of legislative power of the State is subject to the overall responsibility of the Centre and its legislative ambit. He states that no other explanation can justify the inclusion of this provision in the Constitution.[31]

378. It is in such a background and context that the prescription of the six-month time limit upon the State legislature for re-passing the Bill and presenting it before the President for his consideration assumes more significance. Non-adherence or any absence of deference to this time-limit would prove to be detrimental to the cause of the State itself since the balance of power is inherently skewed in favour of the Union on such matters. Having said so, and also conscientiously discussed by us in the preceding paragraphs, this is why the reference by the Governor of bills for the consideration of the President must be strictly by and under the strength of clear provisions of the Constitution.

[31] K.C. MARKANDAN, CENTRE STATE RELATIONS THE PERSPECTIVE 120 (ABS Publications 1986).

379. The features of Article 201 which have been the cause of differences in Centre-State relations over the years are as follows:

a. There is no time-limit within which the President is required to declare the grant or withholding of assent under Article 201 once the bill is reserved for his consideration by the Governor. Unlike Articles 111 and 200 respectively, the expression "as soon as possible" is also not used. Owing to this, a number of bills enacted by the legislatures of various States remain pending with the President awaiting a decision.

b. There being no obligation upon the President to mandatorily assent to a bill under Article 201, if a bill is reserved for the consideration of the President by the Governor acting in his discretion, then it has the effect of rendering the enactment of the bill by the State legislature nugatory, if the President keeps the bill pending with him or declares the withholding of assent to such a bill.

380. As regards the issue of delay under Article 201, as we have discussed in the preceding paragraphs, the Sarkaria Commission observed that the delay in the expeditious disposal of bills reserved for the consideration of the President was one of the major causes of strain in Centre-State relations. It also recommended that definite timelines must be adopted for facilitating the efficient disposal of references under Article 201. The timelines

suggested by the Commission are indicated in paragraph 120 of this judgment.

381. Besides prescribing timelines, the Commission also suggested that the reference being made by the Governor must be self-contained and contain all necessary information. We have discussed that the same was also observed by this Court in ***Kaiser-I-Hind*** *(supra)* in the context of references being made under Article 254(2). The reading of a timeline in Article 201 was also suggested by the Punchhi Commission.

382. While the language of Article 201 does not provide for any timelines within which the President is required to act, the absence of a time limit cannot be construed as indicating that the discharge of functions by the President under the said Article can be done without due deference to the important nature of the role they occupy as regards the legislative machinery of the State. Any bill(s) reserved for the consideration of the President cannot become an act unless it receives the assent as is mentioned in Article 201, and thus, long and undue delays in the disposal of references by the President would have the effect of keeping the bill(s), which are an expression of the popular will embodied by the State legislature, in an indefinite and uncertain state of abeyance.

383. Although we are cognisant of the fact that in discharge of his powers under Article 201, the President is expected to "*consider*" the bill and such "*consideration*" may be difficult to be bound by strict timelines, yet it cannot be a ground to justify inaction on part of the President.

384. We have discussed in detail in the preceding paragraphs that where no time for the exercise of a power has been stipulated, such power must be exercised in a reasonable time, so as to not render the subject matter nugatory or dilute the purpose sought to be achieved. The delay on part of the President in deciding a reference under Article 201, without any justification or necessity, would fall foul of the basic constitutional principle that the exercise of a power must not be arbitrary and capricious. The implications of inaction being of a serious nature and detrimental to the federal fabric of the Constitution, there should be no scope for unnecessary delay on part of the President under Article 201 as well.

385. At this juncture, we deem it apposite to refer to the office memorandum issued by the Ministry of Home Affairs, Government of India dated 04.02.2016 to all the Ministries/Departments of the Government of India regarding the expeditious disposal of State bills reserved for the assent of the President. The same is reproduced hereinbelow:

"

Urgent
State Bill

File No. 23/18/2015-Judl & PP (Part III)

Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya (Judicial & PP Section)

NDCG-II Building, 4" Floor Jai Singh Road, New Delhi-110001

The February 4th of 2016

OFFICE MEMORANDUM

Subject: Guidelines on State Legislations - regarding.

The undersigned is directed to invite to this Ministry's D.O. letter no: 23/33/1992-Judi dated 22.09.1992 duly conveying the guidelines formulated and approved by the Cabinet for disposal of State legislative proposals. Despite these clear guidelines, it is observed that undue delay is caused in taking a final decision on such Bills.

2. The matter has been recently reviewed and a set of supplementary guidelines for expeditious examination and disposal of State Legislative proposals by the Central Ministries / Departments / State Governments has been formulated. These are stated below for strict adherence:

State Bills/Legislative proposals are to be examined in such a way that objections/views of the concerned Central Departments/Ministries, if any, be meaningful as addressing the unreasonable queries/observations delays the entire process.

ii). A time limit of maximum 3 months be strictly adhered to for finalizing the Bills after their receipt from the State Governments.

iii). The Ministry concerned should communicate their view on substantive issues within 15 days from the date of receipt of communication and if they are not able to communicate, they should mention the reasons for the delay. In case Departments/Ministries are not able to communicate their comments/views in a period of one month, it will be construed that they have no comments to offer on the proposal.

iv). The substantive issues involved in the Bills should be dealt by the Ministries concerned and issues relating to language/drafting and Bill's constitutional validity should be checked by the Ministry of Law.

v). As regards Ordinances, which are of urgent nature and are promulgated in view of the urgency, presently a time limit of 2 weeks has been permitted to the Ministries /Departments concerned for offering their views, but often the comments are not received within the prescribed time limit. Hence, as in the case of State Bills, if the Ministries /Departments are not able to communicate their comments/views on the Ordinances in a period of two weeks, it will be construed that they have no comments to offer on the proposal, and MHA will process in consultation with D/o Legal Affairs of the M/o

Law and Justice so as to dispose the Ordinances off within a period of one month from the date of their receipt in the MHA.

3. It is requested that all State Bills / Ordinances be processed in the light of aforesaid guidelines and within the time limit as specified. All the currently pending Bills /Ordinances may be reviewed urgently in terms of above guidelines in order to ensure their disposal within three weeks' time.

4. The receipt of this letter may kindly be acknowledged.

Sd/-
Thangkholun Haokip
Under Secretary to the Govt. of India
Tel./Fax : 011-23438095"

(Emphasis supplied)

386. The aforesaid memorandum indicates that the procedure involved after a reference is made to the President by the Governor is that the Union Ministry of Home Affairs as the nodal Ministry would refer the substantive issues involved in the bill to the appropriate Ministry at the Centre which is concerned with the subject matter and issues pertaining to the bill's language, drafting or constitutional validity to the Law Ministry at the Centre. In this process, the Office Memorandum lays down strict guidelines directing the concerned Central Departments or Ministries that the objections or views that they may have to the bill must be meaningful and

precise. Such a stipulation has been laid down because the making of unreasonable queries or observations only serves to delay the entire process of consideration of a bill by the President under Article 201. The Ministry concerned with the substantive issues as regards the bill is required to communicate their views to the Home Ministry within 15 days from the date of receipt of the bill. If there is a deviation from the said time restriction, they must assign reasons for the delay that has ensued on their part. The failure to indicate so within a maximum period of one month, is construed strictly and understood to mean that the concerned Ministry may have no comments whatsoever to offer on the proposal. A perusal of the aforesaid also makes it clear that a timeline of three months has been prescribed for the decision on bills reserved for the President. A time limit of three weeks has been prescribed for the disposal of ordinances of an urgent nature.

387. Another office memorandum was issued by the Ministry of Home Affairs to all the States/UTs on the same date in this regard and is reproduced below:

"

Urgent
State Bill

File No. 23/18/2015-Judl & PP (Part III)

Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya (Judicial & PP Section)

NDCG-II Building, 4" Floor Jai Singh Road, New Delhi-110001

The February 4th of 2016

OFFICE MEMORANDUM

Subject: Guidelines on State Legislations - regarding.

The undersigned is directed to say that the Ministry of Home Affairs is the nodal Ministry for processing and conveying a final decision with respect to State Legislations under Article 201 read with Article 254(2) of the Constitution; State Legislations requiring previous sanction of the President under Article 304(b) of the Constitution and Ordinances for the instructions of the President under Article 213(1) etc.

