



Balancing Constitutional Powers in a Democratic Setup

This editorial is based on “[Tamil Nadu governor case: Judicial overreach, not constitutional interpretation](#)” which was published in The Indian Express on 14/04/2025. The article highlights the evolving relationship between constitutional functionaries, specifically the President and the Governors, and the judiciary’s role in delineating their responsibilities and timelines.

For Prelims: [Article 200](#), [President](#), [writ petitions](#), [Article 143](#), [Money Bill](#), [S.R. Bommai case](#), [Sarkaria Commission](#), [Punchhi Commission](#)

For Mains: Role of President and Governor in State Bill, Concerns Related to the Office of Governor, Constitutional Position of Governor and President

The recent Supreme Court judgment directing constitutional heads, the President and Governors to act on bills within a “**reasonable time**” has triggered a timely debate on the balance of powers. While hailed by many as a corrective against deliberate executive delays, the verdict also raises concerns about judicial overreach into the discretionary realm of constitutional functionaries. The ***State of Tamil Nadu vs. Governor of Tamil Nadu*** case has become a litmus test for cooperative federalism, the sanctity of legislative processes, and the limits of judicial activism.

What is the SC’s Verdict on the President’s and Governor’s Role in State Bills?

- **Case Background:** The Tamil Nadu Governor withheld assent to 10 Bills, delaying action under [Article 200](#) (power of the Governor to assent to the bills of the State Legislature).
 - After the Governor withheld assent, the Tamil Nadu Legislative Assembly re-enacted the Bills and sent them back. Instead of granting assent or returning them with comments, the Governor referred them to the [President](#).
 - The state government challenged the delay, citing constitutional violations and governance disruption.
- **SC’s Verdict on Governors’ Role in State Bills:** SC termed the Tamil Nadu Governor’s referral of re-enacted Bills to the President as “**erroneous in law.**”
 - The Court ruled that there is no concept of “**absolute veto**” or “**pocket veto**” under Article 200 and stated that governors cannot indefinitely delay action on bills.
 - SC noted that **Governors are bound to follow the advice of the Council of Ministers.**
 - The **SC prescribed clear timelines for Governors** when dealing with Bills with **one month to withhold assent, three months if doing against State Cabinet advice, and one month for Bills re-presented after reconsideration.**

▪ SC's Verdict on the President's Role in State Bills:

- The **SC** noted that **Article 201** provides **no specific timeline** for Presidential assent, and such delays can stall legislative processes, **leaving state Bills in "indefinite and uncertain abeyance."**
- It emphasized that **inaction violates the constitutional principle of non-arbitrariness** in the exercise of power.
- **Time Limit:** The SC held that the President cannot exercise an "absolute veto" by indefinitely delaying assent. A decision must be made **within three months**, and any delay must be reasoned and communicated to the State.
 - Withholding assent must be based on sound and specific grounds, not done arbitrarily.
 - If the **President fails to act** within the time limit, **States can file writ petitions** to compel a decision, **seeking a Writ of Mandamus** from the Court.
 - Additionally, the **SC stated that under Article 143**, if a bill is reserved by the **Governor** on the grounds of unconstitutionality, the **President ought to seek the Supreme Court's opinion**.
 - Although it is **not mandatory**, the reference to the SC in such cases carries high persuasive value.
 - The SC clarified that **unlike the Governor, who must assent to a State Bill** if it is passed again after being returned. The **President is not constitutionally bound to do so under Article 201**.
 - This is because Article 201 applies only in exceptional cases where state legislation has potential national implications.
- **References:** The SC referred to the 2016 Office Memorandums issued by the Ministry of Home Affairs, which prescribed a three-month timeline for decisions on state bills reserved for the President.
 - The Court invoked **recommendations of the Sarkaria Commission (1988) and Punchhi Commission (2010)**, both of which **called for time-bound decisions on reserved Bills**.
 - **Punchhi Commission:** In respect of bills passed by the Legislative Assembly of a state, the **Governor should take the decision within six months whether** to grant assent or to reserve it for consideration of the President.

What are the Constitutional Provisions Related to State Bills?

