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Federalism and the Powers of the Governor in India: A Critical Examination of Recent Supreme Court Interpretations

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ABSTRACT

The federal architecture of the Republic of India is currently experiencing unprecedented institutional friction, primarily catalysed by the contentious exercise of discretionary powers by State Governors. As constitutional heads appointed by the Union Government, Governors operate at the delicate intersection of state legislative autonomy and national policy uniformity. This research report presents an exhaustive, doctrinal examination of the Governor's powers, specifically focusing on the withholding of assent to state criminal legislation under Article 200 and the exercise of pardoning powers under Article 161 of the Constitution of India. Over the past few years, a systemic practice of Governors indefinitely delaying assent to duly enacted state laws has paralyzed legislative agendas across multiple states. This crisis culminated in a jurisprudential whiplash at the Supreme Court of India in the year 2025. In May 2025, a landmark judgment strictly prohibited the absolute or pocket veto, mandated rigid timelines for gubernatorial action, and subjected the Governor's inaction to judicial review, effectively interpreting the phrase "as soon as possible" as a strict mandate.1However, this representation-reinforcing precedent was subsequently destabilized by the November 2025 Advisory Opinion in In Re: Special Reference No. 1 of 2025,2which reasserted the absolute, non-justiciable discretion of the Governor, effectively sanctioning a de facto Union veto over state legislation. Concurrently, the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, has introduced severe statutory complexities, particularly through Section 472(7), which seeks to controversially oust the judicial review of the executive's pardoning power, and Section 477, which replaces central "consultation" with "concurrence" in matters of remission.3Through a rigorous analysis of case law, statutory transitions from the Code of Criminal Procedure (CrPC) to the BNSS, and the structural doctrine of repugnancy under Article 254(2), this report argues that the contemporary expansion of gubernatorial discretion threatens to unravel the cooperative federalism embedded in the Indian Constitution. The report concludes by proposing concrete constitutional amendments and the enforcement of the Punchhi Commission's recommendations to restore equilibrium.

1. State of Tamil Nadu v. Governor of Tamil Nadu, 2025 INSC 481.
2. In Re: Special Reference No. 1 of 2025, 2025 INSC 1333.
3. he Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 472(7), 475, 477.

Introduction

Federalism in India is a dynamic, structurally complex framework, famously characterized by constitutional scholars as quasi-federal with a strong unitary bias. The Constitution of India carefully apportioned legislative and executive

power between the Union and the States, attempting to balance regional autonomy with national integrity. At the fulcrum of this federal balance sits the office of the Governor. Conceived by the framers of the Constitution as a vitalconstitutional link and a sagacious observer, the Governor is entrusted with dual responsibilities: serving as the ceremonial head of the State executive and acting as a representative of the Union Government. The structural design of the Governor's office is codifid in Part VI of the Constitution. Article 153 mandates the appointment of a Governor for each state, while Article 154 vests the executive power of the State in this office, to be exercised either directly or through subordinate officers. Crucially, under Article 163, the Governor is required to exercise these powers on the aid and advice of the State's Council of Ministers, save for specific instances where the Constitution explicitly permits discretionary action. However, the undefined periphery of this discretionary power has historically served as a fertile ground for constitutional litigation, political discord, and allegations of democratic subversion.

In recent years, the intersection of gubernatorial power and criminal law has emerged as a particularly volatile domain. This volatility manifests primarily in two distinct but structurally related arenas: the pardoning power of the Governor under Article 161,4and the power to grant, withhold, or reserve assent to State legislative bills under Articles 200 and 201.5Criminal law and criminal procedure fall under the Concurrent List (List III) of the Seventh Schedule to the Constitution, meaning both the Parliament and the State Legislatures possess the competence to enact laws. When a State legislature enacts a criminal law that may conflict with a Central statute, the Governor is often utilized as a mechanism to reserve the bill for the President's onsideration under Article 254(2), thereby preventing the state law from taking immediate effect.6State governments, including those of Tamil Nadu, Kerala, Punjab, and West Bengal, have repeatedly approached the constitutional courts, alleging that Governors are weaponizing their constitutional offices to stall democratically enacted criminal laws, such as anti-mob

4 The Constitution of India, art. 161.
5 The Constitution of India, arts. 200, 201.
6 The Constitution of India, art. 254(2).