2. On receipt of such a reference, this Ministry examines and seeks the views of the concerned Central Departments/Ministries. Once the views of the Central Departments/Ministries concerned are obtained, these are again examined and in case of any objections, the same are shared with the State Government concerned seeking their views/clarifications so that the Central Departments/Ministries concerned can be apprised of the clarifications of the State Government. This is an integral part of the present processing system. However, it has been observed that State Governments do not send requisite clarifications/views on the comments made by the Central Departments/Ministries and thus, a decision in the matter gets unduly delayed.

3. Recently, the matter has been reviewed and a timeline of maximum three months has been fixed for disposing State Bills/cases of previous instructions/ Ordinances from the date of their receipt from the State Government. A maximum period of one month has been kept for Inter-Ministerial consultation and next one month has been kept for obtaining the comments/clarifications of the State Government on the views as conveyed by the Central Departments/Ministries. Since a time bound disposal of State Legislations etc. is in the interest of the State Governments, it is requested that appropriate instructions may be issued to all concerned to adhere to the timeline of one month for responding to the comments/views of the Central Departments/ Ministries as conveyed by the MHA. If the requisite clarifications/views are not received from the State Government within the stipulated one month's time, it will be construed that the State Government agrees with the observation and has no comments to offer.

4. It has also been observed that many a time the Bill etc, contains drafting errors and State Governments, despite repeated persuasion, do not withdraw such Bills. Since a Bill containing errors cannot be presented to the President, State Governments are requested to kindly verify and check that a Bill is free from any drafting/typographical error. It is also observed that many a time the State Governments agree to make amendments as per the suggestions of Central Ministries/Departments, but still keeps on insisting for assent of the Bill in its original form. It is therefore requested that once the State Government tends to agree with the objections/ views of the Central Departments/Ministries, the State Government may consider sending a consolidated proposal alongwith suggested amendments/modifications instead of insisting for assent of the Bill in their original form

4. It is requested that all concerned may be instructed to follow the aforesaid guidelines scrupulously. All the existing cases pending with the State Government may kindly be reviewed in the light of these guidelines in a time-bound manner.

5. The receipt of this letter may kindly be acknowledged.

Sd/-
Thangkholun Haokip
Under Secretary to the Govt. of India
Tel./Fax : 011-23438095"

388. The aforesaid memorandum then clarifies that when the appropriate Ministry at the Centre, which is concerned with the substantive issues, makes any objections, the same is then shared with the concerned State government for further seeking their views or clarifications on the matter. This is done with the object of apprising the concerned Central Ministry of the clarifications of the State government on the matter. A time-limit of one month has been prescribed for the same. As aspect of concern highlighted herein was the inaction or delayed action on part of the State government to furnish these relevant clarifications which further has the ripple effect of postponing the decision of the Centre on the matter. It was further prescribed that the State Governments must rectify any drafting or typographical errors pointed out by the Central Government and once the suggestions of the Central Government are accepted, the State governments should send a

consolidated proposal containing the amendments rather than insisting on the assent to bill in the original form.

389. It becomes clear upon the perusal of the guidelines that in recognition of the urgent and important nature of Article 201, the Central Government has framed clear guidelines as regards the time limits and the manner in which references under Article 201 are expected to be disposed of. The guidelines also lay down that any delay caused in the seeking of clarifications and making of suggestions by any Ministry would have to be explained by furnishing reasons, in the absence of which, it would be assumed that they have no objections. It would be apposite for us to observe here that the idea of imposing timelines on the various stakeholders would not be antithetical or alien to the procedure that surrounds the discharge of constitutional functions under Article 201. The existence of the aforesaid two Office Memorandums further substantiates such an interpretation. Afterall, no memorandum which is contrary to the substance and spirit of Article 201 can be allowed to command any procedure between the Union and the States The factum of its existence and acceptance reveals that the requirement of expeditious or even a strict time-bound action would be consistent with the aim and object of Article 201.

390. The recommendations made by the Sarakaria and Punchhi Commissions respectively and the guidelines framed by the Central government taken collectively indicate the expediency involved in the disposal of references under Article 201 along with the importance of the role of the President. In this backdrop, it must be made clear that the Courts would not be powerless to intervene in cases where the exercise of function by a constitutional authority is not being done within a reasonable time.

391. We, therefore, deem it appropriate to adopt the timeline prescribed by the Ministry of Home Affairs in the aforesaid guidelines, and prescribe that the President is required to take a decision on the bills reserved for his consideration by the Governor within a period of three months from the date on which such reference is received. In case of any delay beyond this period, appropriate reasons would have to be recorded and conveyed to the concerned State. The States are also required to be collaborative and extend co-operation by furnishing answers to the queries which may be raised and consider the suggestions made by the Central government expeditiously.

392. We may now advert ourselves to the question on the nature of the proviso to Article 201 and whether it is intrinsically attached to the option of withholding of assent available to the President under Article 201, similar to how the first proviso is fastened to the option of withholding assent available

to the Governor under Article 200. Furthermore, how and in what scenarios would the President resort to directing the Governor to return the bill to the House or Houses together with a message?

393. This Court in ***State of Punjab*** *(supra)* had reached the conclusion that the option of withholding of assent under the substantive part of Article 200 would be tethered to the first proviso thereto, predominantly because of the clear use of the expression "*shall not withhold assent therefrom*" therein. It is limpid that an identical expression remains absent in the proviso to Article 201. Despite this, we must not lose sight of the fact that it was also authoritatively laid down in the same decision that a proviso may fulfil the purpose of being an exception or, explanation/addition to the substantive provision of a statute. Therefore, despite the absence of a similar expression mandating the President to not withhold assent in the proviso to Article 201, constitutional principles would require us to read the proviso in conjunction with the option of withholding assent which the President is empowered to choose from.

394. We say so because the scheme under which the constitutional heads of both the country and the State respectively are required to operate, does not contemplate the idea of an 'absolute veto', thereby meaning that there can be no withholding of assent without furnishing of reasons. This is owing to

the fact that the *simpliciter* withholding of assent both by the President and the Governor would be impermissible within the fundamental principles of a constitutional democracy.

395. Since the notion of 'simpliciter withholding' is an anathema to Article 200 of the Constitution, there cannot be any gainsaying that any 'withholding of assent' in terms of Article 201 must also only take place on the strength of a specific provision of the Constitution that envisages the requirement of assent of the President in the first place i.e., those traceable to instances envisaged under Article(s) 31A, 31C, 254(2), 288(2), 360(4)(i)(a), etc. but also must be accompanied by sound and specific reasons that necessitate the withholding, by clearly outlaying the policy considerations on which such an action is predicated.

396. While in the preceding paragraphs we have elaborated that the Governor does not hold the power to exercise 'absolute veto' on any bill, we see no reason why the same standard would also not apply to the President under Article 201 as well. The President is not an exception to this default rule which permeates throughout our Constitution. Such unbridled powers cannot be said to remain in either of these constitutional posts. The only exception that has been carved out by the Constitution as regards the exercise of powers by the Governor and that of the President under Article(s)

200 and 201 of the Constitution is that in the former, the Governor once having withheld assent from a bill would then be bound to assent upon the reconsideration of such bill, whereas in the latter no such compulsion is constitutionally imagined for the President, owing to the very fact that the grant or withholding of assent in terms of Article 201 is not the ordinary law-making procedure so far as the States are concerned, it is an extraordinary situation that only arises wherever policy considerations are involved in an otherwise State legislation but nevertheless having the propensity of a pan-country effect that is necessitated by the very quasi-federal nature of our polity.

397. The natural corollary of the constitutional abhorrence to the notion of simpliciter withholding of assent within our Constitution is that a requirement and responsibility of assigning reasons to the withholding of assent is cast upon the President. What follows from this is that the reasons assigned by the President for withholding of assent must be communicated to the State government concerned. Such an inference is legitimate since there remains no logic in assigning reasons if the same cannot be responded to and addressed by the State government. Putting the State government to proper notice of the reconsiderations or amendments to the bill, which the Council of Ministers at the Centre may have, is also an essential obligation inhered in such situations. In the absence of such communication, there

exists a real and grave danger of denying the State government the knowledge of the reasons due to which the bill passed by the State legislature had not been assented to. Furthermore, there may exist situations where the State governments may be amenable to some remedial changes or amendments. However, in the absence of any communication, they may be robbed of any chance to undertake those changes and ensure that the bill becomes law in their State. The State governments must not be prevented from entertaining or possibly incorporating the changes or amendments to the bill which was originally referred to the President, solely due to the absence of a transparent information sharing mechanism, which the State government may be said to be entitled to in a federal polity. Entertaining such a dialogue assumes importance since the fulcrum of a healthy Centre-State relations, in a constitutional democracy, is the transparent collaboration and cooperation between the Union and the States.