▪ Article 200:

- When a Bill is passed by the Legislative Assembly (or both Houses if there is a Legislative Council) of a state, it must be sent to the **Governor** for approval.
 - The **Governor** has three options: **Assent** to the Bill (approve it); **Withhold assent** (reject it); **Reserve the Bill for the President's consideration** (send it to the President for a final decision).
- **If the Bill is not a Money Bill**, the Governor can **send the Bill back** to the Legislature with a message asking them to reconsider it, or to introduce any changes the Governor suggests.
 - After the Legislature reconsiders and passes the Bill again (with or without amendments), the Governor **must** give **assent** if the Bill is sent back to him again.
- **If the Bill could affect the powers of the High Court**, the Governor **must reserve it** for the President's consideration.

▪ Article 201:

- If the Governor sends a Bill to the **President**, the **President** has two options: **Assent** to the Bill (approve it) or **Withhold assent** (reject it).
- **If the Bill is not a Money Bill**, the President can **send the Bill back** to the Governor with a message asking the Legislature to reconsider it, just like the Governor did in **Article 200**.
- The Legislature must reconsider the Bill within **six months** from the date they receive the President's message.
- If the Legislature passes the Bill again (with or without changes), the Bill is sent back to the **President** for final approval.

What are the Implications of the SC's Ruling on the President and Governor's Role in State Bills?

Positive Implications:

- **Strengthening Accountability in Governance:**
 - The SC's directive on Governors and the President to act on state bills within a reasonable time strengthens **democratic accountability**.
 - This ensures that **elected representatives** are not hindered by unnecessary delays, making the legislative process more efficient.
 - The **Constitutional provisions**, especially **Articles 200 and 201**, provide a structure for executive decisions on bills, ensuring transparency in the working of constitutional functionaries.
- **Protection of Federal Structure:**
 - By ensuring that **Governors cannot withhold assent indefinitely**, the SC's ruling **reaffirms the federal balance**, reducing the potential for the **Centre to exert undue influence** over state legislative functions.
 - This judgment could act as a **check on the misuse of gubernatorial powers for political purposes**.
 - **Article 200** demands that bills passed by **state legislatures are either assented to or reserved** for the President's consideration, safeguarding the autonomy of state legislatures.
- **Enhancing Legislative Independence:**
 - The ruling prevents **executive overreach (Governor)**, ensuring that bills **passed by state legislatures cannot be blocked** without justifiable cause.
 - This upholds the **separation of powers**, a core principle of the Constitution (**declared basic structure in Indira Gandhi vs Raj Narain Case, 1975**), and ensures that the **executive branch does not unduly influence the legislature**.
 - The **Right to Legislate** is now more secured, empowering state governments to carry out their policy agenda without unnecessary interference from the Governor's office.
- **Judicial Oversight as a Safeguard:**
 - The **Supreme Court's intervention** ensures that **Governors and Presidents do not act arbitrarily**, providing judicial checks (writ of *Mandamus*) where needed.
 - It clarifies the **timeliness of actions** by the executive and ensures **constitutional morality** is upheld.
 - The **ruling upholding Articles 200 and 201**, it **emphasizes that executives must act in line with democratic and federal principles**, with the **Supreme Court in Rameshwar Prasad (2006)** affirming that the Governor's power to withhold assent is subject to judicial review if exercised arbitrarily.

Negative Implications:

- **Judicial Overreach into Executive Functions:**
 - The SC's interference in prescribing timelines for Governors and the President may be perceived as **judicial overreach**, potentially infringing upon the **separation of powers**.
 - By mandating action within a specified time, the Court could be perceived as **intruding into executive and constitutional functions** that were originally meant to be outside judicial control.
 - In light of **Article 212**, **legislative proceedings are immune from judicial scrutiny**. As the **Governor's role in lawmaking** is part of this process, it is **similarly protected**. Hence, **judicial directions to the Governor or President—unlike in the case of the Speaker acting as a tribunal** in defection-related cases, where the SC refused to set a timeline citing its constitutional position—may **amount to judicial overreach**.
 - Critics argue that the **Governor's discretion**, particularly in cases involving contentious issues, **should not be subject to judicial timelines**, as it might distort the independence of the office.

