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JUDICIAL MANDATE OR EXECUTIVE PREROGATIVE: A CONSTITUTIONAL CRITIQUE OF DIRECTING PRESIDENTIAL ASSENT UNDER ARTICLE 142

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ABSTRACT

This article critically examines whether the Supreme Court of India, under its extraordinary power to do "complete justice" in Article 142, can constitutionally direct the President to grant assent to a state bill reserved for consideration under Article 201. This inquiry grapples with a fundamental constitutional conundrum: the high-stakes tension between the judiciary's impulse to remedy executive inertia and the sacrosanct nature of Presidential prerogative. At stake is the very architecture of Indian federalism and the separation of powers. To navigate this fraught terrain, my approach is both doctrinal and comparative; I embark on a deep dive into the constitutional bedrock-the text of Articles 142, 200, and 201, the spirited Constituent Assembly Debates, pivotal case law, and the sage counsel of the Sarkaria and Punchhi Commissions. At its heart, this paper posits that while the judiciary can-and should-police the process of a Governor's actions, it must stop short of usurping the President's substantive discretion. This is no mere administrative function; it is a quintessentially political act, often demanding delicate federal negotiations. Our analysis unearths a deliberate, if subtle, constitutional asymmetry: the chasm between a Governor's binding duty upon a bill's repassage and the President's expansive latitude. An interventionist reading of Article 142, I argue, would dangerously collapse this distinction. A brief global tour (taking in the UK, US, Canada, and Australia) reveals a near-universal judicial reluctance to tread on such executive ground. Ultimately, I contend that compelling Presidential assent is to commit a grave judicial overstep-a move that risks not just disrupting our federal equilibrium but also judicializing a core executive prerogative. True constitutional faith, this paper concludes, demands judicial self-restraint.

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Keywords: Judicial Overreach, Article 142, Constitutional Restraint, Presidential Assent, Supreme Court of India, Separation of Powers

I. Introduction

The Indian Constitution envisions a delicate equilibrium among its three organs-the Legislature, Executive, and Judiciary-each empowered to function autonomously within its constitutional domain. Yet, the interstices of this design often present interpretive dilemmas that test the boundaries of institutional competence and restraint. One such issue lies at the intersection of Articles 200, 201, and 142 of the Constitution: whether the Supreme Court can, in the name of "complete justice," direct the President to grant assent to a Bill reserved under Article 201? This question has gained constitutional urgency in light of recent judicial pronouncements, particularly the Supreme Court's decision in ***State of Tamil Nadu v. Governor of Tamil Nadu,***[3] where the Court criticized gubernatorial delay and implicitly opened the door to potential judicial intervention in the President's role. While the intent to protect legislative supremacy and curb executive inertia is understandable, the invocation of Article 142 to override or prescribe action for constitutional functionaries raises concerns about judicial overreach and the erosion of federal principles.

This piece of work undertakes a critical examination of whether such judicial directions are constitutionally tenable. It begins by unpacking the legal framework governing legislative assent under Articles 200 and 201, contrasts the roles and constraints of the Governor and the President, and explores the jurisprudence surrounding Article 142. Through an analysis of Constituent Assembly Debates, landmark judgments, Commission reports, and comparative constitutional practices, the paper argues that while the judiciary may review constitutional impropriety, it cannot mandate Presidential assent-a function inherently embedded in political discretion and federal considerations.

II. Constitutional Framework: Articles 200, 201, and 142

The Constitution of India contemplates a nuanced and layered mechanism[4] for the enactment of legislation at the state level. Key to this process are Articles 200 and 201, which outline the role of the Governor and the President in granting or withholding assent to state bills. Article

[3] 2025 INSC 481: WRIT PETITION (CIVIL) NO. 1239 OF 2023 SC, 8 April, 2025.
[4] M.P. Jain, Indian Constitutional Law, 8th ed, (LexisNexis, 2018), p. 1491.

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142, on the other hand, provides the Supreme Court with the power to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter."[5] The interface of these provisions lies at the heart of the current constitutional dilemma.

A. Article 200: The Governor's Role

Article 200 states:

"When a Bill has been passed by the Legislature of a State, it shall be presented to the Governor, who 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…"[6]

The first proviso to Article 200 is significant in this context. It provides that if the Governor returns a Bill with a message for reconsideration and the Legislature passes it again, the Governor "shall not withhold assent therefrom." This clause mandates the Governor to act in accordance with the will of the Legislature upon repassage. The second proviso obligates the Governor to reserve a bill for the President's consideration if it endangers the jurisdiction of the High Court. Absent such a condition, the reservation is discretionary.

B. Article 201: Presidential Consideration

Article 201 provides:

"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…"[7]

The proviso to Article 201 allows the President to return the Bill (except a Money Bill) to the State Legislature for reconsideration. However, there is no clause analogous to Article 200's first proviso that obliges the President to assent after repassage. This constitutional silence is significant-it indicates that while the Governor is bound after repassage, the President is not.[8] Hence, if a bill is reserved for the President even after repassage, the constitutional text offers no imperative to assent within any timeframe or at all.

