



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## THE DE FACTO UNION VETO: ANALYSING THE CONFLICT BETWEEN THE SUPREME COURT'S APRIL 2025 VERDICT AND THE NOVEMBER 2025 ADVISORY OPINION ON GUBERNATORIAL ASSENT.

~ ADITYA NARAYAN GUPTA

### ABSTRACT

The Constitution of India currently has 448 articles as of 2025, organised into 25 parts and 12 schedules. Article 200 of the Constitution views the governor as an enabler of the legislative process rather than a veto power. However, the recent trend of Gubernatorial inaction in states like Tamil Nadu, Kerala, and Punjab has caused a federal crisis that has contributed to a federal impasse that has significantly impeded legislative functioning. This paper critically analyses the jurisprudential shift in the approach to this issue throughout 2025. Specifically, in the light of the landmark judgment of the State of Tamil Nadu v. Governor (April 2025), which addressed the Governor's inaction in the legislative process by withholding bills and delaying assent. The Supreme Court emphasised that Governors are constitutionally expected to act 'as soon as possible', while deliberately refraining from prescribing rigid or numerical timelines, against the subsequent Presidential Reference Advisory Opinion (November 2025), which appears to soften these timelines in the favour of gubernatorial discretion. This paper argues that the ambiguity introduced by the Advisory opinion raises the possibility of a "De Facto Union Veto," which would enable the Centre(via the Governor) to prevent State legislation indefinitely. By examining the Constituent Assembly Debates and the Sarkaria Commission recommendations, the paper concludes that a strict judicial timeline is the only remedy to maintain the balance and prevent the office of the governor from becoming a parallel centre of power.

**Keywords:** Constitution of India, Supreme Court, Advisory Opinion, Presidential Reference, State of Tamil Nadu, Governor's Case, Article 200.

## I. INTRODUCTION

The constitutional framework of India views the governor as an essential, yet strictly regulated bridge between the Union and the States. The Governor's office was meant to support, not hinder the legislative process; it was designed as a constitutional sentinel rather than a political representative. Article 200 of the Constitution grants certain powers to reflect this intent of the governor through prescribing a limited set of options upon the presentation of a Bill after the Bill passed from a State Legislature by granting assent, withholding assent, or reserving the Bill for reconsideration by the President, or returning it for reconsideration "as soon as possible."<sup>1</sup> This framework noticeably lacks explicit authority for delaying assent indefinitely.

However, throughout the past decade and more particularly in the year 2024-25, constitutional practice has revealed an increasing gap between the political reality and the constitutional framework. The office of the Governor, once described by the Sarkaria Commission as the "linchpin of the constitutional apparatus," has become more and more of a source of conflict at the federal level in India<sup>2</sup>. The constitutional framework states that the Governor is the titular head of the State, bound by the aid and advice of the Council of Ministers under Article 163, with limited discretionary powers.<sup>3</sup> Yet, Several States ruled by the opposition – particularly Tamil Nadu, Kerala, and Punjab- have witnessed an emerging constitutional pattern, 'the strategic use of prolonged inaction.' The States have alleged that Governors have resulted in substantial delays in the legislative process remain in constitutional limbo neither assenting to bills nor formally exercising any of the constitutionally recognised alternatives under Article 200<sup>4</sup>. This tendency, which is often referred to as a "pocket veto" in political discourse, has led to policy stagnation, prolonged legislative uncertainty, policy paralysis, and a gradual decline in the autonomy of states within India's federal structure.

While the Constitution does not expressly provide for any form of indefinite executive inaction equivalent to a veto, in relation to State legislation, the results of indefinite inaction on the part of the governor are functionally indistinguishable from a veto exercised without accountability. This raises a foundational constitutional question: whether silence or inaction by a constitutional authority can be treated as a permissible form of discretion, or whether it amounts to an abuse of constitutional power. This growing administrative uncertainty forces states to seek judicial aid for basic lawmaking.<sup>5</sup>

The year 2025 marked a watershed moment in this conflict. In April 2025, the Supreme Court in *State of Tamil Nadu v. Governor of Tamil Nadu* delivered a landmark judgment seeking to enforce constitutional accountability by rejecting indefinite gubernatorial inaction and reading

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<sup>1</sup> INDIA CONST. art. 200.

<sup>2</sup> COMMISSION ON CENTRE-STATE RELATIONS, REPORT PART I, at 145 (Govt. of India 1988).

<sup>3</sup> INDIA CONST. art. 163.

<sup>4</sup> *State of Punjab v. Principal Secretary to the Governor of Punjab and Another*, (2023) 2023 INSC 1017 (SC); *The State of Telangana v. Secretary to Her Excellency the Hon'ble Governor for the State of Telangana & Anr.*, W.P. (C) No. 333 of 2023 (Supreme Ct. of India).