lynching bills, and to unilaterally intercept executive decisions regarding the remission of sentences for high-profile convicts. The controversy surrounding the Governor’s power reached an inflection point in 2025. The Supreme ourt of India, tasked with interpreting the silences of the Constitution, delivered two heavily contrasting directives within the span of six months. The first, a binding judgment in State of Tamil Nadu v. Governor of Tamil Nadu delivered in May 2025, sought to close the constitutional black hole" of gubernatorial inaction by interpreting the phrase "as soon as possible" as a strict temporal mandate, thereby stripping the Governor of the implied pocket veto and subjecting their deliberate delays to judicial review.7The second directive, a sweeping Advisory Opinion delivered in November 2025 under the President's Article 143 jurisdiction in In Re: Special Reference No. 1 of 2025, completely contradicted the prior judgment by reinstating broad, non-justiciable discretionary powers to both the Governor and the President, declaring that constitutional courts cannot impose fixed timelines on constitutional functionaries.8

Simultaneously, the legislative landscape of Indian criminal law underwent a tectonic shift with the replacement of the colonial-era Code of Criminal Procedure, 1973 (CrPC)9with the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).10The BNSS fundamentally alters the mechanics of commutation and remission, directly impacting the interplay between statutory criminal procedures and the Governor's sovereign prerogative under Article 161. Specifically, provisions such as Section 472(7) of the BNSS attempt to statutorily silence the judicial review of

clemency decisions, raising profound questions regarding the separation of powers and the inviolability of the basic structure doctrine.

This research report provides an exhaustive, critical examination of these concurrent constitutional and statutory developments. The central thesis of this report posits that the current trajectory of Supreme Court interpretations, particularly the November 2025 Advisory Opinion, combined with the centralizing statutory tendencies embedded within the BNSS, effectively empowers an unelected executive authority to override the mandate of State legislatures. This paradigm shift jeopardizes the foundational tenets of cooperative federalism,

7 State of Tamil Nadu v. Governor of Tamil Nadu, 2025 INSC 481.
8 In Re: Special Reference No. 1 of 2025, 2025 INSC 1333.
9 The Code of Criminal Procedure, 1973.
10 The Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 472(7), 475, 477.

necessitating urgent constitutional reforms and a reaffirmation of the boundaries of judicial review.

Literature Review

An exhaustive analysis of the Governor's powers must be firmly grounded in the historical intent of the Constituent Assembly, the textual boundaries of the Constitution, and the seminal recommendations of independent commissions tasked with reviewing Centre-State relations. An extensive survey of existing legal scholarly work, case laws, and historical documents reveals a persistent tension between the ideal of an impartial constitutional sentinel and the reality of a politically active executive agent.

The Constituent Assembly Debates and Constitutional Intent

The debate surrounding the Governor's discretion is not a novel phenomenon; it traces its rigins directly to the deliberations of the Constituent Assembly of India. Draft Article 141, which subsequently metamorphosed into the present-day Article 161, was heavily debated in June and October of 1949. The framers of the Constitution envisioned the Governor not as a parallel center of political power, but as a constitutional observer and a stabilizing force. As established in the historical debates, the fundamental rationale for instituting the office of the Governor was to ensure constitutional checks and balances. The Governor was expected to provide guidance, issue cautions, and offer a mechanism for requesting legislative reconsideration without usurping the democratic will of the elected state ministry. In the context of the pardoning power, Article 161 of the Constitution grants the Governor the authority to "grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends".11Scholarly literature consistently categorizes this power, akin to the prerogative of the British Crown, as fundamentally an executive function that must be exercised strictly on the aid and advice of the State cabinet, rather than as an independent discretionary fiat.

Regarding the legislative process, Article 200 dictates the procedure to be followed when a Bill is passed by the State Legislature and presented to the Governor. The constitutional text provides explicit, limited options: the Governor "shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the

11 The Constitution of India, art. 161.

resident".12The critical first proviso to Article 200 states that the Governor may, "as soon as possible," return the Bill (provided it is not a Money Bill) with a message requesting the House to reconsider it. Importantly, the constitutional literature heavily emphasizes the subsequent clause: if the Bill is re-passed by the House with or without amendments and presented again, the Governor "shall not withhold assent therefrom". Scholars argue that this proviso was meticulously designed as the ultimate safeguard for legislative supremacy, ensuring that the Governor's suspensive veto could be overridden by democratic reiteration, thereby preventing the establishment of an autocratic executive.