C. Article 142: The Plenary Judicial Power

Article 142(1) reads:

"The Supreme Court in the exercise of its jurisdiction may pass such decree or make such

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[5] The Constitution of India, Article 200.
[6] The Constitution of India, Article 200.
[7] Ibid, Article 201.
[8] Punchhi Commission Report, Vol. II, Ch. II, Para 2.22.4.

order as is necessary for doing complete justice in any cause or matter pending before it…"[9]

Over the years, Article 142 has become the bedrock of judicial activism in India,[10] often critiqued as an instance of judicial overreach when deployed to fill perceived legislative or executive lacunae.[11] It empowers the Court to transcend procedural limitations to ensure substantive justice. However, the use of Article 142 is not unbounded. It cannot be deployed to override express constitutional provisions or to compel constitutional authorities like the President to act contrary to the design and spirit of the Constitution.[12] In ***Supreme Court Bar Association v. Union of India,*** [13] the Court held that Article 142 does not empower the Court to ignore substantive rights or override statutory law. Similarly, in ***E.S.P. Rajaram v. Union of India,***[14] it was held that the power under Article 142 is to supplement-not supplant-the law. Thus, while Article 142 empowers the Court to render equitable reliefs, it cannot compel constitutional functionaries to perform duties that are, by the Constitution's design, discretionary or subject to political consideration.

III. Constituent Assembly Debates: Intention Behind Articles 200 and 201

To interpret Articles 200 and 201 meaningfully, it is essential to turn to the Constituent Assembly Debates (CAD), where the framers of the Constitution deliberated extensively on the structure, purpose, and extent of gubernatorial and presidential powers. These debates offer clear insight into the limited nature of the Governor's discretion and, more importantly for our purposes, the carefully calibrated balance of power in the process of legislative assent.[15]

A. The Drafting History of Article 200

Article 200 was originally drafted as Article 175 in the Draft Constitution. The language and structure of this provision underwent significant changes between the 1935 Government of India Act and its final constitutional form. Notably, the words "in his discretion" used in Section 75 of the Government of India Act, 1935, were consciously dropped from both the main clause and the proviso of Article 200. Dr. B.R. Ambedkar, while introducing the

[9] The Constitution of India, Article 142.
[10] Baxi, Upendra, *The Indian Supreme Court and Politics* (Eastern Book Company, 1980), at p. 85.
[11] Sudarshan, F. (2008). Judicial Activism and Constitutional Morality: The Indian Experience. ILI Law Review, 50 (2), pp.189-211, p.193.
[12] Supreme Court Bar Association v. Union of India, (1998) 4 SCC 409; E.S.P. Rajaram v. Union of India, (2001) 2 SCC 186.
[13] 7 CAD (1948) 1112: (1998) 4 SCC 409.
[14] Ibid: 8 CAD (1949) 488: (2001) 2 SCC 186.
[15] **Basu, D. D.,** *Commentary on the Constitution of India*, Vol. IX (LexisNexis, 2013), p. 6311.

provision, clarified the limited role of the Governor: “The Governor under this Constitution has no functions which he can discharge by himself; no functions at all. He has only certain duties to perform.”[16] T.T. Krishnamachari further emphasised: “We are not giving the Governor any discretionary powers. The Governor is to act only on the advice of the ministers... even when he returns the bill, it must be on their advice.”[17]

This deliberate omission reflects the Assembly’s intent to make the Governor a constitutional head acting on the advice of the Council of Ministers, not a parallel center of executive authority. More importantly, it reinforces that the Governor cannot act unilaterally in exercising assent functions, especially after the bill is repassed.

B. The Proviso to Article 200: A Mandate, Not a Discretion

The first proviso to Article 200 introduces a binding obligation: if a bill is returned with a message and repassed, the Governor “shall not withhold assent therefrom.” The phrase “shall not” was heavily debated. Members like Alladi Krishnaswami Ayyar supported the binding nature of the clause to avoid legislative paralysis. Krishnamachari observed: “We do not want a situation where a Governor, by simply withholding assent even after repassage, can frustrate the legislative will of the people.”[18] This provision was viewed as a constitutional safeguard to ensure the legislative supremacy of elected governments within the State framework and as a check on the misuse of gubernatorial discretion.

C. Debates on Article 201: Deliberate Constitutional Silence

Unlike Article 200, Article 201 contains no clause mandating the President to act within a particular time frame or to assent after repassage. This omission was not an oversight-it was intentional. The framers envisioned that Presidential assent might involve broader intergovernmental considerations, especially federal concerns, including repugnancy under Article 254(2) and coordination with Union legislation. Dr. Ambedkar underscored the broader, national dimension of Presidential assent: “In some cases, assent of the President may require consultations across ministries, even with the Cabinet. Hence, no rigid timeframe should be fixed.”[19]Accordingly, while the Governor was expected to act swiftly and non-politically, the President was afforded constitutional latitude, precisely because his role could

[16] 8 CAD (1949) 431.
[17] 7 CAD (1948) 1107.
[18] 7 CAD (1948) 1112.
[19] Ibid.

be influenced by complex federal interests.