<sup>5</sup> INDIA CONST. art. 131.

a requirement of timely decision-making into Article 200, while deliberately refraining from prescribing rigid or numerical timelines.<sup>6</sup> The judgment appeared to recalibrate the balance between constitutional discretion and democratic accountability by interpreting the phrase ‘as soon as possible’ as imposing a constitutionally binding obligation of prompt decision-making under Article 200. However, this clarity was soon unsettled by the Presidential Reference Advisory Opinion delivered in November 2025. A Constitution Bench, answering a Presidential Reference, issued an Advisory Opinion that emphasised institutional restraint against the judicial prescription of fixed timelines, prioritising "**judicial restraint grounded in the separation of powers**" and **declining to judicially prescribe fixed timelines under Articles 200 and 201, while expressly acknowledging the binding nature of the April 2025 judgment, holding that 'reasonable time' cannot be judicially codified.**<sup>7</sup>

The apparent tension between these two constitutional pronouncements has generated doctrinal uncertainty with far-reaching implications. On one hand, the April 2025 judgment underscores the primacy of elected legislatures and cooperative federalism; on the other, although advisory in nature, the Opinion risks diluting these safeguards by declining to limit discretion through fixed temporal prescriptions judicially. This paper argues that such ambiguity enables the emergence of a “De Facto Union Veto”, whereby the Union Executive, acting through the office of the Governor, may effectively neutralise State legislation without formally invoking constitutional veto powers.

Against this backdrop, this paper examines Article 200 through its constitutional text, judicial interpretation, the Constituent Assembly Debates, and the recommendations of the Sarkaria Commission. It argues that prolonged gubernatorial delays are inconsistent with the federal structure of the Constitution and that, in order to prevent the office of the Governor from functioning as an indirect tool of control over state legislatures, enforceable judicial criteria on timeliness are required.

## II. CONSTITUTIONAL MANDATE: ANALYSIS OF ARTICLE 200 AND ARTICLE 355

To understand the crisis, one must first breakdown the textual source of the power under Article 200 of the Constitution of India.<sup>8</sup>

### A. THE TEXTUAL FRAMEWORK OF ARTICLE 200: LIMITED CHOICES, NOT OPEN-ENDED DISCRETION

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<sup>6</sup> The State of Tamil Nadu v. The Governor of Tamil Nadu & Anr., 2025 INSC 481.

<sup>7</sup> In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India, Special Ref. No. 1 of 2025, 2025 INSC 1333.

<sup>8</sup> INDIA CONST. art. 200.

Article 200 of the Constitution governs the final constitutional stage of the State Legislative process. Upon the presentation of a Bill passed by the State Legislature, The Governor acts under three primary options, with a proviso mandating a fourth course of action upon withholding assent:<sup>9</sup>

1. **Assent:** Granting assent to the bill immediately.
2. **Withhold Assent:** Declare that he withholds assent.
3. **Reserve:** Reserve the Bill for the consideration of the President (mandatory if the Bill endangers the High Court's position).
4. **Return:** Return the Bill (if it is not a Money Bill) "as soon as possible" with a message requesting reconsideration.

## B. THE "AS SOON AS POSSIBLE" AMBIGUITY

The phrase "as soon as possible," though not defined with numerical precision, is not constitutionally meaningless. Indian constitutional jurisprudence has consistently held that such expressions impose a duty to act within a reasonable time, determined by context, purpose, and constitutional consequences.<sup>10</sup> In the context of Article 200, the purpose is clear: to ensure the continuity of the legislative process and to prevent executive obstruction of democratically enacted laws.

The absence of a fixed time limit does not mean that there is no timeline at all. Instead, it expresses the framers' desire for constitutional flexibility without compromising responsibility. The framers of the Constitution, instead of relying on the British conventions of gentlemanly conduct, did not specify a deadline in weeks or months. Historically, this silence was interpreted as a command for urgency. In the Constituent Assembly, Dr. B.R. Ambedkar explicitly stated that the Governor has no function to perform "on his own" and the President and Governors are in place in the administration as a ceremonial device on a seal by which the nation's decisions are made known, but must follow the advice of the ministers.<sup>11</sup> But later, this was deleted from the final draft of the constitution.<sup>12</sup>

The Governor may require time to seek legal advice or examine the Bill's constitutional validity; this discretion must not permanently block legislation. Any interpretation that treats "as soon as possible" as merely directory, rather than obligatory, would make the sentence redundant and compromise the structural logic of the provision. Moreover, once a Bill is repassed, the constitutional space for further inaction by the Governor is substantially constrained, Article 200 has been interpreted as imposing a constitutional expectation on the Governor to take a constitutionally justifiable decision without resorting to further inaction,

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<sup>9</sup> Id.