398. The mandate for an effective and purposeful dialogue has been constitutionally recognised and approved through the proviso to Article 201. Making the exercise of this proviso optional or subjecting it to the discretion of the President to use wherever and whenever he deems fit would deprive the States of an important safeguard which has been clearly laid down in the Constitution. Although we are not oblivious to the fact that the Office Memorandums referred by us above provide an opportunity for the State

government to respond to the objections that the concerned Ministry at the Centre may have, we must remember that such an Office Memorandum cannot be used to bypass a procedure already laid down in the text of the Constitution. Furthermore, the sending of objections and receipt of clarifications to and from the State government while the proposed bill is under consideration of the President through the concerned Ministry at the Centre, is to enable and infuse an informed decision making in the entire process to avoid any haste or non-application of mind, before taking any decision of either grant of assent or withholding thereof in the first place.

399. However, at this stage we may clarify, that although the Memorandum mandates that there must be a channel of transparent and purposeful communication between the State Government and the Central Government, yet this does not mean that the requirement of sending a message in terms of the proviso to Article 201 is eliminated. Mere existence of any communication that may take place prior to any decision being taken under Article 201 is no reason to shirk the constitutional responsibility of officially communicating the message to the concerned State legislature. There lies a very fundamental difference between the communication envisaged under the Memorandum and that under the proviso to Article 201. The former is only to address any preliminary objections or doubts as regards the proposed bill and which prevent a meaningful decision from being taken by the

President under Article 201 whereas under the latter, the idea is to communicate the reasons as to how the President arrived at his decision to withhold assent along with specifying the provisions of the proposed bill that should be reconsidered by the State legislature.

400. In other words, the sending of preliminary objections under the Memorandum cannot be equated to the message under the proviso to Article 201, which is used to communicate the aspects of the proposed bill to be reconsidered and how they may be reconsidered by the State legislature. Unlike the memorandum, the message under Article 201 of the Constitution is of seminal significance inasmuch as it facilitates the repassing of the bill by the State legislature. What emerges from the aforesaid is that when the President declares the withholding of assent of the State legislature's proposed bill, it would be his constitutionally bounden duty to also set into motion the proviso to Article 201.

401. In short, after due consultation with the State government, the President may either declare assent to the bill or he may declare that he withholds assent thereto. It would not be appropriate for the President to declare withholding of assent without first seeking clarifications from the State government as is mentioned in the guidelines featuring in the Office Memorandums. If, in the course of discussions, the State government expresses willingness to make

such changes to the bill as may be suggested by the Central government, then it would be open to the President to seek reconsideration of the bill by invoking the proviso, and upon the bill being re-considered and passed with such changes, the President may grant assent thereto.

402. At this stage, it would be prudent for the President while choosing to withhold assent to the bill and setting the proviso into motion, to address the issues, views, changes, amendments or recommendations that he may have comprehensively and in one go. Piecemeal exercise of the proviso to Article 201 must be dissuaded. This is to prevent the endless loop of sending and re-sending of the bill that may ensue between the President acting under the proviso to Article 201 and the House or Houses of the State Legislature. A purposive interpretation of Article 201 does not in any manner envisage a never-ending cycle of communications between the President and the State Government. Such conduct would tantamount to abusing the essence of the proviso which embodies fostering a collaborative spirit between the Union and the States. Therefore, the exercise of the power under the proviso must also be done in good faith and in a *bona fide* manner.

403. The object underlying Article 201 and the significance it holds for the enforceability of a State legislation would be frustrated if the procedure therein is reduced to an endless cycle of back and forth without any chance

for fruition of the aspirations of the people of the State on mere technicalities. Therefore, the President is expected to follow the procedure envisaged under the proviso with a sense of responsibility whenever necessary. In the ordinary course of action, a bill must be sent back for the reconsideration of the State legislature under the proviso to Article 201, only once.

404. After the bill is sent with a message to State legislature by the President and they repass it, with or without amendments, the President would be empowered to take a final call on the giving or withholding of assent on the bill concerned. If he chooses to assent to the bill, it would become law. There is no gainsaying to the fact that the President under Article 201 is conferred with the power to withhold a bill during the second round, without activating any other procedure, effectively bringing the legislative process vis-à-vis that same bill to an end, in contrast to the scheme of Article 200 wherein the Governor must mandatorily accord his assent to a Bill which is presented to him for the second time.

405. However, if he chooses to withhold his assent, the bill will not take birth as law. It must, however, be noted that even during the withholding of assent of a bill received on the second round, the President would be required to assign clear and sufficiently detailed reasons for arriving at such a decision.

Even in the second round, he has no power whatsoever to exercise absolute veto, as the Constitution does not provide anywhere that withholding of assent can be done simpliciter. Hence, the decision to choose the option of withholding assent after having set into motion the proviso to Article 201 must not be misconstrued to mean that he is exercising an 'absolute veto' or a power of a similar nature. We say so because *first,* the decision has not been arrived at in the first instance without communicating reasons to the State legislature and providing them with an opportunity to reconsider the bill, and *secondly,* the President is mandated to declare the withholding of assent to the repassed bill with cogent and sufficient reasons at this stage as well.

406. In cases where the reservation is on the ground of repugnancy of the State legislation with a Central legislation, or under one of the provisions where the assent of President has been envisaged for the purpose of enforceability or imparting immunity to the legislation, it would be a matter where the President would decide the question of grant of assent keeping in mind the desirability of having a uniformity in the policy across the country on the subject matter involved. This, as was held in ***Kaiser-I-Hind*** *(supra),* is evident from the fact that the assent under Article 201 is not the same as the assent to be granted under Articles 111 and 201, and the President has been given supremacy under the Constitution as regards the bills covered under

Article 201 by virtue of his constituent powers. In this regard, the observations of the Sarkaria Commission may be referred to as guiding principles by the President wherein it was observed thus:

> *"5.10.02 While we agree that the scrutiny by the Union Government need not be confined to the general constitutionality of the Bill or conformity with constitutional provisions under which the Bill has been reserved, we would sound a note of caution that non-conformity of a State Bill to the policy of the Union Government is not always a safe ground for withholding Presidential assent from it. In this connection it is necessary to bear in mind the general principles that underlie the division of legislative powers between the Union and the States with reference to Lists I, II and III of the Seventh Schedule. All matters in the Concurrent List are manifestly of common interest to the Union and the States. The supervisory powers conferred on the Union under Articles 201— and 254(2) enable it to secure a broad uniformity in the main principles of the laws on Concurrent List subjects throughout the country.*
>
> *5.10.03 From a functional angle, all matters in List II cannot be said to be exclusively of State or local concern. Several Entries in List II are either expressly subject to certain entries in List I or overlap to some extent matters in List I or List III. Securing uniformity and coordinating policy on the basic aspects of such matters in List II, having an interface with those in List I, cannot be extraneous to the functions exercised by the President in considering State Bills, under Article 201.*
>
> *5.10.04 Articles 31A(1), 31C, 288(2) and 304(b) provide for reservation of certain types of State Bills for the consideration and assent of the President. These provisions, read with Article 201—, enable the Union Executive to*

ensure, on the basic aspects of these special matters, a certain degree of uniformity in the interests of the social and economic unity of the country. Examination of the State Bills of this special category, from the point of their compatibility with the settled policy of the Union, therefore, does not involve any impropriety.

President should not withhold assent merely on consideration of policy differences with respect to matters in List II

5.10.05 Apart from all such matters on which a measure of uniform coordinated policy is desirable, there remains in List II an area which is purely of local or domestic concern to the States. It is with respect to Bills falling within this area of exclusive State concern that utmost caution, circumspection and restraint on the part of the Union Executive is required in the exercise of its supervisory powers under Article 201— . This is all the more necessary if the Bill has been reserved by the Governor in the exercise of his discretion, contrary to the advice of his Ministers. It may not be prudent to veto such a Bill merely on the ground that the legislative policy of the Bill, though otherwise constitutional, does not conform with what the Union Government thinks should be its policy with respect to the subject-matter of the Bill.

5.10.06 We recommend that as a matter of convention, the President should not withhold assent only on the consideration of policy differences on matters relating, in pith and substance, to the State List, except on the grounds of patent unconstitutionality such as those indicated in para 5.6.13 above."