D. Distinguishing the Governor from the President

The framers also consciously created an asymmetry between the two offices. The Governor, as a state appointee of the President, was to act almost entirely on ministerial advice. But the President, being elected and advised by a Cabinet responsible to Parliament, was expected to exercise broader, sometimes political, discretion. This difference is constitutionally significant. It supports the argument that the Supreme Court should not collapse this distinction by directing the President to act under judicial mandate, particularly via Article 142. The judiciary compelling presidential action risks intruding into the constitutional autonomy envisaged for the Union Executive.

IV. Sarkaria and Punchhi Commission Recommendations: Towards Federal Clarity

Both the Sarkaria Commission (1983–1988) and the Punchhi Commission (2007–2010) have stressed the need for conventions over judicial mandates-an insight endorsed by various scholars advocating for minimal judicial intrusion in federal processes.[20] These commissions explored the role of the Governor, including their powers under Article 200, and the process of granting or withholding assent to State legislation. Their recommendations decisively underscore the need for constitutional conventions, time-bound decision-making, and judicial restraint.

A. Sarkaria Commission: The Governor Must Act as a Constitutional Figurehead

The Sarkaria Commission devoted considerable attention to the misuse and delay of gubernatorial assent under Article 200. It recorded that excessive delays and the practice of "pocket veto"-where a Governor neither grants assent nor returns a Bill-were inconsistent with the spirit of parliamentary democracy and constitutional propriety.

The Commission's key recommendations included:

1. **Time-bound decision-making:** The Governor should decide on a Bill- whether to grant assent, withhold assent, or reserve the Bill-within one month of its presentation.

[20] B. Arora, *Political Dynamics of Federalism in India*, (1995) 56 I.J.P.S. pp..267-285, p278, Singh, M.P. Singh, *Governor's Role in India's Constitutional Framework: A Reapp.raisal*, (2015) 57 JILI, pp.251-272, p. 263.

2. **Reservation should be an exception:** Reservation of Bills for Presidential consideration should not be routine. It must be restricted to cases of genuine constitutional conflict, particularly when mandatory under Article 200, second proviso (e.g., affecting High Court jurisdiction).
3. **No personal discretion:** The Governor must act on the aid and advice of the Council of Ministers in all matters under Article 200, including withholding assent or reservation, except where explicitly required to act in his discretion.

The Commission emphasised: "The Governor is not an ombudsman or a parallel government; he is a constitutional head… the role envisaged is limited, non-political, and guided by ministerial advice." By this logic, if the Governor is bound to act upon repassage, judicial enforcement to compel assent is not needed, let alone the invocation of Article 142 to command the President.

B. Punchhi Commission: Emphasis on Codification and Time Limits

The Punchhi Commission, building upon Sarkaria's observations, reiterated the need for institutional clarity and time-bound action. It recognised that gubernatorial inaction on Bills was being increasingly used to frustrate democratically elected state governments.[21]

Its recommendations were stronger and more specific:[22]

1. **Maximum six-month limit:** The Governor should take a decision on a Bill within six months, failing which the assent shall be deemed to have been granted. This would prevent indefinite delays.[23]
2. **Judicial restraint:** The judiciary should not ordinarily compel assent to legislation unless there is manifest mala fides or constitutional impropriety. In such rare cases, it may intervene to ensure compliance with constitutional duties but should not substitute its own view on assent.
3. **Presidential discretion under Article 201 should not be judicially controlled:** The President's power to withhold or grant assent is political in nature and should not be

[21] Punchhi Commission held Governor was 'obliged' to give assent to returned Bill", The Hindu, 15 March 2022, https://www.thehindu.com/news/national/tamil-nadu/punchhi-commission-held-governor-was-obliged-to-give-assent-to-returned-bill/article65228410.ece (last visited 24 July 2025).
[22] The Times of India, "Tamil Nadu vs governor: 'SC verdict may create imbalance in federal structure' "Apr 15,2025), highlighting the judgment's federal implications, https://timesofindia.indiatimes.com/india/tamil-nadu-vs-governor-sc-verdict-may-create-imbalance-in-federal-structure/articleshow/120317257.cms (last visited 24 July 2025).
[23] Sarkaria Commission, Report of the Commission on Centre-State Relations (Government of India, 1988), Part I, Ch. VI, para 6.8.10, p. 185

subject to judicial timelines.[24]

The Commission warned: "Judicial intervention should not convert the Supreme Court into a third political chamber. Federal design mandates that both Central and State institutions retain space to perform constitutional duties within their domain."[25] This aligns with the view advanced in this paper: that the judiciary should not, by invoking Article 142, direct the President to act within a time frame, particularly after a Governor has exercised his judgment (rightly or wrongly) under Article 200.

C. Relevance to the Present Case

In ***State of Tamil Nadu v. Governor of Tamil Nadu,*** [26] the Supreme Court took a critical view of gubernatorial delays and endorsed, albeit implicitly, the possibility of enforcing time-limits through Article 142.[27] However, this overlooks the above Commission reports, which advocate constitutional conventions, not judicial mandates.[28] The consistent theme across both commissions is the institutional autonomy of executive actors-Governors and Presidents-guided by advice, but not subject to judicial micro-management. The recommendations do support the idea of time-bound assent at the Governor's level. However, they stop short of suggesting judicial enforcement of timelines for the President, thereby respecting the federal and political nature of Presidential decision-making. Importantly, they do not envision Article 142 as a tool to correct delays in executive decision-making in such domains.