<sup>10</sup> *Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly & Ors.*, (2020) 2 S.C.R. 132 (Supreme Ct. of India).

<sup>11</sup> Constituent Assembly Debates (Constituent Assembly of India), vol. VIII at 467 (1949) (statement of Dr. B.R. Ambedkar).

<sup>12</sup> Constituent Assembly Debates (Constituent Assembly of India), vol. X at 114 (1949).

subject only to the power of reservation for Presidential consideration.<sup>13</sup> This reinforces the understanding that the Governor's discretion is intended to be exhaustible, not perpetual.

### **C. ARTICLE 355 AND THE MISPLACED JUSTIFICATION OF GUBERNATORIAL INACTION**

Article 355 confers a duty upon the Union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.<sup>14</sup> In recent years, gubernatorial delays have been justified—whether directly or tacitly—as a constitutional obligation, particularly when state legislation is perceived to conflict with national interests or norms.

Such an interpretation is unfounded from a doctrinal approach. Article 355 is an enabling provision that defines the Union obligation; it does not independently authorise unilateral executive obstruction of the state legislation. Article 355's enforcement procedures, particularly those under Article 356, are outlined in the constitution and are subject to judicial review.<sup>15</sup> To permit the Governor to invoke Article 355 has occasionally been invoked in political discourse to justify heightened gubernatorial scrutiny, despite lacking direct constitutional or judicial sanction for such use.

Additionally, mixing up Article 200 with Article 355 creates the risk of turning the governor from a constitutional functionary into an agent of preventive federal control. By doing this, the constitutional hierarchy would be inverted, enabling executive anticipation to override the legislative supremacy without the need for the official constitutional process.

### **D. DOCTRINAL CONSEQUENCES: DE FACTO VETO AND CONSTITUTIONAL SILENCE**

The combined reading of Articles 200 and 355 reveals a carefully setups the constitutional balance. While the constitution provides limited safeguards against unconstitutional or nationally detrimental State legislation, it does not sanction the indefinite executive's status quo. When gubernatorial inaction becomes prolonged and systematic, it ceases to be a matter of discretion and assumes the character of a veto in substance, if not in form.

This phenomenon, described in this paper as a “**De Facto Union Veto**,” operates not through express constitutional text but through strategic silence. It exploits the absence of rigid timelines to neutralise State legislation while avoiding political and judicial accountability. The

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<sup>13</sup> INDIA CONST. art. 200, first proviso.

<sup>14</sup> INDIA CONST. art. 355.

<sup>15</sup> INDIA CONST. art. 356.

constitution's guiding the ideal principles of federalism, responsible government, and democratic legitimacy that animate the constitution are incompatible with such a result.

### III. THE JUDICIAL INTERVENTION: STATE OF TAMIL NADU V. GOVERNOR OF TAMIL NADU (8 APRIL 2025)

In *State of Tamil Nadu v. Governor of Tamil Nadu* (decided on 8 April 2025), the Supreme Court examined the constitutional implications of prolonged gubernatorial inaction under Article 200.<sup>16</sup> Multiple Bills passed by the Tamil Nadu Legislative Assembly, some pending for over a year, remained undecided by the Governor, without assent, return, or reservation for Presidential consideration. Mr R.N. Ravi, The Governor's prolonged inaction brought into focus the constitutional implications of silence within the legislative process: regarding ten specific Bills (including the Tamil Nadu Universities law (Amendment) Bills, he first "withheld assent" without explanation.<sup>17</sup> When the State Assembly convened a special session and re-passed the bills, thereby significantly narrowing the scope of permissible discretion under the First Proviso to Article 200, the Governor attempted to bypass the essential assent by "reserving" the re-passed Bills for the President of India. This prolonged inaction compelled the State to reach to the Supreme Court through the original jurisdiction, alleging a breakdown of constitutional functioning and an erosion of legislative supremacy.<sup>18</sup>

The fundamental constitutional question before the Supreme Court was both narrowly defined and yet, consequently broad: **Whether Article 200 permits a Governor to indefinitely delay a decision on Bills duly passed by a State Legislature**, and if not, whether the judiciary is competent to impose an enforceable constitutional framework to prevent such delay.

In its judgment dated 8 April 2025, the Division Bench comprising Justice J.B. Pardiwala and Justice R. Mahadevan examined the constitutional validity of the Governor's course of action in light of the structure and purpose of Article 200.