The Sarkaria and Punchhi Commissions

To address the chronic misuse of Article 200 and the resulting strain on federalism, the Union Government has historically relied on expert commissions to analyze Centre-State relations. The Sarkaria Commission on Centre-State Relations, which submitted its monumental report in 1988, was explicitly tasked with providing recommendations regarding the interpretation of Articles 200 and 201.13The Commission comprehensively reviewed the existing status quo and warned that if the power to withhold assent is construed as falling within the exclusive discretionary domain of the Governor free from the binding aid and advice of the Council of Ministers it would possess the catastrophic potential of turning the Governor into a "super- constitutional figure". Such an interpretation, the Commission cautioned, could bring the entire legislative machinery of a State to a complete halt. The Sarkaria report emphasized that a Governor should reserve bills for the President only in rare, specific instances of patent unconstitutionality, or when a bill explicitly seeks to override central laws on concurrent subjects, thereby attracting the provisions of Article 254(2).

The M.M. Punchhi Commission on Centre-State Relations, which presented its multi-volume report in March 2010, built upon the structural foundations laid by the Sarkaria Commission.14 The Punchhi Commission observed that the indefinite delays orchestrated by Governors systematically subverted the democratic process and eroded cooperative federalism. To rectify this systemic flaw, the Punchhi Commission recommended the introduction of a strict, constitutionally codified time limit: the Governor must decide within a maximum period of six months whether to grant assent, withhold it, or reserve the bill for Presidential consideration. The Commission further argued that to maintain rigorous accountability, State Legislatures

12 The Constitution of India, arts. 200, 201.
13 Commission on Centre-State Relations, Report of the Sarkaria Commission (1988).
14 Commission on Centre-State Relations, Report of the Punchhi Commission (2010).

hould be empowered with the authority to impeach Governors, utilizing a procedure modeled appropriately after the impeachment mechanism designed for the President of India. Despite these robust, extensively researched recommendations, successive Union governments have conspicuously failed to amend the Constitution to codify these guidelines, leaving the matter entirely to the interpretive discretion of the Supreme Court of India.

Gaps in Existing Knowledge and Context

While the historical literature and commission reports provide a solid foundation regarding what the Governor's role should be, a significant gap exists in the contemporary legal literature regarding the interplay between the newly enacted Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and the Governor's constitutional powers. Existing scholarship extensivelyanalyzes the colonial-era Code of Criminal Procedure (CrPC), but there is a distinct lack of

comprehensive doctrinal analysis addressing how the BNSS's explicit ouster of judicial review under Section 472(7) interacts with the basic structure doctrine. Furthermore, the jurisprudential chaos introduced by the conflicting Supreme Court directives of May 2025 and November 2025 requires immediate scholarly synthesis. The literature has yet to fully map the contours of the "de facto Union veto" that has emerged from the November 2025 Advisory Opinion, nor has it adequately explored the specific stalling of state-level anti-mob lynching legislation as a symptom of this broader federal breakdown. This research report aims to bridge these precise gaps.

Research Methodology

This research report adopts a rigorous doctrinal (library-based) and analytical methodology to meticulously dissect the intersecting realms of constitutional law, criminal procedure, and federal theory. The methodology is structured to systematically evaluate the evolution of gubernatorial powers through the lens of recent statutory enactments and shifting judicial precedents.

The primary sources utilized in this analysis encompass the foundational legal texts of the Republic of India. These include the bare text of the Constitution of India, with particular emphasis on Part VI (The States) and Part XI (Relations between the Union and the States). Furthermore, a detailed textual comparison is conducted between the repealed Code of Criminal Procedure, 1973 (CrPC), and the newly operationalized Bharatiya Nagarik Suraksha Sanhita, 2023 (B SS). The research heavily relies on primary judicial texts, specifically extracting the ratio decidendi and obiter dicta from landmark judgments and advisory opinions of the Supreme Court of India. Key judicial pronouncements subjected to qualitative analysis include historical precedents such as Maru Ram v. Union of India15and Epuru Sudhakar v. Govt. of A.P.16as well as the highly disruptive contemporary decisions, namely A.G. Perarivalan v. State,17State of Tamil Nadu v. Governor of Tamil Nadu,18and the advisory opinion in In Re: Special Reference No. 1 of 2025.19 Secondary sources have been systematically integrated to construct a comprehensive evaluation of the underlying structural shifts in Indian federalism. These sources include the authoritative reports of the Sarkaria Commission (1988) and the M.M. Punchhi Commission