V. Judicial Interpretation of Article 142: Limits and Scope

Article 142 of the Constitution of India has been hailed as one of the most potent provisions in the judiciary's arsenal for doing "complete justice." Yet, it's very breadth necessitates careful restraint, especially when invoked to address lacunae in executive action. This section examines the jurisprudence surrounding Article 142, with a focus on whether it can be used to direct the President to act within a particular timeframe in matters involving constitutional

[24] Pandey, Rajendra Kumar, "Context as Pretext: Presidential Discretion in India", (2017) 63(4) Indian J. Pol. Sc. pp..320-321, p. 320.

[25] Sarkaria Commission, *Report of the Commission on Centre–State Relations*, Vol. II (Government of India, 1988) pp. 214, para. 9.5.

[26] 2025 INSC 481: WRIT PETITION (CIVIL) NO. 1239 OF 2023 SC.

[27] Scroll.in, "Why the Supreme Court verdict on TN governor is a double-edged sword" (Apr 2025), discussing timelines and judicial overreach concerns, https://scroll.in/article/1081458/why-the-supreme-court-verdict-on-tn-governor-is-a-double-edged-sword (last visited 22 July 2025).

[28] Indian Express, "Why SC ruling on Tamil Nadu Guv stands out: Sparingly used powers invoked, strong message sent" (Explained news), on Article 142's rare use in constitutional matters, Indian Express, "Why SC ruling on Tamil Nadu Guv stands out: Sparingly used powers invoked, strong message sent" (Explained news), on Article 142's rare use in constitutional matters (last visited 23 July 2025).

discretion under Article 201.

A. Nature and Scope of Article 142

Article 142(1) provides:

"The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it..."

The provision is worded expansively. However, the Supreme Court itself has repeatedly cautioned that this power cannot be used to override express constitutional limitations or statutory mandates.[29] The aim is to supplement the law, not supplant it. In ***Supreme Court Bar Association v. Union of India,***[30] a Constitution Bench held: "Article 142 cannot be used to supplant substantive law applicable to the case or ignore statutory provisions… It cannot be construed as a source of jurisdiction." In ***A.B. Bhaskara Rao v. Inspector of Police,***[31] the Court stated: "Though the powers under Article 142 are curative, they do not confer upon the Court a legislative function. The relief must be within the contours of law." These cases clearly demarcate the outer bounds of Article 142-it can aid justice but cannot create new rights or obligations that conflict with constitutional design.

B. Application in Constitutional Contexts

When invoked in constitutional matters, especially those involving coordinate organs of government, Article 142 must be interpreted in light of the basic structure doctrine, which includes principles such as federalism, separation of powers, and the rule of law. In ***State of Punjab v. Jagdev Singh Talwandi,***[32] the Court reiterated that constitutional functionaries cannot be compelled to perform their duties in a particular manner unless the Constitution expressly mandates such performance. Likewise, in ***Samsher Singh v. State of Punjab,***[33] while the Court emphasised that the Governor must act on the aid and advice of the Council of Ministers, it did not suggest that the judiciary could direct a constitutional head to act or decide within a specific period, especially where the Constitution has not imposed such a time limit.

[29] Live Mint, "Complete justice: Article 142 should be invoked only in truly rare cases" (May 2025), on the dangers of judicial overreach, https://cuts-ccier.org/complete-justice-article-142-should-be-invoked-only-in-truly-rare-cases/ (last Visited 20 July 2025).
[30] AIR 1998 SC 1895, 1998 (4) SCC 409, 1998 AIR SCW 1706.
[31] (1998) 8 SCC 730.
[32] (1984) 1 SCC 596.
[33] (1974) 2 SCC 831.

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The ***decision in Union Carbide Corporation v. Union of India,***[34] is often cited as a robust example of Article 142's reach. However, even there, the Court limited its intervention to fashioning remedies between private parties and the State in a tort law context-it did not compel action by the President or Parliament.

C. Judicial Deference to Executive Discretion

The Supreme Court has traditionally deferred to the President's discretion where constitutional provisions afford flexibility. In ***Rameshwar Prasad v. Union of India,***[35] the Court held that while Article 356 proclamations were subject to judicial review, the President's satisfaction could not be substituted with that of the Court. This principle is equally relevant for Article 201. The President's decision to withhold or grant assent-particularly after reservation under Article 200-is not a mere administrative act; it is a constitutional function influenced by a broader political and federal context. Directing the President to act within a time frame or to grant assent effectively overrides this constitutional discretion. In ***State of Punjab v. Principal Secretary to Governor of Punjab,***[36] the Court rightly emphasised that a Governor cannot delay action indefinitely. However, the decision was limited to the Governor's conduct under Article 200, not the President's under Article 201. The distinction is material. The former is a state constitutional head with limited discretion; the latter is a Union constitutional authority advised by the Union Council of Ministers.[37]