#### A. RATIO DECIDENDI: INACTION IS NOT A CONSTITUTIONALLY PERMISSIBLE OPTION

The Supreme Court expressed serious constitutional concern regarding prolonged gubernatorial inaction. Rejecting the argument that constitutional silence expands the Governor's permissible discretion, the Court observed that Article 200 does not envisage executive silence as a constitutionally permissible outcome. The court stated that the

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<sup>16</sup> *State of Punjab v. Principal Secretary to the Governor of Punjab & Anr.*, 2023 INSC 1017.

<sup>17</sup> The Tamil Nadu Universities Laws (Amendment) Bill, 2022, L.A. Bill No. 24 of 2022 (Tamil Nadu Legislative Assembly).

<sup>18</sup> INDIA CONST. art. 131.

constitutional options available to the Governor are comprehensive in nature, not illustrative. Once a Bill is presented, the Governor must choose one of the constitutionally prescribed alternatives within a reasonable time.<sup>19</sup>

The Court's ratio is based on the fundamental constitutional principle: discretion cannot be equated with the non-decision. By classifying the prolonged delays as constitutional inaction rather than as permissible reasoned discretion, the notion that the Governor can "sit on" a Bill without consequence was categorically rejected by the Court. The ruling seriously questioned the constitutionality of state-level prolonged gubernatorial inaction producing effects comparable to a 'veto.'

Significantly, the Court emphasised the focus on that the absence of an express timeline in Article 200 does not authorise indefinite delay. It noted that constitutional provisions must be construed purposefully, taking into consideration their democratic function. To allow unlimited delay will also permit an unelected constitutional authority to frustrate the will of an elected legislature- a consequence that contradicts the fundamental framework of the Constitution.

## **B. A STRUCTURAL AND PURPOSIVE READING OF ARTICLE 200**

The interpretation of Article 200 by the Supreme Court in the 2025 Judgment crystallises a key foundational constitutional principle: the Governor's discretionary powers concerning assent are neither standalone nor temporally unregulated. The main focus of the Court's reasoning lies in what may be described as the A structural and purposive reading of Article 200, read in addition to an implied requirement of temporal discipline.

The principal ratio decidendi of the judgment resolves the long-standing ambiguity around the phrase "withhold assent." The Attorney General argued that the 'Withholding assent' has been the subject of constitutional debate, particularly regarding whether it permits permanent legislative obstruction. This standalone veto theory was decisively rejected by the court.

Justice Pardiwala, adopting a structural and purposive reading of Article 200, held that the power to withhold assent cannot be exercised in isolation. However, it is bound by Article 200's First Proviso, which requires that the Bill be returned to the Legislature with a message. The Court reasoned that withholding assent does not signify rejection; rather, it operates as a procedural pause intended to facilitate reconsideration by the elected House. Hence, the exercise of withholding assent, when deployed in a manner that permanently frustrates the legislative process, raises serious constitutional concerns under Article 200. Any interpretation that allows a Governor to withhold assent without returning the bill will break the link and would alter the constitutional framework.

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<sup>19</sup> State of Punjab v. Principal Secretary to the Governor of Punjab & Anr., 2023 INSC 1017, at ¶ 27.

The Court indicated that a Governor cannot be allowed to permit legislative paralysis through prolonged inaction. The Court cautioned that withholding assent, if exercised in a manner that permanently frustrates the legislative process, would be constitutionally suspect, although supposed to be acting within constitutional constraints, and violates the legislative process. The Court clarified that such conduct of the governor is inconsistent with the Governor's role as a constitutional functionary and impermissibly transforms the office into a parallel veto authority.<sup>20</sup>

The Court's deliberate interpretation of the temporal framework of Article 200 strengthened this doctrinal stance. The phrase "as soon as possible" was interpreted in the broader aspects of the constitutional requirement of expediency that penetrates the entire provision. The Court observed that the Constitution does not consider gubernatorial silence to be a valid constitutional outcome.

Relying on the settled precedent in the case *Shamsher Singh v. State of Punjab* (1974), the court reaffirmed that the Governor ordinarily acts on the aid and advice of the Council of Ministers, save in a limited number of extraordinary circumstances.<sup>21</sup> Prolonged or unexplained inaction does not fall within the recognised sphere of discretionary power. The argument that constitutional doubts and silence justify the delay was therefore rejected. While such doubts may be considered as for the reservation of a Bill for the President's consideration, they cannot justify executive paralysis outside the Constitution's structured mechanisms.