407. Where the ground of reservation of a bill is patent unconstitutionality of a nature described in the exceptional situations in ***M.P. Special Police*** *(supra)*, that is where the bill upon becoming law would be a peril to democracy, the decision of the President must be guided by the fact that it is the constitutional courts that have been conferred with the ultimate authority of interpretation of the Constitution and the laws.

408. When a legislation is apprehended to be patently unconstitutional of the nature described in the above paragraph, the courts as the *sentinel on qui vive* have been empowered by the Constitution to test the *vires* of such legislation and there is no bar or limitation to the power of judicial review of the courts in this regard. This is in consonance with the constitutional scheme of checks and balances between the three wings of the Government so as to ensure that absolute power does not vest in one authority. Therefore, the power of judicial review by design acts as more than a sufficient safeguard against the enactment of an unconstitutional legislation by the legislature.

409. However, in cases of challenge to legislations duly passed by the legislature and assented to by the executive, the constitutional courts temper their judicial review with the presumption that such legislation is constitutional. This is because the courts deem it appropriate to not interfere with an

enactment that has been passed in the wisdom of the legislature and symbolises the political will of our people. It is in this context, that we find it worthwhile to note the remarks of the eminent constitutional jurist, Nani Palkhivala on the object of assent by the executive to a bill – "*The object of enacting these provisions [Articles 200 and 201] was perhaps that while the constitutionality of a law can be challenged in a court, its wisdom cannot be and that it would be better to prevent a clearly unconstitutional legislation from becoming law than to have it invalidated by a court later*." However, the aforesaid statement should not be construed devoid of its context, more particularly in ignorance of Article 143 of the Constitution which we shall now discuss.

410. We are in agreement that one of the object of Article 201 is also to prevent a bill that is perilous to democratic principles. However, we are also of the view that a bill appearing to be unconstitutional must be assessed by a judicial mind. It is for this reason that both the Sarkaria Commission and the Punchhi Commission categorically recommended the President to seek the opinion of this Court under Article 143 in respect of bills that may be apprehended to be patently unconstitutional.

411. Article 143 confers on the President the power to consult this Court any time when it appears to the President that a question of law or fact has arisen, or

is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of this Court upon it. Therefore, the President is not just precluded but constitutionally expected to refer the question of *vires* of a bill to this Court as the apex judicial institution to ascertain the constitutionality thereof and accordingly enable the President to take action in respect of the said bill under Article 201.

412. We are of the considered view that although the option to refer a bill to this Court under Article 143 may not be mandatory, yet the President, as a measure of prudence, ought to seek an opinion under the said provision in respect of bills that have been reserved for the consideration of the President on grounds of perceived unconstitutionality. This is all the more necessary as there is no mechanism at the State level for the Governor to refer bills to the constitutional courts for their advice or opinion thereupon. Under the scheme of the Constitution as we see it, there is only one possible way for the Governor to ascertain the palpable constitutionality of a bill, which is by way of reserving it for the consideration of the President who in turn is then expected to invoke Article 143. The Constitution is not a maze, but a labyrinth. Although both may semantically appear to be one and the same, yet there is a very fine but discernible difference between the two. The difference lies in the fact that in a maze one may lose their way within the multiple overlapping paths, with the possibility of each of them leading to a

dead-end, however in a labyrinth one eventually finds the way and in the process also come out more enlightened. Similarly, any questions emanating from the Constitution or pertaining thereto such as the constitutional vires of a law must be uncovered through the foresightedness of our Constitution. Wherever, a bill is reserved by the Governor for the President on the ground of patent unconstitutionality of the nature wherein the exercise of discretion by the Governor is permissible under Article 163(1), the Constitution expects the President to be the soothsayer, easing the sails for the Governor.

413. This very same constitutional obligation cast on the President is also provided in Article 154H of the Constitution of Sri Lanka wherein if the Governor is of the opinion that a statute enacted by a provincial council is unconstitutional, then he may refer the bill to the President who in turn is obligated to make a reference to the Supreme Court of Sri Lanka for obtaining pronouncement on the constitutional *vires* of such bill. Where the Supreme Court holds the statute to be constitutional, then the Governor is bound to grant assent. A similar framework is followed in the Republic of Kiribati where Section 66 of the Constitution of Kiribati allows the Beretitenti, who is the constitutional head of the State, to withhold assent to a bill only if he believes that such bill is inconsistent with the constitution. In such a case, he may return the bill back to the Parliament however, if the bill is passed again then the only option left with the Beretitenti is to either

assent or to refer its *vires* to the High Court for a declaration. If the court declares the bill to be constitutional then the assent must be granted forthwith.

414. The object of Article 143 in context of reference of bills, whose constitutionality is under consideration by the President under Article 201, has been explained by the N.L. Untwalia, J., ***In Re: The Special Courts Bill, 1978*** reported in **(1979) 1 SCC 380**. The relevant portion of his judgment is reproduced below:

> *"143. [...] I see no harm in adopting the method of giving some suggestions from the Court which may obliterate a possible constitutional attack upon the vires of a Bill. It may not be necessary or even advisable to adopt such a course in all References under Article 143 of the Constitution. But if in some it becomes expedient to do so, as in my opinion in the instant one it was so, I think, it saves a lot of public time and money to remove any technical lacuna from the Bill if the Government thinks that it can agree to do so. Of course the Bill by itself is not a law. It would be a law when passed by the Parliament. But even at the stage of the Bill when opinion of this Court is asked for, it seems to me quite appropriate in a given case to make some suggestions and then to answer the Reference on the footing of acceptance by the Government of such of the suggestions as have been accepted. [...]"*
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> (Emphasis supplied)

415. The view taken ***In Re: Special Courts*** *(supra)* was that consultative jurisdiction under Article 143 may avoid any possible challenges to the *vires*

of a bill if it becomes an Act. On basis of the dictum in the said reference, we are of the considered view that constitutional courts are not precluded from making suggestions or opining about the constitutional validity of a bill before the same becomes a law. This is because preventing a patently unconstitutional bill from being enacted saves not only public resources but also respects the wisdom of the legislature by providing the constitutional functionaries associated with the process of passage of a legislation, to review the bill and take appropriate actions. However, the approach of prevention before cure cannot be stretched to such extent, that the very process of reservation becomes a resort for thwarting the very legislative powers of the States. The President's recourse to Article 143 also palliates any apprehensions of bias or *mala fides* in the Central government's approach to bills reserved under Article 200.

416. The approach to be adopted by the courts in answering references under Article 143 in respect of reserved bills also requires a perusal of constitutional provisions viz. Articles 31A, 31C, 254, 288, 360, etc. that place a requirement of assent to a bill by the President, either expressly or by necessary implication. The scope of these Articles is largely centred around social, economic and political objectives that are sought to be achieved by a State. The necessity for Presidential assent in case of legislations under these Articles is for enabling the Central government to

streamline policies and ensure uniformity in socio-economic and welfare measures across States. In contemplation of the bills under these Articles, the central government, more often than not, has policy considerations in mind and the reasons for assent or withholding thereof may not be on purely legal grounds.

417. It is in such situations that the court has to be mindful as to whether the reference received from the President under Article 143 pertains to pure legal questions regarding interpretation of the Constitution or questions that are in the nature of a policy consideration. In case of the latter, the Supreme Court, having regard to the relevant facts and circumstances, can refuse to express its advisory opinion upon being satisfied that the questions presented to it are purely socio-economic or political questions and have no relation to the Constitution.

418. The exercise of a self-imposed restraint by the court in matters involving purely political considerations is in consonance with the doctrine of political thicket, that is, the courts do not venture into areas of governance in which the Constitution gives a prerogative solely to the executive. For instance, the question whether a State legislation repugnant to a central law should be assented to by the President or not under Article 254(2) is largely a policy decision on part of the Union Government. In such matters, the court has its

hands tied and does not attempt to encroach into the functions of the executive wing.

419. However, in certain exceptional circumstances, the Governor may reserve a bill for consideration of the President on grounds that the bill is perilous to the principles of democracy and an interpretation of the Constitution is necessary to ascertain whether such legislation should be granted assent or not. In such cases where a bill has been reserved majorly on the grounds of not being in consonance with the constitutional principles and involves questions of constitutional validity, the executive is supposed to exercise restraint. It is expected that the Union executive should not assume the role of the courts in determining the *vires* of a bill and should, as a matter of practice, refer such question to the Supreme Court under Article 143. We have no qualms in stating that the hands of the executive are tied when engaging with purely legal issues in a bill and only the constitutional courts have the prerogative to study and provide recommendations as regards the constitutionality of a bill.