D. Limitations in Compelling Assent

In ***Kaiser-I-Hind Pvt. Ltd. v. National Textile Corporation,***[38] a Constitution Bench explained that Presidential assent under Article 254(2) is a distinct process, requiring specific reference to the repugnancy and an assessment of the national interest. This reinforces the principle that such decisions entail political judgment beyond judicial competence. Further, in ***R. Rajagopal v. State of Tamil Nadu,***[39] the Court reaffirmed that even fundamental rights do not permit the judiciary to rewrite constitutional roles. Compelling the President to assent within a prescribed time frame would not only reassign a constitutional duty but also distort the federal structure

[34] 1991) 4 SCC 584.
[35] (2006) 2 SCC 1.
[36] (2024) 1 SCC 384.
[37] Times of India, "Prez questioning SC fixing deadline …" (President Murmu's reaction under Article 143), expressing concerns over judicial limits vis-à-vis executive prerogatives, https://timesofindia.indiatimes.com/india/can-sc-fix-deadlines-for-president-governors-assent-to-bills-murmu/articleshow/121171934.cms (last visited 23 July2025).
[38] (2002) 8 SCC 182.
[39] (1994) 6 SCC 632.

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by judicializing what is otherwise a matter for executive discretion.

VI. Powers of the President and Governor: Judicial Review and Constitutional Discretion

Understanding the limits of judicial intervention in the exercise of constitutional powers by the President and Governor requires a deep dive into how these offices function within the constitutional framework. Although both are expected to act on the advice of the respective Council of Ministers, the context and scope of their discretion differ, particularly under Articles 200 and 201.

A. The President under Article 201: Executive Head with Federal Considerations

Article 201 empowers the President to grant or withhold assent to a Bill reserved by the Governor under Article 200. Unlike Article 200, which restricts the Governor's options after repassage of a Bill, Article 201 contains no equivalent binding proviso. In ***Kaiser-I-Hind Pvt. Ltd. v. National Textile Corporation,***[40] the Supreme Court held: "The President's power to grant or withhold assent is not mechanical but based on federal considerations involving repugnancy, public interest and national legislative priorities." This means the decision is inherently political, not just administrative. Hence, subjecting it to judicial direction through Article 142 would erode the President's constitutional role. Moreover, the President acts on the aid and advice of the Union Council of Ministers under Article 74. In ***Samsher Singh v. State of Punjab,***[41] the Supreme Court made it clear that the President is not expected to act personally except in matters requiring personal discretion (e.g., Article 123 ordinances). The decision to assent or withhold assent, being subject to Cabinet advice, involves inter-ministerial consultation and often legal scrutiny at the central level.

B. The Governor: Constitutional Head with Constrained Discretion

The Governor's position has long been contentious, given the potential for conflict with the elected State Government. However, judicial precedent has consistently emphasised that the Governor is bound by the advice of the Council of Ministers in most situations. In ***Nabam Rebia v. Dy. Speaker, Arunachal Pradesh Legislative Assembly,***[42] a Constitution Bench observed: "The Governor's discretion is not general or unlimited. It is confined to areas

[40] (2002) 8 SCC 182.
[41] (1974) 2 SCC 831.
[42] (2016) 8 SCC 1.

specifically earmarked by the Constitution or where constitutional conventions clearly allow for independent decision-making." This limits the Governor's capacity to reserve Bills at will, particularly after repassage. The first proviso to Article 200 further binds the Governor to assent once the legislature re-enacts a Bill, thereby negating discretion in the second round.

However, in ***State of Tamil Nadu v. Governor of Tamil Nadu,***[43] the Supreme Court acknowledged the Governor's letter withholding assent without a message. Upon repassage, the Governor sought to reserve the Bills again under Article 200, raising constitutional concerns about a potential circumvention of Article 200's first proviso. Still, even assuming this amounted to constitutional impropriety, the remedy lies in setting aside the Governor's second reservation, not in compelling the President to assent under Article 201.

C. Limits of Judicial Review: Reviewing Process, Not Directing Outcome

The judiciary is well within its rights to review whether the Governor or the President exercised their power constitutionally-i.e., without mala fides, arbitrariness, or extraneous considerations. But it is equally clear that courts cannot substitute their judgment in place of the executive, particularly where discretion is explicitly or implicitly provided. In ***Rameshwar Prasad v. Union of India,***[44] the Court observed: "Judicial review can examine whether the satisfaction is vitiated by mala fides or is based on irrelevant considerations, but not the sufficiency or correctness of the material." Similarly, in the context of the President's discretion under Article 201, courts can scrutinise whether the decision violates constitutional norms. But courts cannot direct the President to act, much less within a judicially imposed timeframe, because such direction violates the principle of separation of powers.

D. Constitutional Autonomy and Institutional Balance

The framers of the Constitution envisioned a delicate institutional balance. While the judiciary is the ultimate guardian of constitutional rights, it is not the sole actor. The President and Governor are not judicial subordinates but constitutional authorities with distinct roles. In this respect, the observations of the Punchhi Commission are instructive: "The Judiciary should not convert itself into a super-legislature or a parallel executive. Constitutional roles must be respected by all institutions."[45] Compelling the President to act under Article 201 using Article

[43] (2025) INSC 481.
[44] (2006) 2 SCC 1.
[45] Punchhi Commission Report, Vol. II, Government of India, Report of the Commission on Centre-State Relations, para 5.10.19, p. 139 (2010).