Significantly, by mandating that Governors act within a "reasonable time," the Court did not purport to legislate a rigid deadline. Instead, it articulated a judicially enforceable standard—one that balances functional flexibility with constitutional accountability. By recognising that prolonged inaction is constitutionally suspect, the Court administered the Judicial Assertion of Constitutional Discipline:

1. **The "Reasonable Time" Standard:** "As soon as possible" means a period reasonably required to read and apply one's mind to the Bill.
2. **The Timeline:** While avoiding a rigid statute of limitations, the Court indicated that any prolonged or unexplained delay may invite judicial scrutiny in appropriate cases.<sup>22</sup>

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<sup>20</sup> *State of Punjab v. Principal Secretary to the Governor of Punjab & Anr.*, 2023 INSC 1017, at ¶ 28.

<sup>21</sup> *Shamsher Singh v. State of Punjab*, 1974 INSC 153.

<sup>22</sup> *State of Punjab v. Principal Secretary to the Governor of Punjab & Anr.*, 2023 INSC 1017, at ¶ 30.

### **C. FEDERALISM ANALYSIS: RESTORING THE BALANCE OF POWER**

This judgment is also important to understand with a view to the federalism analysis and the balance of power, situating gubernatorial inaction within the constitutional balance between the Union and the States. The Court warned that unchecked delay by the Governor risks converting the office into an instrument of Union control over the State Legislature, thereby undermining cooperative federalism and distorted the federal structure of the Constitutional framework.

The Court ruled that executive obstruct through an unelected constitutional official cannot supersede democratically elected representatives and elected government, as State legislatures are the principal law-making authorities within their constitutional jurisdictions. Although Indian federalism is asymmetrical, the Court clarified that this asymmetry does not justify unilateral executive paralysis of State governance.

Relying on *Shamsher Singh v. State of Punjab* (1974), the Court reiterated that the Governor functions as a “Constitutional Sentinel,” not a parallel centre of power.<sup>23</sup> Delaying bills basically amounts to a veto of the electorate's will in a Cabinet system, reviving a type of dyarchy that the Constitution specifically rejected. In a Cabinet system, elected representatives hold true power.

The judgment therefore rejected any notion of a gubernatorial “Pocket Veto,” clarifying that the Governor’s role is facilitative once the Legislature has spoken. In doing so, the Court recalibrated constitutional power to protect State legislative autonomy, while also exposing underlying Centre–State tensions that later surfaced in the Presidential Reference.

### **D. SIGNIFICANCE OF THE JUDGMENT: JUDICIAL WILLINGNESS TO JUDICIAL ASSERTION OF CONSTITUTIONAL DISCIPLINE**

The judgment marks an important shift in the Supreme Court’s approach to gubernatorial conduct, which came in the ruling of April 2025. In contrast to earlier judicial opposition to examining the temporal aspects of constitutional discretion, the Court asserted its authority to enforce constitutional discipline where silence threatens democratic functioning.

By holding, in substance, that a Governor cannot keep a Bill pending indefinitely, the Court substantially narrowed a long-standing constitutional ambiguity that had enabled executive inaction without effective accountability. The Court removed a long-standing constitutional loophole that had allowed executive delay without accountability by holding, in effect, that indefinite inaction is constitutionally impermissible. Therefore, the ruling reflects significant

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<sup>23</sup> *Shamsher Singh v. State of Punjab*, 1974 INSC 153, at ¶ 24.

judicial intervention needed rather than judicial overreach—an intervention meant to maintain the integrity of constitutional procedures rather than to replace them.

#### **IV. THE NOVEMBER 2025 TWIST: THE ADVISORY OPINION AND THE RETURN OF AMBIGUITY**

The clarity provided by the Tamil Nadu judgment in April, but it looks as if it was only meant to be temporary. The Union Government invoked the President's power under Article 143 to seek the advisory opinion of the Supreme Court on the interpretation of Article 200.<sup>24</sup> The resulting opinion significantly influenced the interpretive landscape surrounding Article 200 by emphasising judicial restraint and institutional boundaries (*In Re: Presidential Reference No. 1 of 2025*).<sup>25</sup>

While Advisory Opinions are not binding precedents in the strict sense (*stare decisis*), they command the highest judicial respect and effectively the emerging constitutional position suggests that the law. In this instance, the Advisory Opinion declined to carry forward the assertive approach adopted in April, opting instead for a restrained understanding of judicial competence.

##### **A. THE DOCTRINE OF “JUDICIAL RESTRAINT GROUNDED IN THE SEPARATION OF POWERS”**

The fundamental question in the reference was whether the Judiciary could prescribe a reasonable timeline for a high constitutional authority like the Governor, given in the light of the text of Article 200 given a silence.