▪ **Undermining Constitutional Office:**

- The **two-judge bench of the Supreme Court** effectively **re-enacted the Constitution** by imposing conditions that the framers had deliberately avoided.
- By invoking **Article 142**, the Court has subjected the roles of the **Governor** and **President to judicial scrutiny**, allowing for writs to be issued against the President, contrary to the original constitutional design.
- This decision undermines the **independence** and **impartiality** of these constitutional offices, which were intended to function above political pressures.
- The ruling introduces the risk of judicial intervention in the **Governor's** and **President's** discretionary powers, potentially eroding their autonomy and altering the **balance of powers** in the Constitution.

▪ **Diluting Separation of Power:**

- The **Supreme Court's recent ruling** effectively **amends the Constitution** by imposing fixed timelines on the **Governor** and **President** regarding assent to bills. This alters the procedural framework of **Article 200** and **Article 201**, which traditionally allowed discretion to these constitutional offices.
- By doing so, the Court has encroached upon the **Parliament's power** under **Article 368** to amend the Constitution, modifying the original procedures set by Parliament.

▪ **Opening a Pandora's Box:**

- The Supreme Court's judgment has **introduced judicial oversight into legislative matters**, potentially leading to a flood of **similar cases involving center-state disputes and discretionary powers**, such as those in states like Kerala, West Bengal, Telangana, and Punjab, where Governors have delayed assent to Bills.
- This could overburden an already **overloaded judiciary (+80000 pending cases in SC)**, diverting **attention from more urgent legal issues** and creating a precedent for further judicial intervention in legislative functions.

What Could Be the Structural Remedies Regarding the Governor's Role in State Bills?

▪ **Impeachment Process for Governors:** At present, Governors can only be removed by the **President**, which limits **state-level accountability**.

- The **Punchhi Commission** suggested introducing an impeachment process (*mutatis mutandis*) at the state level to improve accountability.
- Additionally, the **Supreme Court's ruling in BP Singhal vs Union of India (2010)** stressed that removal should be based on valid reasons, ensuring fairness in the process.

▪ **Revision to Article 163:** Article 163 grants **Governors discretionary powers**, which could sometimes lead to political bias.

- An amendment could **clarify that these powers should only be exercised in exceptional situations** that directly impact national interest or constitutional integrity, reducing the scope for misuse.

▪ **Periodic Review of Gubernatorial Conduct:** Establishing a **periodic review system** via **Judicial Commissions** could assess how Governors exercise their powers.

- This would ensure their actions align with **constitutional principles**, minimize interference in state governance, and enhance **transparency**.

▪ **Clear Guidelines for Imposing President's Rule:** To avoid misuse, the Governor's discretion in recommending **President's Rule** should be **strictly guided** by objective criteria and subject to judicial review, as emphasized in the **S.R. Bommai case (1994)**.

- The **Sarkaria Commission** recommended that this should be a **last resort**, invoked only after all other constitutional remedies have been exhausted.

▪ **Primacy of Advice of Council of Ministers:**

- In **Shamsher Singh v. State of Punjab (1974) case**, the Supreme Court emphasized that the Governor must act on the advice of the Council of Ministers, except in situations where the Constitution explicitly requires the Governor to act in his discretion.
- The same stance was reiterated in the current judgment, reinforcing that the Governor's actions should align with the advice of the elected government, ensuring democratic governance and accountability.

Conclusion

The Supreme Court's ruling on the **Governor's and President's role** in the assent process strengthens **democratic accountability** but raises concerns about **judicial overreach** and the **separation of powers**. While it enhances **legislative efficiency**, it is crucial to balance accountability with the **independence of constitutional offices**.

Future reforms should focus on introducing an **impeachment process for Governors**, clarifying the scope of **discretionary powers**, and establishing **review mechanisms** to ensure **transparency and constitutional balance**.

Drishti Mains Question:

Critically examine the Supreme Court's verdict on the role of Governors and the President in the assent process. Discuss its implications on the autonomy of constitutional offices and suggest reforms to ensure a balance between accountability and independence.

UPSC Civil Services Examination, Previous Year Question

Mains

Q. Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine. (2018)

Q. Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the legality of re-promulgation of ordinances by the Governor without placing them before the Legislature. (2022)

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