420. Since the constitutionality of a bill is a matter which falls within the exclusive domain of the courts, the opinion rendered by the Supreme Court under Article 143 holds high persuasive value and should ordinarily be accepted by the legislature and the executive. We are no strangers to the arguments as regards the non-binding nature of the advisory jurisdiction of

this Court and that even though a bill may be referred to this Court by the President under Article 143, yet the opinion delivered thereunder may not be heeded to. However, merely because the jurisdiction under Article 143 is not binding does not undermine the principles used by this Court to determine the constitutionality of the bill. This Court in ***Re Special Courts*** *(supra)* has held thus:

> "*34. Learned counsel for the interveners who oppose the reference urged as one of the planks of attack on the reference that it is futile for us to consider the constitutional validity of the Bill because whatever view we may take, it will still be open to the Parliament to discuss the Bill and to pass or not to pass it as it pleases. This argument proceeds upon an unrealistic basis, its assumption being that the Parliament will not act in a fair and proper manner. True, that nothing that we say in this opinion can defer the Parliament from proceeding with the Bill or dropping it. That is because, no court will issue a writ or order restraining the Parliament from proceeding with the consideration of a Bill pending before it. But we cannot assume, what seems to us to be unfair to that august body, that even if we hold that the Bill is unconstitutional, the Parliament will proceed to pass it without removing the defects from which it is shown to suffer. Since the constitutionality of the Bill is a matter which falls within the exclusive domain of the courts, we trust that the Parliament will not fail to take notice of the court's decision.*"
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> (Emphasis supplied)

421. In our considered view, the only reason for which the legislative or the executive wing may not take note of the opinion delivered by the Supreme Court under Article 143 is when the grounds on which a State bill was

reserved for the consideration of the President, are not purely legal but also involve certain policy considerations, which may outweigh the issue of constitutionality. In such cases, if the President acts contrary to the advice of this Court and withholds assent to a bill, he must record cogent reasons and materials that justify not granting assent.

422. A lack of reasons or even insufficiency thereof may do violence to the concept of 'limited government' on which the edifice of our Constitution has been built. The whys and wherefores of the President's actions provide a basis for judicial review and allow the courts to assess the validity of the decision as well as ensure accountability between the three pillars of government which is in consonance with the idea of checks and balances in the constitutional set-up of our country.

423. In this context, we are of the considered view that the expression of intention by the President through a declaration of reasons supporting his actions under Article 201 is of paramount importance and this Court is not inhibited in any manner to make a presumption that the President and by extension, the Central government, may not have acted in a *bona fide* manner at the time when it exercises its powers of judicial review.

424. We would also like to make a reference to Rule 48 of the Tamil Nadu Government Business Rules, 1978. The said Rule provides that whenever there is legislative proposal for a subject matter falling within the Concurrent List, the concerned administrative department should consult the Ministry of Home Affairs, whenever possible. Similar requirement is laid down for the legislations falling under Articles 31A, 31B and 31C of the Constitution. The rules read as follows:

> *"(2) If a Bill which is proposed to be introduced in the Legislature falls within the concurrent Legislative Field, the administrative department principally concerned shall, whenever possible, consult the Ministry of Home Affairs of the Government of India on the proposed legislation. Consultation with the Government of India shall also be necessary in cases where a Bill may seek to amend a law falling within the concurrent legislative field, even though such law applies only to the State of Tamil Nadu. Such consultation should be made after the stage indicated in clause (1).*
>
> *(3) If a Bill which is proposed to be introduced in the Legislature attracts the provisions of clause (2) of Article 31, clause (1) of Article 31-A or Article 31-C, of the Constitution or it is a Bill on Land Re-forms, the Administrative department principally concerned with the subject matter shall consult the Ministry of Home Affairs of the Government of India before the introduction of the Bill (in the Legislature:*
>
> *Provided that the procedure in sub-rule (2) or sub-rule (3) need not be followed when the need for action is so urgent that prior consultation is not possible. In such cases, Ministry*

of Home Affairs of the Government of India shall be informed as soon as possible."

425. Thus, as a matter of prudence, the States should enter into pre-legislation consultation with the Central government before introducing legislations on matters pertaining to those provisions of the Constitution where the assent of the President may be required. Likewise, the Central government, should consider the legislative proposals sent by the State governments with due regard and expediency. Such a practice reduces friction between Centre-State relations and also ensures that future roadblocks are overcome in the beginning itself, thereby promoting public welfare.

vii. <u>On Exercise of Article 142</u>.

426. Article 142 of the Constitution empowers this Court, in the exercise of its jurisdiction to, pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

427. A three-Judge Bench of this Court in ***A.G. Perarivalan*** *(supra)* was dealing with the inaction on the part of the Governor of Tamil Nadu in deciding the remission petition of the petitioner therein. Despite the resolution passed by the State government in favour of granting remission to the petitioner, the Governor first kept the matter pending with him for a long duration and

thereafter, without taking a decision thereupon, referred the same to the President.

428. The Court, taking into consideration the huge delay caused by inaction on the part of the Governor, and also the adverse impact of such inaction on the liberty of the petitioner therein, exercised its powers under Article 142 of the Constitution and deemed the petitioner to have served his sentence and ordered his release forthwith. The Court observed thus:

> *"Given that his petition under Article 161 remained pending for two-and-a-half years following the recommendation of the State Cabinet for remission of his sentence and continues to remain pending for over a year since the reference by the Governor, we do not consider it appropriate to remand the matter for the Governor's consideration. In the absence of any other disqualification and in the exceptional facts and circumstances of this case, in exercise of our power under Article 142 of the Constitution, we direct that the appellant is deemed to have served the sentence in connection with Crime No. 329 of 1991. The appellant, who is on bail, is set at liberty forthwith."*
>
> (Emphasis supplied)

429. The Court, while summarizing its observations, further observed that the reference made by the Governor to the President had no constitutional backing and therefore the reference having been declared erronoeus, and the Council of Ministers having advised in the favour of remission, there was

no requirement to remand the matter to the Governor for taking a decision thereupon. The observations read thus:

> *"38.3. The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two-and-a-half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, whereby "the Governor is but a shorthand expression for the State Government" as observed by this Court [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112]."*

430. Coming to the facts of the present case, the Governor first withheld the ten bills under question and later despite the said Bills being repassed by the State legislature and presented before him again under the first proviso to Article 200, still reserved them for the consideration of the President. We have elaborated in detail that owing to the clear language in which the first proviso is couched, there would never arise, except in extraordinary situations, any occasion for the Governor to reserve a reconsidered bill for the consideration of the President. The said bills, in the absence of any message given by the Governor under the first proviso, were taken up for reconsideration by the State Assembly and passed in their original form, and presented to the Governor for his assent. Thus, undoubtedly, it was not open to the Governor to reserve the bills for the consideration of the President and he ought to have granted assent.

431. Considerable time has elapsed since these ten Bills were originally passed and presented to the Governor for assent. Two out of the ten Bills even date back to 2020. It is important to keep in mind that the tenure of the State legislature is of five years and the representatives are accountable to their electorate as regards the enactment of legislations addressing the issues faced by the electorate. At the end of every five years, the elected representatives have to go back to their electorate and provide a report card, based upon which the people, in whom the ultimate sovereignty rests, cast their votes. Bills, if kept pending for long despite their passage by the State legislature, militate against this very fundamental, essential to the sustenance of a representative democracy based on direct elections.

432. The conduct exhibited on part of the Governor, as it clearly appears from the events that have transpired even during the course of the present litigation, has been lacking in *bonafides*. There have been clear instances where the Governor has failed in showing due deference and respect to the judgments and directions of this Court. In such a situation, it is difficult for us to repose our trust and remand the matter to the Governor with a direction to dispose of the bills in accordance with the observations made by us in this judgment. Article 142 empowers this Court to do complete justice and in the facts of the present case, more particularly, in light of the fact that the option of granting assent to the repassed bills was the only constitutionally permissible

option available with the Governor, we deem it absolutely necessary and appropriate to grant that very relief by exercising our extraordinary powers. No meaningful purpose would be served by keeping the bills, some of which have already been pending for incredulously long periods, pending for more time. Therefore, we deem the assent to have been granted.