(2010), alongside peer-reviewed legal commentaries, constitutional law blogs, and

jurisprudential critiques regarding the doctrine of repugnancy and the separation of powers. The analytical framework of this report is qualitative. It employs a comparative statutory analysis to highlight the functional differences between the CrPC and the BNSS concerning executive clemency. Furthermore, it utilizes a chronological jurisprudential mapping to trace the Supreme Court's shifting interpretation of Article 200 throughout the year 2025. In adherence to the formatting requirements, case laws and statutes are cited utilizing the principles of the Indian Law Institute (ILI) citation standard via comprehensive footnotes.

Analysis and Discussion

The substantive analysis of this report is bifurcated into two major conceptual segments. The irst segment addresses the Governor's pardoning power under Article 161 and its disruptive interaction with the newly enacted BNSS. The second segment tackles the systemic crisis surrounding gubernatorial assent to State legislation under Articles 200 and 201, culminating in the conflicting Supreme Court interpretations of 2025.

Existing Law and Status Quo: The Mechanics of Clemency and Assent

To comprehend the magnitude of the current federal crisis, it is imperative to first establish the baseline legal mechanics governing executive clemency and legislative assent in India. The executive power to grant clemency

under Article 161 is a cornerstone of the Governor's authority within the realm of criminal justice. This constitutional provision confers upon the

15 Maru Ram v. Union of India, (1981) 1 SCC 107.
16 Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161.
17 A.G. Perarivalan v. State, (2022) 8 SCC 134.
18 State of Tamil Nadu v. Governor of Tamil Nadu, 2025 INSC 481.
19 In Re: Special Reference No. 1 of 2025, 2025 INSC 1333.

Governor a 'pardoning power' analogous to that of sovereign entities in other global jurisdictions. However, this power is explicitly circumscribed; it can only be exercised in relation to offenses against laws to which the executive power of the State extends. The scope of Article 161 is theoretically broad, and its constitutional language does not impose specific temporal limitations on the exercise of the power.

The jurisprudential baseline for the exercise of Article 161 was profoundly reaffirmed and clarified in the landmark case of A.G. Perarivalan v. State.20Perarivalan, a convict in the assassination of former Prime Minister Rajiv Gandhi, had languished in prison for nearly three decades. In 2018, the Tamil Nadu State Cabinet, exercising its constitutional prerogative, explicitly advised the Governor to pardon Perarivalan under Article 161. Instead of acting upon the binding aid and advice of the Council of Ministers as mandated by democratic norms, the Governor inexplicably forwarded the clemency petition to the President of India. The Supreme Court fundamentally rejected the Governor's action, unequivocally terming it an unconstitutional abdication of duty. The Court reiterated the established constitutional principle that the Governor is inexorably bound by the aid and advice of the State government in the exercise of pardoning powers. The Governor does not possess the independent discretion to refer a State Cabinet's recommendation under Article 161 to the President. A critical sub-issue in the Perarivalan case was the jurisdictional conflict between the Union and the State. Under Section 432(7) of the then-applicable CrPC, the "appropriate government" for granting remission depended on the division of executive power between the State and the Union. Because a central agency, the Central Bureau of Investigation (CBI), had probed the case, the Union government vehemently argued that under Section 435 of the CrPC, the State government required the explicit concurrence of the Central government to grant remission. The Supreme Court, however, clarified the hierarchy of laws, affirming that statutory provisions of the CrPC cannot control, dilute, or override the sovereign constitutional power of the Governor under Article 161. Finding its origin in English Common Law, the constitutional prerogative remains supreme and unfettered by subordinate legislation. When the Governor continuously failed to act on the binding advice of the cabinet, the Supreme Court invoked its extraordinary, inherent jurisdiction under Article 142 of the Constitution to directly order Perarivalan's release, effectively stepping into the shoes of the executive to cure a