142-especially where the Constitution provides no such compulsion-breaches this balance.

VII. Critique of State of Tamil Nadu v. Governor (2025 INSC 481)

The Supreme Court's judgment in ***State of Tamil Nadu v. Governor of Tamil Nadu***[46] represents a significant moment in constitutional adjudication on Centre–State relations and the boundaries of judicial power. While the Court sought to redress what it saw as gubernatorial inaction bordering on constitutional abdication, its reasoning raises serious concerns about institutional overreach. Particularly contentious is the suggestion-implicit or explicit-that the Court may compel the President to act on reserved Bills, using the authority of Article 142. This section critiques the decision from the standpoint of constitutional text, precedent, and federalism, arguing that the Court's approach is flawed on both interpretive and structural grounds.

A. The Factual Background and Judicial Posture

The case involved a set of 12 Bills passed by the Tamil Nadu Legislature, 10 of which were initially withheld by the Governor without returning them with a message, and later repassed by the State Assembly. The Governor, instead of giving assent post-repassage, reserved the Bills for Presidential consideration. The State challenged this action, terming it mala fide and unconstitutional. The Supreme Court found fault with the Governor's actions and emphasised that the first proviso to Article 200 binds the Governor to assent after repassage. However, in recognising the subsequent reservation of Bills as problematic, the Court seemed to suggest that the delay by the President could also be reviewed and remedied, potentially through Article 142.

B. Article 142 Cannot Be Used to Direct Presidential Assent

The most controversial implication of the judgment is the possibility of directing the President to accord assent within a judicially imposed time frame. This approach is constitutionally untenable for several reasons:

1. **Lack of Constitutional Compulsion:** Article 201 contains no provision akin to Article 200's first proviso. The President is not mandated to assent after repassage. Judicially reading such a compulsion into Article 201 violates constitutional design and undermines the federal character of the Indian polity.

[46] (2025) INSC 481.

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2. **Separation of Powers:** The President, acting on the advice of the Union Council of Ministers, is part of the executive, not a subordinate to the judiciary. Any direction compelling the President to act within a timeframe would judicialize a political-executive function.
3. **A Leap into Judicial Terra Incognita:** Let's be clear: the judiciary has never before crossed this particular Rubicon. There is a resounding absence of precedent for any court directing the President on the matter of assent. Even the high-water marks of judicial activism under Article 142-think of ***Union Carbide and Common Cause v. Union of India,***[47] stopped at the precipice, carefully avoiding interference with core executive domains. By even hinting that it might compel the President, the ***State of Tamil Nadu v. Governor of Tamil Nadu,***[48] judgment ventures into uncharted territory, breaking with settled jurisprudence and threatening to breach the firewall of executive discretion.

C. Misapplication of State of Punjab v. Principal Secretary to Governor of Punjab

The Court heavily relied on ***State of Punjab v. Principal Secretary to Governor of Punjab,***[49] where it held that a Governor must act under Article 200 within a reasonable time and cannot indefinitely delay a Bill. However, Punjab dealt with the Governor-not the President-and explicitly focused on the scope of the first proviso to Article 200. Extending that logic to Article 201, where no such proviso exists, reflects a judicial overreach not supported by constitutional text or precedent. While the principle of non-delay is vital, the remedy cannot be to judicially compel presidential action, especially where the Constitution itself does not.

D. Overlooking the Nature of Presidential Assent

The judgment fails to engage with the qualitative difference between the Governor's and President's roles. The President, in cases of reservation, often acts based on inputs from multiple ministries and agencies, particularly when issues of repugnancy under Article 254(2) arise. Judicial timelines cannot reasonably govern such complex policy processes. Further, the President is not just a constitutional head but also a participant in the political-executive machinery of the Union. Compelling him to act by judicial decree may create undesirable tensions between the judiciary and the executive, and even risk political backlash.

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[47] (1999) 6 SCC 667.
[48] 2025 INSC 481.
[49] (2024) 1 SCC 384.

E. Remedies Exist Without Invoking Article 142

Even if the Court found the Governor's action improper, the constitutional remedy lies in invalidating the second reservation, not in compelling the President to act. The Supreme Court could have:

- Declared the Governor's reservation after repassage as ultra vires Article 200.
- Directed the Governor to act in accordance with Article 200's first proviso.
- Sent the matter back to the State Legislature with specific guidelines.

Each of these remedies respects constitutional roles and avoids encroaching upon the President's domain. Instead, the judgment risks creating a precedent where any delay in Presidential assent is met with judicial compulsion.[50]

F. Federalism and Political Process: The Overlooked Pillars

The judgment also underestimates the role of political and federal dialogue in resolving such disputes. Article 201, by design, permits the Union to weigh competing legislative interests, especially where repugnancy or inter-State impact exists. Judicially compressing this process into strict deadlines undermines the flexibility essential to federal governance.