433. Constitutional authorities are creatures of the Constitution and are bound by the limitations prescribed by it. No authority, in exercise of its powers, or to put it precisely, in discharge of its duties, must attempt to breach the constitutional firewall. The office of the Governor is no exception to this supreme command. Whenever there is an attempt by any authority to move beyond the bounds of the Constitution, this Court has been entrusted with the responsibility to act as the *Sentinel on the qui vive* and bring back the authority within the constitutionally permissible limits by exercising judicial review. We are not exercising our power under Article 142 in a casual manner, or without giving a thought to it. On the contrary, it is only after deepest of deliberations, and having reached at the firm conclusion that the actions of the Governor - *first* in exhibiting prolonged inaction over the bills; *secondly* in declaring a simplicter withholding of assent and returning the bills without a message; and *thirdly* in reserving the bills for the President in the second round - were all in clear violation of the procedure envisaged under the Constitution, that we have decided to declare the deeming of

assent to the ten bills, considering it to be our constitutionally bounden duty. In our view, that is the only way to ensure that complete justice is done with the parties without any delay, and without possibility of any further delay due to any inaction on the part of the Governor, or lack of deference on his part to this judgment.

H. CONCLUSION

434. In light of the aforesaid discussion, we answer the questions of law formulated by us as under:

(I) In discharge of his functions under Article 200, the Governor has three options to choose from when a bill passed by the State legislature is presented to him –

i. First, to assent;

ii. Secondly, to withhold assent; or

iii. Thirdly, to reserve the bill for the consideration of the President.

(II) The first proviso to Article 200 should be read in conjunction with the option of withholding of assent provided in the substantive part of Article 200. It is not an independent course of action and has to be mandatorily initiated by the Governor in cases where the option

of withholding of assent is to be exercised. The decision of this Court in ***State of Punjab*** *(supra)* lays down the correct position of law in this regard.

(III) The expression "*the bill falls through unless the procedure under the first proviso is followed*" as used in ***Valluri Basavaiah Chowdhary*** *(supra)* signifies that once the Governor declares withholding of assent and returns the bill to the House or Houses, the bill would lapse or fall through unless the House or Houses reconsider the bill in accordance with the suggestions made by the Governor in his message and present it to him after repassing. The expression *"unless the procedure under the first proviso is followed"* cannot be construed to mean that the Governor exercises discretion in setting the machinery prescribed under the first proviso in motion. Once the Governor exercises the option of withholding assent, he is under an obligation to follow the procedure prescribed in the first proviso *"as soon as possible"*.

(IV) The decision of this Court in ***State of Punjab*** *(supra)* cannot be said to be *per incuriam*. The observations made in the decision as regards attaching of the first proviso with the option of withholding of assent are supported by the observations made in ***Valluri Basavaiah Chowdhary*** *(supra).*

(V) Neither the concept of 'pocket veto' nor that of 'absolute veto' finds place within the constitutional scheme and mechanism envisaged under Article 200 of the Constitution. The substantive part of Article 200 consciously uses the expression "*shall declare*" to signify that there is no scope of inaction, and whenever a bill is presented to the Governor, he is under a constitutional obligation to adopt one of the three courses of action available therein. Further, the expression "*as soon as possible*" in the first proviso permeates Article 200 with a sense of expediency and does not allow the Governor to sit on the bills and exercise pocket veto over them. Similarly, by virtue of the first proviso being intrinsically and inextricably attached to the option of withholding of assent, there is no scope for the Governor to declare a simpliciter withholding of assent, meaning thereby that 'absolute veto' is also impermissible under Article 200.

(VI) It goes without saying that the scheme of Article 200 is characterized by the movement of the bill from one constitutional authority to another and that too with a sense of expediency. It is trite to say that Article 200 occupies an important role of giving the bills passed by the State legislature the authority of an Act. Without the procedure envisaged under Article 200, the bills remain mere

pieces of paper, skeletons without any flesh or lifeblood flowing through their veins, mere documentation of the aspirations of the people without any possibility of bringing them to fruition.

(VII) As a general rule, it is not open for the Governor to reserve a bill for the consideration of the President once it is presented to him in the second round, after having been returned to the House previously as per the first proviso. The use of the expression "*shall not withhold assent therefrom*" appearing in the first proviso places a clear embargo on the Governor and is a clear enunciation of the requirement that the Governor must assent to a bill which is presented to him after complying with the procedure laid down in the first proviso. 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, as discussed in paragraph 204 of this judgment. In such a scenario, it would be open for the Governor to choose from the three options provided in the substantive part of Article 200.

(VIII) In the facts of the present case, the reservation by the Governor of the ten Bills for the consideration of the President in the second round was illegal, erroneous in law and is thus liable to be set aside.

As a result, any subsequent action taken upon the said Bills by the President also does not survive and is thus set aside.

(IX) The Bills, having been pending with the Governor for an unduly long period of time, and the Governor having acted with clear lack of *bona fides* in reserving the Bills for the consideration of the President, immediately after the pronouncement of the decision of this Court in ***State of Punjab*** *(supra)*, are deemed to have been assented to by the Governor on the date when they were presented to him after being reconsidered.

(X) There is no expressly specified time-limit for the discharge of the functions by the Governor under Article 200 of the Constitution. Despite there being no prescribed time-limit, Article 200 cannot be read in a manner which allows the Governor to not take action upon bills which are presented to him for assent and thereby delay and essentially roadblock the law-making machinery in the State.

(XI) The use of the expression "*as soon as possible*" in the first proviso makes it clear that the Constitution infuses a sense of urgency upon the Governor and expects him to act with expediency if he decides to declare the withholding of assent.

(XII) The settled position of law is that where no time-limit for the exercise of a power is prescribed, the same must be exercised in a reasonable time period. Guided by the decisions of this Court in ***A.G. Perarivalan*** *(supra)* and ***Keisham*** *(supra)*, we find that it is no more *res-integra* that the courts are well-empowered to prescribe a time-limit for the discharge of any function or exercise of any power which, by its very nature, demands expediency.

(XIII) Prescription of a general time-limit by this Court, within which the ordinary exercise of power by the Governor under Article 200 must take place, is not the same thing as amending the text of the Constitution to read in a time-limit which would fundamentally change the procedure and mechanism stipulated by Article 200. Prescription of such time-limits within the scheme of Article 200 is with a view to lay down a determinable judicial standard for ascertaining the reasonable exercise of such power and to curtail any arbitrary inaction. This Court while prescribing a time-limit for the exercise of power, is guided by the inherent expedient nature of the procedure prescribed under Article 200.

(XIV) Keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, the following

timelines are being prescribed. Failure to comply with these timelines would make the inaction of the Governors subject to judicial review by the courts:

(i) In case of either withholding of assent or reservation of the bill for the consideration of the President, upon the aid and advice of the State Council of Ministers, the Governor is expected to take such an action forthwith, subject to a maximum period of one-month;

(ii) In case of withholding of assent contrary to the advice of the State Council of Ministers, the Governor must return the bill together with a message within a maximum period of three-months;

(iii) In case of reservation of bills for the consideration of the President contrary to the advice of the State Council of Ministers, the Governor shall make such reservation within a maximum period of three months;

(iv) In case of presentation of a bill after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one-month.

(XV) 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. Thus, only in instances where the Governor is by or under the Constitution required to act in his discretion, would he be justified in exercising his powers under Article 200 contrary to the advice of the Council of Ministers. Further, any exercise of discretion by the Governor in exercise of his powers under Article 200 is amenable to judicial review.

(XVI) We declare the view taken in ***B.K. Pavitra*** *(supra)* to be *per incuriam* to the extent of the following two observations made therein – *First,* that the Constitution confers discretion upon the Governor insofar as the reservation of bills for the consideration of the President is concerned and; *Secondly*, that the exercise of discretion by the Governor under Article 200 is beyond judicial scrutiny.

The removal of the expression "*in his discretion*" from Section 75 of the GoI Act, 1935 when it was being adapted as Article 200 of the Constitution clearly indicates that any discretion which was available to the Governor under the GoI Act, 1935 in

respect of reservation of bills became unavailable with the commencement of the Constitution.