20 A.G. Perarivalan v. State, (2022) 8 SCC 134.

persistent constitutional violation.21This judgment firmly established that the Governor’s clemency powers are not statutory, but constitutional, and are strictly subject to cabinet advice. Simultaneously, the mechanics of legislative assent under Article 200 dictate the very creation of criminal law. When a State legislature passes a bill, it cannot become law without the formal assent of the Governor or the President. Under Article 200, the Governor has three express options: grant assent, withhold assent, or reserve the bill for Presidential consideration. If the Governor withholds assent, the first proviso dictates that the bill must be returned "as soon as possible" with a message

requesting reconsideration. If the legislature re-passes the bill, the Governor's suspensive veto is exhausted, and assent becomes mandatory. Furthermore, under Article 254(2), if a state passes a criminal law (a Concurrent List subject) that is repugnant to an existing central law, the Governor must reserve the bill for the President. If the President grants assent, the state law prevails within that state, providing a crucial mechanism for localized legislative innovation.

The Problem: Statutory Centralization and the Weaponization of the Veto

While the Perarivalan precedent established a robust defense of state executive power and affirmed the necessity of judicial intervention in cases of executive paralysis, the Union Government's subsequent overhaul of the criminal justice system via the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, introduced statutory mechanisms that seek to severely curtail state autonomy and entirely oust judicial oversight. Concurrently, the mechanical application of Article 200 has been heavily weaponized by Governors to stall state legislative agendas. The most alarming development in the realm of clemency is the insertion of Section 472(7) into the BNSS. This provision explicitly dictates: "No appeal shall lie in any Court against the order of the President or of the Governor made under article 72 or article 161 of the Constitution and it shall be final, and any question as to the arriving of the decision by the President or the Governor shall not be inquired into in any Court".22

This statutory attempt to oust judicial review directly conflicts with decades of carefully calibrated constitutional jurisprudence. While it is settled law that a decision on a mercy petition is not subject to a standard appellate process on its substantive merits, the Supreme Court has consistently held that the process of arriving at that decision is undeniably subject to

21 The Constitution of India, art. 142.
22 The Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 472(7), 475, 477.

limited judicial review. In seminal cases such as Satpal v. State of Haryana23and Epuru Sudhakar v. Govt. of A.P.24the Court conclusively established that clemency decisions can be judicially scrutinized if they suffer from a lack of application of mind, are demonstrably mala fide, are based on extraneous or irrelevant considerations, improperly exclude relevant materials, or are purely arbitrary.

By statutorily mandating that "any question as to the arriving of the decision... shall not be inquired into in any Court," Section 472(7) attempts to construct an impenetrable legal shield around the executive, shielding clemency decisions from all forms of judicial accountability. This legislative silencing poses a grave risk to the doctrine of separation of powers and the rule of law. The power of judicial review is a universally recognized facet of the "basic structure" of the Indian Constitution; consequently, it cannot be abrogated even by a formal constitutional amendment under Article 368,25let alone by an ordinary criminal statute like the BNSS.

Beyond the deeply problematic ouster of judicial review, the BNSS substantially alters the mechanical framework of sentence commutation and remission, deliberately shifting the balance of power toward the Union Government.

Functional Feature	Code of Criminal Procedure, 1973 (CrPC)	Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Federal and Jurisprudential Impact Analysis
Commutation of Death		Section 475: Strictly restricts the scope of	Severely curtails executive discretion

Sentence	Section 433(a): A death sentence could be commuted by the executive to "any other punishment" stipulated in the IPC.	commutation of a death sentence to a sentence of **life imprisonment alone**.	under the statute, purportedly intended to increase the deterrence of capital offenses, removing the possibility of reducing a death sentence to a lesser term of years.
Role of Central Government in	Section 435: Provided that the State	Section 477: Explicitly replaces the	Statutorily mandates absolute Union

23 Satpal v. State of Haryana, (2000) 5 SCC 170.
24 Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161.
25 The Constitution of India, art. 368.

State Remissions	Government could remit a sentence only after **"consultation"** with the Central Government in cases probed by central agencies.	term "consultation" with the requirement for **"concurrence"** of the Central Government.	agreement, effectively providing the Centre with a unilateral veto over State remission policies in a wide array of high-profile cases.
Time Limits for Filing Mercy Petitions	No strict, universally applied statutory timeline was defined for filing mercy petitions post-conviction.	Section 472: Mandates that convicts must file mercy petitions within a strict window of **60 days** following the dismissal of an appeal by the Supreme Court.	Imposes rigid procedural timelines on death row convicts, severely limiting the temporal flexibility and strategic avenues for seeking executive clemency.