VIII. Comparative Constitutional Perspectives

To further understand the boundaries of judicial intervention in executive assent, it is useful to examine how other constitutional democracies treat the grant or withholding of assent by heads of state, and whether courts in those jurisdictions have the power to compel such assent or impose time limits. A comparative analysis reveals a consistent theme: while judicial review of legality exists, courts abstain from directing heads of state-Presidents, Monarchs, or Governors-on matters of assent, especially where the Constitution or conventions provide space for executive discretion.

A. United Kingdom: Parliamentary Supremacy and Royal Assent

In the Westminster system, once a Bill passes both Houses of Parliament, it is presented to the Sovereign for Royal Assent. While the power technically exists for the Monarch to refuse assent, the last time it was exercised was in 1708. Royal Assent is now a constitutional convention and is always granted. Courts in the UK have never entertained a petition to compel

[50] Onmanorama, "President must decide on bills reserved by Governors within 3 months: Supreme Court," Apr 12, 2025, https://www.onmanorama.com/news/india/2025/04/12/president-assent-reserved-bills-governors-supreme-court.html (last visited 23 July 2025).

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Royal Assent. The doctrine of separation of powers, combined with the supremacy of Parliament, ensures that the judiciary does not intervene in legislative–executive procedures at this stage. As Professor A.V. Dicey noted, the role of the Monarch is "ceremonial," and the assent is a constitutional obligation, not a point for judicial contestation.[51]

B. United States: Veto and Judicial Restraint

In the U.S., the President has a qualified veto. Article I, Section 7 of the U.S. Constitution allows the President to return a bill with objections. If Congress repasses the bill with a two-thirds majority, the President must accept it as law. However, the Constitution also recognises the possibility of a "pocket veto," wherein the President does not sign or return the bill, and if Congress adjourns, the bill dies. U.S. courts have never directed the President to sign a bill. In Kennedy v. Sampson,[52] the Court reviewed the use of pocket veto but did not compel executive action. It held that judicial review could extend to verifying constitutional compliance but not to substituting for Presidential decision-making. The Supreme Court of the United States has also made clear in ***Mississippi v. Johnson***[53] that courts cannot issue injunctions against the President in matters involving discretionary or executive duties, reinforcing that judicial power cannot compel the performance of acts that are political in nature.

C. Canada: Lieutenant-Governor and Reservation Power

Canada's federal system has direct analogies with India. Under Section 90 of the British North America Act, the Lieutenant-Governor of a province may reserve a bill for the Governor-General's consideration. This is equivalent to Articles 200–201 in India. However, judicial review of such reservations is almost non-existent. The Supreme Court of Canada in ***OPSEU v. Ontario (Attorney General)***,[54] upheld the principle that the Lieutenant-Governor acts within a constitutionally defined role, and courts cannot interfere unless there is a clear violation of constitutional limits. The judgment maintained that the nature of assent and reservation is political and must be resolved through institutional mechanisms, not judicial mandates.

D. Australia: Governor and Discretion

In Australia, under Section 58 of the Commonwealth Constitution, the Governor-General may

[51] A.V. Dicey, Introduction to the Study of the Law of the Constitution, 10th ed. (London: Macmillan,1959), p. 57.
[52] 511 F.2d 430 (D.C. Cir. 1974).
[53] 71 U.S. (4 Wall.) 475 (1866).
[54] [1987] 2 SCR 2.

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assent to, withhold assent from, or reserve bills for the Queen's pleasure. Courts have historically refrained from issuing any direction regarding these powers. The High Court of Australia, in ***Attorney-General (Cth) v. The Queen,***[55] stated that matters involving the powers of the Governor-General remain a non-justiciable 'no-go' zone, barring the most egregious constitutional breach. And even then? The remedy is merely a declaration, never compulsion.

E. The View from South Africa: Restraint Amidst Transformation

The South African model, forged in the crucible of post-apartheid reform, offers a compelling lesson. Under Section 79, the President has checks but is ultimately bound to assent to a constitutionally compliant bill. Yet, as the Constitutional Court affirmed in ***Doctors for Life International v. Speaker of the National Assembly,***[56] its role is to police the *process*, not to dictate the *pace* or substance of assent. This is profound. Even in a system celebrated for its robust Bill of Rights and 'transformative constitutionalism,' the Court knows where its authority ends.

What emerges from this global voyage is an almost deafening judicial consensus: courts can referee the constitutional game, but they cannot force a player-the head of state-to make a move. The logic is simple and institutional. Such decisions are tangled webs of political and federal calculus, better handled by political actors. This perspective fortifies our central thesis. For the Indian Supreme Court to use Article 142 to compel Presidential assent would be to chart a lonely, perilous course, making India a constitutional pariah and shattering the fragile equilibrium between judicial power and executive autonomy.

IX. Conclusion

The question that animates this paper: Can the Supreme Court of India, under Article 142, direct the President to accord assent to a state bill repassed under Article 200? The judgment in ***State of Tamil Nadu v. Governor of Tamil Nadu***,[57] while addressing valid concerns regarding constitutional delays and the breakdown of cooperative federalism, oversteps the permissible boundaries of judicial intervention when it implies or approaches the possibility of compelling Presidential action.

[55] [1912] HCA 94, (1912) 15 CLR 182, High Court (Australia).
[56] [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC).
[57] (2025) INSC 481.