The answer of the constitutional bench comes in the negative. The Court declined to endorse the prescriptive approach adopted in the April 2025 judgment, holding that courts should refrain from imposing judicially crafted timelines on constitutional authorities where the Constitution itself is silent, stating that the phrase "as soon as possible" should be seen in terms of the Doctrine of "Judicial restraint grounded in the separation of powers" without endorsing indefinite gubernatorial inaction. The Court has also affirmed that courts cannot impose rigid timelines on constitutional authorities where the Constitution itself does not expressly prescribe them. The Bench also stated that the Constituent Assembly deliberately refrains from fixing any fixed timelines to allow the Governors the necessary space or discretionary power to apply

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<sup>24</sup> INDIA CONST. art. 143.

<sup>25</sup> *In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India, Special Ref. No. 1 of 2025, 2025 INSC 1333.*

their minds to the complex legislation. The Court reasoned that imposing judge-made deadlines could risk encroaching upon the legislative domain, raising separation of powers concerns.<sup>26</sup>

The reasoning of the November Opinion places substantial reliance on assumptions of constitutional propriety and institutional good faith expected of high constitutional functionaries, without needing a court order. This reasoning looks and matches with the jurisprudentially sound theory, ignoring the political reality on the ground. Through refusing to set a timeline, the Court effectively revived reliance on unwritten constitutional conventions and institutional self-restraint rather than enforceable judicial standards, as through the past incident and very fact of the Tamil Nadu Case- shows how on the ground the political friction is high, these unwritten rules are the first to be violated.

## **B. THE UNINTENDED CONSEQUENCE: THE DE FACTO UNION VETO**

The most critical drawback of the November Advisory Opinion is the revival of the “Pocket Veto” in a new, different name and form.

### **a. No Deadline or timeframe for “Withholding”:**

The November Opinion argues that the Governor needs "reasonable time" to decide whether to withhold, despite the April ruling clarifying that the power to withhold assent is constitutionally linked to the First Proviso to Article 200, which envisages return of the Bill for legislative reconsideration rather than permanent legislative obstruction. A governor can purportedly spend years "applying their mind" because 'reasonable time' is left undefined, without any judicially specified outer limit, leaving its application to case-specific assessment.

### **b. The Loophole:**

A Governor can now simply sit on a Bill, stating that they are “studying or examining” it. Since the Court declined to prescribe enforceable timelines, the State Government faces practical difficulty in establishing when delay becomes constitutionally unreasonable, notwithstanding the continued theoretical availability of judicial review.

This creates the conditions for a “**De facto Union Veto**”, not through any express constitutional text, not by a legal rejection, but by the procedural silence. By **rejecting the doctrine of 'Constructive' or 'Deemed Assent' established in the April judgment**, the Advisory Opinion has unintentionally enabled conditions under which prolonged gubernatorial inaction

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<sup>26</sup> See generally *Kesavananda Bharati v. State of Kerala*, 1973 INSC 79.

may function as a de facto veto exercised through constitutional silence. This creates a power imbalance where an appointed authority can paralyse the whole legislative agenda of an elected government without ever formally rejecting it, thereby obtaining the same outcome without any political cost of a veto in achieving the same result.

### **C. Reconciling the Conflict: A Missed Opportunity**

Even though it declined to set up strict deadlines and a timeframe, the Advisory Opinion could have reconciled judicial restraint within the constitutional framework, stating the constitutional accountability by reiterating the "reasonable time" standard as a justiciable principle, not a judicial overreach in the Judicial legislation. Its inability to do so amounts to a lost chance to build on the successive precedent on the line of the April 2025 ruling.

Instead, the Court unintentionally undermined its own prior claim of constitutional discipline by retreating into generalisations of institutional trust. As a result, the jurisprudence is fragmented, undermining the predictability necessary for federal governance and sending conflicting signals to constitutional actors.

The *State of Tamil Nadu* judgment (April) remains the binding law of the land until explicitly set aside, even if the Advisory Opinion muddied the waters. An Advisory Opinion is not binding law under Article 141 in the same way a judgment is, though it carries high persuasive value. It cannot technically "overrule" a binding Constitution Bench judgment unless accepted by a larger bench in a litigated matter.

## **V. IMPACT ON ADMINISTRATION: CONSTITUTIONAL DELAY AS A GOVERNANCE CRISIS**

The jurisprudential ambiguity resulting from the Presidential Reference of November 2025 Advisory Opinion is not a fact of academic analysis only; it has immediate, tangible consequences for State administration. The inaction of the Governor under Article 200 not only remains confined to constitutional theory; it directly impairs the administrative capacity of the State governments. When the Bills passed by the State legislature remain pending for a prolonged period of time, the legal foundation for the necessary implementation of policy also remains uncertain. Executive departments are unable to operationalise the schemes, allocate the necessary funds, or framing of the subordinate legislation in the absence of statutory authority. The "De Facto Veto" results in Administrative Stasis for a state's executive branch and civil service. This also results in the paralysis interfering with governance continuity and disrupting long-term planning.