The transition from requiring mere "consultation" to requiring definitive "concurrence" under Section 477 of the BNSS represents a monumental shift for Indian federalism.26While the Supreme Court had previously interpreted consultation to imply concurrence in certain specific, fact-heavy scenarios, formally codifying "concurrence" into the statute cements the Union government's absolute veto power over a State's ability to remit sentences. However, as definitively ruled in the Perarivalan case, this statutory requirement of concurrence cannot legally bind or restrict the Governor when exercising the paramount, overriding constitutional power under Article 161. Thus, the BNSS sets the stage for inevitable, high-stakes constitutional litigation regarding the hierarchy of statutory constraints versus sovereign executive prerogatives.Simultaneously, the problem extends beyond executive clemency into the realm of legislative creation. The systematic delay in granting assent to state bills has escalated into a full-blown constitutional crisis, reflecting deep partisan divides between Union-appointed Governors and opposition-ruled State legislatures.

A primary justification utilized by Governors for reserving state criminal bills for the President is the doctrine of repugnancy under Article 254(2) of the

26 The Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 472(7), 475, 477.

Constitution.27In recent years, multiple states have attempted to pass specialized criminal legislation to address severe localized issues, only to have these laws effectively nullified by the Governor-President nexus.

A glaring example of this systemic obstruction is the fate of state-level Anti-Mob Lynching bills. Following explicit directives from the Supreme Court to enact special laws to combat the rising tide of mob violence, several state assemblies exercised their concurrent legislative competence.

These anti-lynching bills represent a state's legitimate, democratically mandated response to a localized law-and-order crisis. However, Governors have strategically utilized the threat of Article 254(2) repugnancy with the Indian Penal Code (and subsequently the BNSS/BNS) to

State	Proposed Legislation	Current Legislative Status	Legal and Political Context Underlying the Delay
Rajasthan	Rajasthan Protection from Lynching Bill, 2019 / 2024	Passed by the State Assembly in August 2019. Currently withheld and pending.	The Union Home Ministry (MHA) argued that "lynching" is not defined as a separate crime under the IPC/BNSS, viewing the state law as deviating from national policy.
West Bengal	West Bengal (Prevention of Lynching) Bill, 2019	Passed in August 2019. Pending the Governor's nod or Presidential reference.	Proposed 3 years to life imprisonment. The MHA formally stated the bill was "not received" from the state government, indicating a complete breakdown in the gubernatorial transmission process.
Manipur	Manipur Protection from Mob Violence Bill, 2018	Passed in 2018. Perpetually under examination by the Union Ministry.	Kept pending indefinitely. The Union continuously evaluates state criminal laws on subjective grounds of repugnancy with central laws and deviation from national policy frameworks.

27 The Constitution of India, art. 254(2).

reserve these bills for the President. Once a bill is reserved, it enters a "constitutional black hole" at the Union level, as Article 201 sets absolutely no time limit for the President to grant or withhold assent. This dynamic essentially strips states of their concurrent legislative competence, rendering state assemblies impotent in the face of urgent criminal justice requirements.

Legal Arguments: The May 2025 Mandate and the Prohibition of the Pocket Veto

The crisis of gubernatorial inaction reached a boiling point in the State of Tamil Nadu, where the Governor deliberately withheld action on 12 critical bills for over three years, stretching from January 2020 to April 2023. Only after the State government, paralyzed by this obstruction, approached the Supreme Court under Article 32 did the Governor react summarily withholding assent to ten bills and reserving two for the President without substantive justification. The State legislature promptly re-passed the ten bills, but the Governor, in direct defiance of the first proviso to Article 200 which mandates assent upon re-passage, forwarded these re-passed bills to the President.

On April 8, 2025, a two-judge bench of the Supreme Court delivered a watershed judgment in State of Tamil Nadu v. Governor of Tamil Nadu.28The Court, engaging in a powerful form of representation-reinforcing judicial review, ruled unequivocally that the Governor's indefinite delay and calculated inaction were fundamentally "illegal" and "erroneous in law". The judgment established several critical constitutional doctrines designed to repair the federal imbalance. First, it declared the absolute abolition of the pocket veto. The Court held that the Constitution does not permit a Governor to exercise an "absolute" or "pocket veto" over legislation duly passed by the State Legislature. The Governor cannot simply remain silent on a bill; their role is strictly limited to the three explicitly enumerated options under Article 200: assent, withhold and return, or reserve. Second, the Court undertook the task of defining the nebulous constitutional phrase "as soon as possible." To bridge the textual gap in Article 200, which lacks a specific timeframe, the Court creatively and strictly interpreted this phrase. It prescribed that the Governor must act within **one month** if they are following the aid and advice of the Council of Ministers, and within **three months** if they are deciding to act contrary to it. This objective metric removed the grey area that Governors had historically exploited.