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The Constitution of India draws a clear line between different spheres of authority. Articles 200 and 201 establish a multi-tiered framework for legislative assent, embedding both legal obligations and executive discretion. The first proviso to Article 200 binds the Governor to assent following repassage of a Bill, thereby ensuring that the legislative will prevails. In contrast, Article 201 affords the President broader latitude, especially where federal or constitutional concerns arise. It is this asymmetry that the judiciary must recognize and preserve. Judicial review, a core feature of constitutionalism, permits the Court to examine whether the Governor or President has acted within their powers and in good faith. But it does not entitle the Court to command a course of action in areas where the Constitution has conferred discretion. Article 142, despite its breadth, is not a super-constitutional provision and must be interpreted with judicial restraint consistent with the basic structure doctrine. As repeatedly held by the Supreme Court in Supreme Court Bar Association, Samsher Singh, Rameshwar Prasad, and Union Carbide, Article 142 supplements the law; it does not supplant constitutional structure or institutional roles.

The Constituent Assembly Debates leave little doubt that the Governor is not to act in his discretion, and that the President's role in Article 201 matters was intentionally left open-ended to accommodate broader federal considerations. The Sarkaria and Punchhi Commission reports echo this design by recommending time-bound gubernatorial action but resisting judicial compulsion of Presidential functions. Internationally, constitutional courts uniformly abstain from directing heads of state to assent to legislation. From the United Kingdom's non-justiciable Royal Assent to the United States' pocket veto, and Canada's and Australia's cautious judicial stances, the global practice respects the political nature of assent.

Therefore, while it is constitutionally permissible for the Supreme Court to declare the Governor's actions unlawful-particularly if he has withheld assent after repassage in violation of Article 200's first proviso-it is constitutionally impermissible to direct the President to grant assent under Article 201 using Article 142. Doing so undermines federalism, violates separation of powers, and places the judiciary in the role of a super-executive, a result that India's constitutional scheme does not envisage.

Recommendations: To address these constitutional tensions while preserving institutional integrity, this paper recommends: (1) constitutional amendment introducing time-bound Presidential assent similar to Article 200's first proviso; (2) codification of constitutional

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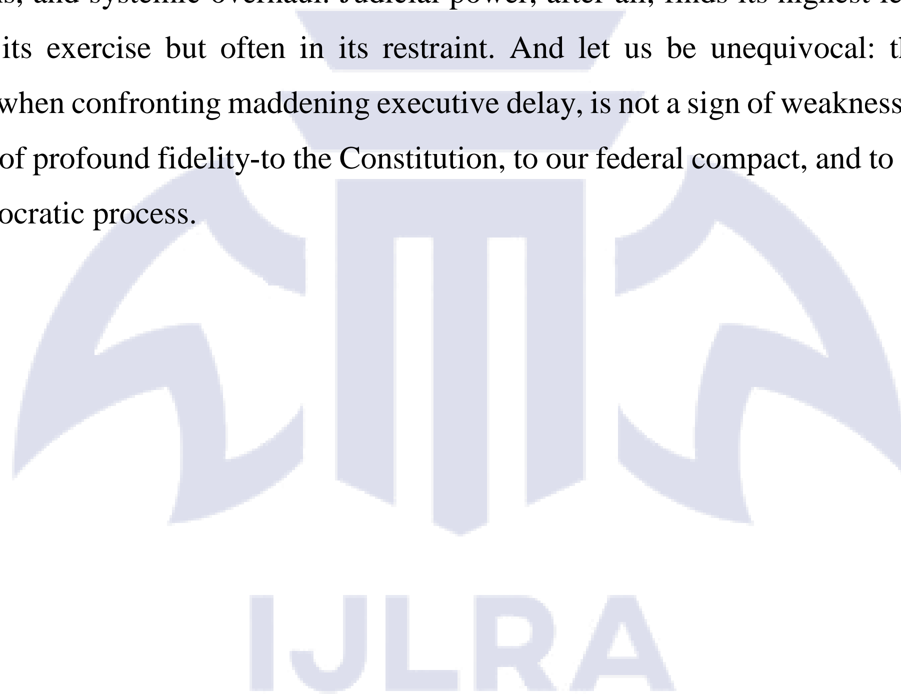
conventions governing Centre-State relations; (3) establishment of institutional mechanisms like an enhanced Inter-State Council for mediating assent disputes; (4) judicial guidelines limiting Article 142's application to discretionary constitutional functions; (5) executive accountability measures including annual parliamentary reports on reserved Bills; and (6) comprehensive constitutional training programs for functionaries. The path forward, I submit, lies not in the seductive shortcut of the judicial gavel but in the hard grind of political consensus-building and genuine structural reform.

In the final analysis, the cure for executive lethargy isn't a judicial decree that rattles institutional foundations; it's the stronger medicine of political accountability, robust conventions, and systemic overhaul. Judicial power, after all, finds its highest legitimacy not always in its exercise but often in its restraint. And let us be unequivocal: that restraint, especially when confronting maddening executive delay, is not a sign of weakness or passivity. It is an act of profound fidelity-to the Constitution, to our federal compact, and to the very soul of the democratic process.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