In areas that require a quick legislative action, such as public welfare, education, taxation, and local government, this uncertainty is particularly acute. Due to delayed assent, legislative delay turns into administrative stagnation, which has a cascading effect on state bureaucracies. Due to legal compliance, civil servants are compelled to delay action even when legislative intent is clear.

#### **A. FISCAL AND BUDGETARY IMPLICATIONS**

The impact of delayed assent is especially severe in fiscal matters, too, while Money Bills are excluded from the Governor's power of return, several finance-related Bills- such as those concerning taxation reforms, public expenditure, and the regulatory mechanisms- do not come into the strict definition of the Money Bills. States have to experience administrative inefficiencies, revenue shortages, and fiscal instability due to the prolonged delay in the legislation.

In the extreme cases, the prolonged delayed assent also disrupts with the budgetary cycles and the implementation of welfare schemes that depend upon the statutory backing. Asymmetrical federal dependence is reinforced by the incapacity to promptly restructure financial regimes or enforce tax regulations, which diminishes State financial autonomy and increases dependency on Union grants.

#### **B. POLICY VACUUM AND EXECUTIVE OVERREACH**

Due to the prolonged legislative delay, the State administration is often forced to use an alternative mechanism, such as the use of ordinance or executive orders, to bridge the gaps. While constitutionally permissible in limited circumstances, excessive reliance on such an instrument raises concerns regarding the democratic legitimacy and legislative overreach.

This leads to a paradoxical outcome: gubernatorial inaction, ostensibly justified as a defence against unlawful legislation, unintentionally promotes executive overreach within the States. Ordinance-making became and took the place of regular legislation, weakening deliberative democracy and increasing the risk of governance by executive fiat rule.

The most visible casualty of this conflict has seen in the area of the Higher Education Sector. The tug-of-war over the Universities Laws (Amendment) Bills could be seen in states like West Bengal, Kerala, and Tamil Nadu, which sought to replace the Governor with the Chief Minister as the Chancellor of the State Universities, which led to a governance vacuum.<sup>27</sup>

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<sup>27</sup> See generally The West Bengal University Laws (Amendment) Bill, 2022 (W.B. Legislative Assembly).

The consequence of the bills being stuck in a long waiting queue then it often results in the appointment of Vice-Chancellors suffering too. Without VCs, universities could not convene convocation, sign degrees, or make critical financial decisions and other important academic decisions would suffer and stop. This Administrative failure has cost thousands of students to face delay in their degrees and uncertainty in their career progression. This demonstrates how a constitutional friction at the highest levels affects the fundamental rights of Citizens.

### **C. THE BREAKDOWN OF THE “AID AND ADVICE” MODEL**

India's administrative structure is based on a Weberian bureaucracy that reports to the political executive. The constitution requires civil servants, especially those in the All-India Services (IAS/IPS), to carry out the legislative will as articulated by legislation duly passed by the legislature. From the Legislature to the Executive and, finally, to the Administration, this structure requires governance to be clear and consistent.

“Pocket Veto” is a practice of indefinite gubernatorial power, which disrupts this scheme and reintroduces a form of a diarchy that the Constitution has explicitly rejected. As stated in *Shamsher Singh v. State of Punjab* (1974), the Governor is not an independent authority but acts on the ‘aid and advice’ of the Council of Ministers, which is defined narrowly in the constitutional framework.<sup>28</sup> Indefinite withholding of assent falls outside the recognised scope of discretionary authority contemplated under the aid and advice framework.

Whenever Governor delays assent without resolution, due to this bureaucracy is placed in a state of constitutional uncertainty. While the elected executive may issue directions to implement a newly passed policy, the absence of formal assent prevents the Bill from acquiring the force of law. This disjunction fractures the “aid and advice” model and deprives civil servants of a clear legal mandate.

Officers are naturally hesitant to create regulations, notify schemes, or take significant administrative action on pending legislation when faced with possible judicial scrutiny. The outcome is administrative paralysis, which places the governance in suspension and defeats the principle of continuous administration. The result is essentially incompatible with responsible governance and democratic accountability if executive inaction is allowed to undermine legislative intent.

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<sup>28</sup> *Shamsher Singh v. State of Punjab*, 1974 INSC 153.

#### **D. CENTRE-STATE RELATIONS AND THREAT TO COOPERATIVE FEDERALISM**

Gubernatorial delay has effects that go beyond internal administration and directly impact Centre–State relations. When State legislation is stalled without explanation or formal constitutional action, it creates institutional mistrust and political friction. States are likely to view such a delay not as constitutional scrutiny, but as political interference by the Union acting through the Governor.

