

# Supreme Court's Advisory Opinion on Governor's Powers

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## Advisory Opinion Latest News

- The Supreme Court has issued a significant advisory opinion under **Article 143** of the Constitution, responding to a Presidential reference triggered by a two-judge Bench judgment from April 2025 related to delays in assent to State Bills.

## Background to the Presidential Reference

- The Presidential reference arose due to the Supreme Court's April 2025 judgment in **State of Tamil Nadu vs. Governor of Tamil Nadu**, which:
  - Mandated a three-month timeline for Governors and the President to act on Bills,
  - Declared such decisions judicially reviewable,
  - Exercised **Article 142** powers to grant "deemed assent" to several pending Tamil Nadu Bills.
- This ruling generated constitutional uncertainty, prompting the Union government to seek clarification on:

- Whether courts can prescribe timelines,
- Whether presidential inaction is justiciable,
- Whether the Supreme Court's Article 142 powers can override constitutional provisions.

## Scope of Questions Raised in the Reference

- The reference placed 14 constitutional questions before a Constitution Bench, primarily relating to:
  - Interpretation of **Article 200** and **Article 201** regarding assent to State Bills,
  - Whether courts can intervene before a Bill becomes law,
  - The justiciability of delays,
  - The permissible boundaries of Article 142.
- These questions went to the heart of India's federal structure and the functional relationship among State legislatures, Governors, and the Union.

## Key Takeaways from the Supreme Court's Advisory Opinion

- The five-judge Bench delivered a comprehensive opinion, which reshapes constitutional understanding on several fronts.
- **Governor's Options Under Article 200**
  - The Court clarified that a Governor has three constitutionally recognised choices when presented with a Bill:
    - Assent,
    - Reserve the Bill for Presidential consideration,
    - Withhold assent and return the Bill to the legislature with observations.
 These options are explicitly grounded in the constitutional text.
- **Discretion of the Governor**
  - The Court held that the Governor enjoys discretion in choosing among these options and is not bound by the aid and advice of the Council of Ministers regarding assent-related decisions.
  - This interpretation marks a significant shift from earlier decisions such as **Shamsher Singh (1974)** and **Nabam Rebia (2016)**, which emphasised the primacy of ministerial advice.
- **Limited Justiciability**
  - Governor's actions under Article 200 are generally not justiciable,
  - However, in cases of "glaring prolonged and unexplained inaction", courts may issue a limited mandamus directing the Governor to act,
  - Courts cannot review the validity of the Governor/President's decision before a Bill becomes law.
- **No Judicial Timelines**
  - A key reversal of the April 2025 judgment: the Court held that in the absence of constitutional timelines, the judiciary cannot prescribe time limits for Governors or the President to act on Bills.
- **No 'Deemed Assent'**
  - The Court strongly rejected the concept of "deemed assent," holding that the judiciary cannot substitute executive authority through Article 142. Assent-related decisions belong exclusively to the Governor or President.

# Issues Arising from the Opinion

- **Potential Undermining of Legislative Intent**

- The Court's recognition of wide gubernatorial discretion contradicts earlier judicial positions and expert committee recommendations.
- The **Sarkaria Commission** (1987) held that reserving Bills for the President should occur rarely, and only in cases of clear unconstitutionality.
- Earlier Supreme Court cases insisted that Governors act on ministerial advice, not independent discretion.
- The current opinion risks allowing Governors to delay or derail the legislative agenda of elected State governments.

- **Concerns Over Lack of Timelines**

- The **Punchhi Commission** (2010) recommended a six-month limit for gubernatorial decisions.
- The Supreme Court itself had earlier set non-textual timelines (e.g., in K.M. Singh, three months for Speakers to decide disqualification petitions).
- Thus, critics argue that judicially crafted timelines can be constitutionally permissible when required to uphold democratic functioning.
- The current advisory opinion rejects such purposive interpretation.

## Way Forward

- While the Governor represents the Union and the ideal of national unity, federalism is a **basic structure of the Constitution**. Moving forward:
  - Governors must exercise constitutional powers with responsible urgency,
  - The Centre must ensure the office is not used to thwart State governments,
  - Judicial oversight must remain available to prevent constitutional paralysis while respecting the separation of powers.

**Source: TH**

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