28 State of Tamil Nadu v. Governor of Tamil Nadu, 2025 INSC 481.

Third, the Court affirmed the doctrine of mandatory assent on re-passage. It clarified that once a bill is returned by the Governor, reconsidered, and subsequently re-passed by the State Legislature, the Governor is under an absolute, unavoidable constitutional obligation to grant assent. The Court noted that the role ascribed to the Governor by the first proviso is merely "recommendatory in nature" and does not bind the State Legislature. Consequently, the Governor cannot subsequently reserve a re-passed bill for the President's consideration.

Most remarkably, the Court established that gubernatorial inaction invites limited judicial scrutiny. To cure the immediate constitutional paralysis and rescue the legislation from indefinite limbo, the Court invoked its extraordinary inherent powers under Article 142 of the Constitution to effectively "deem" the ten pending Tamil Nadu bills as having received assent. This May 2025 ruling was widely celebrated by federalism advocates and constitutional scholars as a necessary, robust judicial intervention to repair a broken democratic machine, ensuring that unelected executive officials could not perpetually frustrate the legislative will of a sovereign state.

Counterarguments: The Advisory Opinion and the Doctrine of the Political Thicket

A rigorous and objective examination of this subject must thoroughly acknowledge the legal and institutional defenses supporting the expansion of gubernatorial discretion and the limitation of judicial review. The equilibrium established by the Supreme Court in May 2025 was extraordinarily short-lived. The Union government, profoundly dissatisfied with the curtailment of gubernatorial discretion, rapidly facilitated a Presidential Reference to the Supreme Court under the advisory jurisdiction of Article 143. On May 13, 2025, President Droupadi Murmu referred 14 complex questions of law concerning the powers of the Governor and the President under Articles 200 and 201. On November 20, 2025, a five-judge Constitution Bench delivered its comprehensive advisory opinion in In Re: Special Reference No. 1 of 2025.29This exhaustive 111-page unanimous opinion fundamentally dismantled the doctrinal foundations established just months prior. Proponents of the November 2025 Advisory Opinion argue that the Governor's discretionary veto is a vital, non-negotiable structural safeguard against legislative populism and the potential fracturing of the Indian state. As noted during the Constituent Assembly debates, democratic trends can occasionally mirror a "wild beast," swayed by the transient whims of localized

29 In Re: Special Reference No. 1 of 2025, 2025 INSC 1333.

populist movements and regional political parties. In this reality, the Governor acts as the indispensable guardian of both the Constitution and Central policy. If State legislatures were granted unfettered, timeline-driven authority to enact criminal laws under the Concurrent List without robust Union oversight, it could lead to severe legal balkanization. A citizen could face vastly different criminal procedures, definitions of offenses, and evidentiary standards merely by crossing state lines. The Governor's power to reserve bills under Article 200 and Article 254(2) ensures that national uniformity in the criminal justice system a core objective of the NSS and the Bharatiya Nyaya Sanhita (BNS) is not eroded by contradictory, piecemeal regional statutes. Therefore, reading strict timelines into the Constitution artificially rushes a necessary, deliberative oversight process.

The Constitution Bench in the Advisory Opinion concluded that the powers of the Governor under Article 200 are inherently discretionary, and the Governor is not strictly bound by the aid and advice of the State Council of Ministers when deciding whether to grant, withhold, or reserve a bill. The Bench explicitly declared the imposition of strict timelines (the 1-to-3-month rule) to be unconstitutional, arguing that because the constitutional text omits specific deadlines, the judiciary cannot artificially impose them without egregiously violating the separation of powers. Furthermore, the Court ruled that the actions of the Governor and the President are not subject to judicial review, and courts do not possess the constitutional authority to "deem assent" to a bill. Crucially, the opinion introduced a devastating loophole: while Article 200 requires a Governor to assent to a returned and re-passed bill, no such requirement exists if the Governor simply bypasses the return process and directly reserves the bill for the President under Article 201.