Cooperative federalism, which depends on cooperation and respect amongst these two constitutional functionaries, is weakened by this lack of trust. When the Governor risks being perceived as acting in alignment with Union executive preferences control rather than impartial constitutional authorities, whether in centrally sponsored programs, regulatory coordination, or intergovernmental decision-making, becomes tense due to this lack of trust and cooperation between the Union and States.

The Supreme Court, through its various judgments, has repeatedly held that Indian federalism, though asymmetrical, is not weak. In the *State of Rajasthan v. Union of India*, States retain substantial autonomy within their constitutional domains.<sup>29</sup> By allowing an unelected appointee of the Union (the Governor) to indefinitely delay State legislation threatens this balance, as it enabling outcomes that may operate as indirect Union influence over a State’s legislative agenda without invoking the constitutional safeguards attached to Article 356.<sup>30</sup>

Such a delay functions as a de facto veto over the State Assembly’s democratic mandate, diluting the importance of State elections. By prioritising the Governor’s institutional position over the urgency of governance, the November 2025 Advisory Opinion risks normalising constitutional dysfunction, contrary to the Union’s duty under Article 355 to ensure constitutional governance in the States.<sup>31</sup>

#### **VI. CONCLUSION: CONSTITUTIONAL CLARITY AS A FEDERAL NECESSITY**

The constitutional conflict surrounding gubernatorial assent in 2025 reveals a deeper structural dilemma and conflicts within Indian federalism: whether constitutional power may legitimately be exercised through silence. Textually, historically, and structurally, Article 200 does not see delay as a stand-alone constitutional option. However, the coexistence of the Supreme Court’s

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<sup>29</sup> *State of Rajasthan v. Union of India*, 1977 INSC 105.

<sup>30</sup> INDIA CONST. art. 356.

<sup>31</sup> INDIA CONST. art. 355.

itself stated in the April 2025 judgment and the deferential opinion in the November 2025 Advisory Opinion has reintroduced uncertainty into a provision that had briefly been clarified.

This ambiguity is not acceptable. In a federal system where, legislative competence is carefully distributed, permitting a Governor to indefinitely withhold assent—without reasons, accountability, or temporal limits—effectively transfers legislative control from elected State institutions to an unelected constitutional office functioning under Union influence. This does not merely disturb the federal balance; it recalibrates it in favour of central dominance.

The April 2025 judgment correctly recognised that constitutional morality demands timely action. By holding that Bills cannot be kept in indefinite abeyance and by interpreting “as soon as possible” as a binding constitutional obligation, the Court reaffirmed the Governor’s role as a constitutional facilitator rather than a parallel veto authority. This interpretation aligned with the Constituent Assembly’s intent and long-standing constitutional commission recommendations cautioning against discretionary misuse.

In contrast, the November 2025 Advisory Opinion—though rooted in judicial restraint—unintentionally legitimised constitutional delay by resisting enforceable standards. Its refusal to impose meaningful temporal discipline risks converting discretion into dominance, enabling what this paper characterises as a *De Facto Union Veto*: not explicitly granted by the Constitution, but emerging from sustained constitutional ambiguity.

Past constitutional wisdom had anticipated this danger. The Sarkaria Commission (1988) and the National Commission to Review the Working of the Constitution both recommended time-bound limits for gubernatorial assent.<sup>32</sup> The events of 2024–25 demonstrate that reliance on unwritten conventions is no longer sufficient in an era of political polarisation.

## **The Way Forward**

Two corrective measures are imperative. First, judicial clarification must standardise the concept of “reasonable time” by linking it to the legislative calendar—requiring assent, return, or reservation before the next Assembly session. This would preserve flexibility without permitting paralysis. Second, the principle which was affirmed in April 2025 must be firmly reinstated: withholding assent is not a standalone veto, but a mandatory trigger for returning the Bill to the Legislature.

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<sup>32</sup> Commission on Centre-State Relations, *supra* note 2; National Commission to Review the Working of the Constitution, Report, vol. I, at ¶ 8.14.2 (2002).

In the end, the integrity of constitutional processes is just as important to Indian federalism as the allocation of powers. When delay becomes power and silence becomes control, federalism stands eroded. The Governor was envisaged as a constitutional sentinel, a bridge between the Union and the State—not a source of procedural obstruction within the legislative process. Unless the “Pocket Veto” is decisively buried, State legislatures run the risk of losing their democratic mandate. Constitutional clarity therefore, assumes critical importance to preserving the federal structure and ensuring that sovereignty in the States continues to reside with the electorate, not the appointee.