The decision of ***B.K. Pavitra*** *(supra)* is not in consonance with the observations made by the larger bench decision of this Court in ***Samsher Singh*** *(supra)*. The majority opinion in ***Samsher Singh*** *(supra)* in paragraph 28 observed that "*Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion"* At the cost of repetition, we again reiterate "***and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers****".*

The decision in ***Samsher Singh*** *(supra)* illustrated certain provisions of the Constitution which expressly required the Governor to exercise his powers in his discretion. The second proviso to Article 200 was one such illustration. Thus, it is amply clear from the dictum in ***Samsher Singh*** *(supra)* that the seven-Judge Bench, after taking into consideration the scheme of Article

200, observed that the second proviso to Article 200 was the only instance where the Governor had been entrusted with the power to act in his own discretion. Subsequent Constitution Bench decisions in ***M.P. Special Police*** *(supra)* and ***Nabam Rebia*** *(supra)* clarified that besides the instances where the Governor has been expressly conferred with discretionary powers, there may still be certain exceptional circumstances wherein it would be legitimate for him to act in his own discretion as indicated by us in paragraph 300. However, the general rule remains that the Governor acts upon the aid and advice of the State Council of Ministers.

Under Article 200 of the Constitution, the Governor does not possess any discretion in the exercise of his functions and has to mandatorily abide by the advice tendered to him by the Council of Ministers. The only exceptions to this general rule are as follows:

(i) Where the bill is of a description as provided under the second proviso to Article 200;

(ii) Where the bill is of a nature covered by Articles 31A, 31C, 254(2), 288(2), 360(4)(a)(ii) etc. wherein assent of the President is a condition precedent before the bill can take effect as law;

(iii) Where the bill is of a nature that if allowed to take effect then it would undermine the Constitution by placing the fundamental principles of a representative democracy in peril.

The observations made in ***B.K. Pavitra*** *(supra)* that "*a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200"* do not take into consideration the decision of ***Samsher Singh*** *(supra)* and is for this reason *per incuriam.* It failed to consider that Article 200 which had been duly considered by ***Samsher Singh*** *(supra)* was found to contain only one instance where the exercise of discretion was expressly provided, that being the second proviso thereto. Besides this, as already aforestated, it failed to notice the removal of the expression "*in his discretion*" from Section 75 of the GoI Act, 1935 which ultimately culminated into Article 200.

(XVII) Under Article 201, the occasion for the reservation of a bill for the consideration of the President by the Governor may arise where a constitutional provision makes the assent of the President to be a condition precedent to a State legislation becoming enforceable or for the purpose of securing some immunity to the State legislation. Such a requirement can be found in Articles 31A, 31C, 254(2),

288(2), 360(4)(a)(ii) etc. The second proviso to Article 200 also makes reservation for the consideration of the President mandatory. As we have also discussed, there may be certain other situations where by peril to fundamental principles of representative democracy, the Governor may, in exercise of his discretion, reserve a bill for the consideration of the President.

(XVIII) There is no 'pocket veto' or 'absolute veto' available to the President in discharge of his functions under Article 201. The use of the expression "shall declare" makes it mandatory for the President to make a choice between the two options available under the substantive part of Article 201, that is, to either grant assent or to withhold assent to a bill. The constitutional scheme does not, in any manner, provide that a constitutional authority can exercise its powers under the Constitution arbitrarily. This necessarily implies that the withholding of assent under Article 201 is to be accompanied by the furnishing of reasons for such withholding. We cannot say for a moment that the President would be allowed to not exercise the proviso to Article 201 and not communicate reasons for the withholding of assent to the State legislature, as doing so would make the very inclusion of the proviso in Article 200

redundant. Thus, the proviso to Article 201 could be said to attach with the option of withholding of assent.

(XIX) The position of law is settled that even where no time-limit is prescribed for the exercise of any power under a statute, it should be exercised within a reasonable time. The exercise of powers by the President under Article 201 cannot be said to be immune to this general principle of law. Keeping in mind the expedient nature of the provision and having regard to the reports of Sarkaria and Puncchi Commissions, as well as the Memorandum dated 04.02.2016 issued by the Ministry of Home Affairs, we prescribe that the President is required to take a decision on the bills reserved for his consideration by the Governor within a period of three months from the date on which such reference is received. In case of any delay beyond this period, appropriate reasons would have to be recorded and conveyed to the concerned State.

(XX) Whenever, in exercise of the powers under Article 200 of the Constitution, a bill is reserved for the consideration of the President on grounds of patent unconstitutionality that are of such a nature so as to cause peril to the principles of representative democracy, the President, must be guided by the fact that it is the constitutional

courts which have been entrusted with the responsibility of adjudicating upon the questions of constitutionality and legality of an executive or legislative action. Therefore, 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.

(XXI) Judicial review and justiciability are not synonymous concepts. The power of judicial review in a written constitution is implicit. Unless expressly excluded by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. On the other hand, justiciability relates to a particular field falling within the purview of the power of judicial review.

(XXII) The determining factor in deciding whether a power would be subject to judicial review is the subject-matter of such power and not its source. ***Indra Sawhney*** *(supra)* observed that the yardstick of subjecting an act or a decision to judicial review is not whether it is a legislative act or an executive decision on a policy matter but whether it violates any constitutional guarantee or the rights under Part III of the Constitution. The Governor, wherever he acts in his

discretion under the Constitution, does so by virtue of his position as the constitutional and formal head of the State. It has been held in a catena of decisions that exercise of any power under the Constitution must conform to the limits set by the Constitution itself. Article 200 is no exception to this general rule.

(XXIII) In light of this, the observations made by this Court in ***Hoechst*** *(supra)* that the assent of the President is non-justiciable, cannot be stretched to mean that as a general rule, the exercise of powers by the Governor under Article 200 in his discretion would also be immune from judicial review. While grant of assent by the Governor or the President, being acts which are generally taken upon the aid and advice of the Council of Ministers, may not be justiciable, 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.

(XXIV) We summarise our findings on judicial review of the exercise of power by the Governor under Article 200 and the exercise of power by the President under Article 201 as follows:

a. Where the Governor reserves a bill for the consideration of the President in his own discretion and contrary to the aid and advice tendered to him by the State Council of Ministers, it shall be open to the State Government to assail such an action before the appropriate High Court or this Court. Such a challenge can broadly be made on the following grounds:

(i) Where the reservation is on the ground that the bill is of a description falling under the Second Proviso to Article 200 of the Constitution, it may be assailed on the ground that the bill or any provision thereof does not so derogate from the powers of the High Court so as to endanger the position which that court is designed by the Constitution to fill. The Governor while reserving a bill on this count shall be expected to provide clear reasons and also point to the specific provision(s) of the bill which, in his opinion, attract the Second Proviso. This question being purely of a legal nature would be completely justiciable and the competent court would be, after a proper adjudication, fully authorized to approve or disapprove of such reservation by the Governor. If such a challenge finds favour with the competent court, then, subject to any other

considerations, it would be a fit case for the issuance of a writ in the nature of mandamus to the Governor for appropriate action. If, however, the challenge should fail then the mechanism envisaged under Article 201 of the Constitution will spring into action.

(ii) Where the reservation is on account of the bill attracting any provision of the Constitution wherein the assent of the President is a condition precedent for the proper enactment and enforceability of such a bill as a law (such as under Article 364A2) or for the purpose of securing any immunity (such as under Article 31A) or overcoming any repugnancy that may exist *qua* a Central Legislation (under Article 254(2)), then the Governor is expected to make a specific and clear reference to the President properly indicating the reasons for such reservation and inviting his attention as described in ***Kaiser-I-Hind*** *(supra)*. Such a reservation can be assailed by the State Government, if the reference made by the Governor either fails to indicate the reasons for such reservation as discussed above or that the reasons indicated are wholly irrelevant, *mala-*

fide, arbitrary, unnecessary or motivated by extraneous considerations. Then such a reservation would be liable to be set aside. This question being purely of a legal nature would be completely justiciable and the competent court would be after a proper adjudication fully authorized to approve or disapprove of such reservation by the Governor. If such a challenge finds favour with the competent court, then, subject to any other considerations, it would be fit case for issuance of a writ in the nature of mandamus to the Governor for appropriate action. If however, the challenge should fail then the mechanism envisaged under Article 201 of the Constitution will spring into action.

(iii) Where the reservation of a bill by the Governor for the consideration of the President is on the grounds of peril to democracy or democratic principles or on other exceptional grounds as mentioned in ***M.P. Special Police*** *(supra)* and ***Nabam Rebia*** *(supra)* then the Governor would be expected to make a specific and clear reference to the President properly indicating the reasons for entertaining such a belief by pinpointing the

specific provisions in this regard and the consequent effect that may ensue if such a bill were to be allowed to become a law. The Governor while making such a reference should also indicate his subjective satisfaction as to why the aforesaid consequences that may ensue cannot be possibly curtailed or contained by taking recourse to the constitutional courts of the country. It shall be open to the State Government to challenge such a reservation on the ground of failure on part of the Governor to furnish the necessary reasons as discussed aforesaid or that the reasons indicated are wholly irrelevant, *mala-fide*, arbitrary, unnecessary or motivated by extraneous considerations. This being a question completely capable of being determined by the constitutional courts, would be fully justiciable.

(iv) Reservation of a bill on grounds other than the ones mentioned above, such as personal dissatisfaction of the Governor, political expediency or any other extraneous or irrelevant considerations is strictly impermissible by the Constitution and would be liable to be set-aside forthwith on that ground alone. This will also

encompass reservation of a bill by the Governor after having already exercised the option of withholding of assent in terms of Article 200 except in such exceptional circumstance as mentioned in paragraph 204 of this judgment.

(v) Where the Governor exhibits inaction in making a decision when a bill is presented to him for assent under Article 200 and such inaction exceeds the time-limit as has been prescribed by us in paragraph 250 of this judgment then it shall be open to the State Government to seek a writ of mandamus from a competent court against the Governor directing expeditious decision on the concerned bill as is the mandate of the Constitution, however, it is clarified that the Governor may successfully resist such a challenge on providing sufficient explanation for the delay caused.

b. Where the Governor reserves a bill for the consideration of the President and the President in turn withholds assent thereto then, it shall be open to the State Government to assail such an action before this Court. Such a challenge can broadly be made on the following grounds:

(i) Where a State bill has been reserved by the Governor for the consideration of the President on the ground that assent of the President is required for the purpose of making the bill enforceable or securing some immunity therefor, then in such cases the withholding of assent by the President would be justiciable to the limited extent of exercise of such power in an arbitrary or *malafide* manner. Owing to the political nature of the assent of the President in these categories of bills, the courts would impose a self-restraint.

(ii) Where a State bill has been reserved by the Governor, in his discretion, for the consideration of the President on the ground that the bill appears to be patently unconstitutional for placing the principles of representative democracy in peril, the withholding of assent by the President would, in ordinary circumstances, involve purely legal and constitutional questions and therefore be justiciable without any impediments imposed by the doctrine of political thicket. In such cases, it would be prudent for the President to obtain the advisory opinion of this Court by

way of a reference under Article 143 and act in accordance with the same to dispel any apprehensions of bias, arbitrariness or *mala fides*.

(iii) Where the President exhibits inaction in making a decision when a bill is presented to him for assent under Article 201 and such inaction exceeds the time-limit as has been prescribed by us in paragraph 391 of this judgment then it shall be open to the State Government to seek a writ of mandamus from this Court.

435. For all the foregoing reasons we have reached the following conclusion:

a. The reservation of the ten Bills which are the subject-matter of challenge in the present petition by the Governor for the consideration of the President on 28.11.2023 after their due reconsideration by the State legislature in terms of the first proviso to Article 200 being in contravention of the procedure prescribed under Article 200 as explained by us hereinabove is declared to be erroneous in law, *non-est* and thus, is hereby set-aside.

b. As a result of the above, any consequential steps that might have been taken by the President on these ten Bills is equally *non-est* and is hereby set-aside.

c. Having regard to the unduly long period of time for which these Bills were kept pending by the Governor before the ultimate declaration of withholding of assent and in view of the scant respect shown by the Governor to the decision of this Court in ***State of Punjab*** *(supra)* and other extraneous considerations that appear to be writ large in the discharge of his functions, we are left with no other option but to exercise our inherent powers under Article 142 of the Constitution for the purpose of declaring these ten Bills as deemed to have been assented on the date when they were presented to the Governor after being reconsidered by the State legislature i.e., on 18.11.2023.

436. We are in no way undermining the office of the Governor. All we say is that the Governor must act with due deference to the settled conventions of parliamentary democracy; respecting the will of the people being expressed through the legislature as-well as the elected government responsible to the people. He must perform his role of a friend, philosopher and guide with dispassion, guided not by considerations of political expediency but by the sanctity of the constitutional oath he undertakes. In times of conflict, he must be the harbinger of consensus and resolution, lubricating the functioning of the State machinery by his sagacity, wisdom and not run it into a standstill. He must be the catalyst and not an inhibitor. All his actions must be impelled keeping in mind the dignity of the high constitutional office that he occupies.

437. The Governor before he assumes office undertakes an oath to discharge his functions to the best of his ability in order to preserve, protect and defend the Constitution and the rule of law, along with avowing to devote himself to the service and well-being of the people of the State. Therefore, it is imperative that all his actions be guided in true allegiance to his oath and that he faithfully executes his functions that he is entrusted with by and under the Constitution. There is a reason why a specific reference is made to the well-being of the people of the State in his oath, there is a reason why he is sworn in to pledge himself to the service of the same people; the Governor as the constitutional head of the State is reposed with the responsibility to accord primacy to the will and welfare of the people of the State and earnestly work in harmony with the State machinery, as his oath not only makes this mandate anything but clear but rather also demands it of the Governor owing to the intimate and delicate nature of the functions that he performs and the potency of the ramifications that could ensue or be unleashed upon the State. Due to this, the Governor must be conscious to not create roadblocks or chokehold the State Legislature in order to thwart and trade the will of the people for political edge. The members of the State Legislature having been elected by the people of the State as an outcome of the democratic expression are better attuned to ensure the wellbeing of the people of the State. Hence, any action contrary to the express choice of the

people, in other words, the State legislature would be a renege of his constitutional oath.

438. Before we part with the matter, we find it apposite to observe that constitutional authorities occupying high offices must be guided by the values of the Constitution. These values that are so cherished by the people of India are a result of years of struggle and sacrifice of our forefathers. When called upon to take decisions, such authorities must not give in to ephemeral political considerations but rather be guided by the spirit that underlies the Constitution. They must look within and reflect whether their actions are informed by their constitutional oath and if the course of action adopted by them furthers the ideals enshrined in the Constitution. If the authorities attempt to deliberately bypass the constitutional mandate, they are tinkering with the very ideals revered by its people upon which this country has been built.

439. We take this opportunity to quote Dr. B.R. Ambedkar's concluding speech in the Constituent Assembly, which is as relevant today as it was in 1949 – "*However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot*".

440. It is our duty as the highest constitutional court to recognize such evil and increasingly strengthen our initiative to remove them. In the last, we may say with the utmost responsibility and all the humility at our command that it is only when the constitutional functionaries exercise their powers by and under the Constitution that they show deference to the people of India who have given the Constitution to themselves.

441. The soul of India is its Constitution. Our Republic, the foresight of dynamic visionaries. What a great edifice, they built, ensuring sovereignty with democratic values. The Constitution is our bedrock ensuring our safety and security. It outlines a process that keeps us rooted in values. We read it for reference and for every policy decision. Without it, we would be lost and make many mistakes. It is now seventy-five years old, but we still keep turning to it, why? Because it guarantees our rights and sets benchmarks for our responsibilities. The laws and rules that uplift all people sprout from its pristine womb, welfare of all is its primary concern, but its sanctity and safety should be our prime concern.

442. We would also like to refer to a snippet of history from the days of infancy of the Constitution and the Indian Republic, which has been narrated in the "Eminent Parliamentarians Monograph Series on Dr. Rajendra Prasad"

published by the Lok Sabha Secretariat in 1990 (pp. 102). In the matter concerning the constitutional role of the President in legislative processes, an issue arose during the deliberations on the Hindu Code Bill, wherein the first President of India, Dr. Rajendra Prasad, expressed reservations and sought to assert his independent authority to withhold assent to the legislation. A reference was made to the first Attorney General for India, M.C. Setalvad, who clarified that the role of the President under the Indian Constitution was analogous to that of the British monarch and he was expected to serve as a constitutional figurehead. The Attorney General opined that the President does not possess the authority to act contrary to the advice of the Council of Ministers. The opinion of the Attorney General was, with respect and magnanimity, accepted by the President and thus the ensuing controversy between the Prime Minister and the President was laid to rest.

443. Such was the commitment shown by the stalwarts to upholding the spirit of the Constitution.

444. We hope and trust that the Governor and the State Government would work in tandem and harmoniously keeping the interests and well-being of the people as their paramount consideration.

445. We direct the Registry to send one copy each of this judgment to all the High Courts and the Principal Secretaries to the Governors of all States.

446. In the result, the present writ petition stands disposed of in the aforesaid terms.

447. Pending application(s), if any, stand disposed of.

..... J.
(J.B. Pardiwala)

..... J.
(R. Mahadevan)

New Delhi;
08th April, 2025