Regarding the non-justiciability of the Governor's actions and the BNSS Section 472(7) ouster clause, constitutional conservatives rely heavily on the doctrine of the "political thicket". The doctrine of separation of powers dictates that the judiciary should not micromanage the executive's sovereign, prerogative functions. The power to pardon or to assent to a bill involves highly complex political, social, and national security considerations that are not readily quantifiable, nor are they judicially discoverable. By explicitly prohibiting judicial review of ardons, Section 472(7) of the BNSS aims to prevent the Supreme Court from acting as a super- executive appellate body, ensuring finality in the criminal justice process. Similarly, issuing a writ of mandamus against the Governor or the President violates the explicit constitutional immunity granted to these high offices under Article 361.30Forcing the President to seek

judicial advice on pending bills or imposing a doctrine of "deemed assent" constitutes profound judicial overreach, effectively amending the Constitution from the bench a legislative power reserved exclusively for Parliament under Article 368.

Conclusion and Recommendations

The federal framework of the Republic of India currently stands at a precarious, highly volatile crossroads, severely tested by the strategic manipulation of gubernatorial powers. The complex interplay between Article 161 (the executive pardoning power) and Article 200 (the legislative assent power) demonstrates a coordinated, systemic centralization of authority, rapidly shifting the locus of constitutional control away from democratically elected State legislatures and toward the Union Executive.

The jurisprudential trajectory of the Supreme Court throughout the year 2025 has been deeply contradictory, reflecting a profound institutional struggle over the definition of federalism. The May 2025 judgment in State of Tamil Nadu v. Governor of Tamil Nadu represented a monumental triumph of "innovative constitutionalism," seeking to strictly enforce executive accountability, define ambiguous constitutional timelines, and categorically prevent the unconstitutional utilization of the pocket veto. However, the subsequent November 2025Advisory Opinion efficiently dismantled this progressive framework, prioritizing a rigid, textualist, and non-justiciable interpretation of the Constitution. By removing timelines and immunizing the reservation process, the Advisory Opinion functionally grants the Union Government a de facto, permanent veto over state legislation.

In the concurrent realm of statutory criminal law, the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 particularly the aggressive ouster of judicial review mandated in Section 472(7) and the stringent "concurrence" requirement for remissions under Section 477 further erodes state autonomy and directly challenges the basic structure doctrine of judicial review. The systemic, indefinite stalling of crucial state legislation, vividly illustrated by the fate of the anti-mob lynching bills in Rajasthan and West Bengal, underscores the tangible, deeply harmful human cost of this constitutional deadlock. When Governors abandon their intended role as impartial constitutional sentinels and act merely as partisan, obstructionist

30 The Constitution of India, art. 361.

agents of the Union, the cooperative federalism meticulously envisioned by the framers degrades into a coercive, unitary hierarchy. To resolve this escalating constitutional crisis, restore the delicate federal equilibrium, andensure the supremacy of the democratic process, the following comprehensive legal reforms are urgently recommended:

- **Constitutional Amendment of Article 200:** The Parliament of India must undertake aconstitutional amendment of Article 200 to explicitly codify the longstanding recommendations of the Punchhi Commission. A strict, unambiguous timeline mandating that the Governor must grant assent, withhold assent and return the bill, or explicitly reserve a bill for the President within a maximum period of six months must be permanently embedded into the constitutional text to eliminate the concept of the pocket veto entirely.
- **Judicial Clarification on the Hierarchy of Advisory Opinions:** The Supreme Court must urgently clarify the hierarchical, precedential weight of Article 143 Advisory Opinions. A larger Constitution Bench should be constituted to reaffirm the principle that non-binding advisory opinions cannot be utilized to implicitly overrule or dilute the ratio decidendi of binding, inter-partes judgments that enforce fundamental democratic rights and federal structures.

- **Reading Down Section 472(7) of the BNSS:** To preserve the fundamental separation of powers and the inviolable basic structure of the Constitution, the Supreme Court must read down Section 472(7) of the BNSS. The judiciary must vehemently maintain its constitutional power of limited judicial review over executive clemency under Articles 72 and 161 to ensure that such critical decisions are not arbitrary, mala fide, or based on extraneous considerations, in strict alignment with the established Epuru Sudhakar precedent.
- **Establishment of Clear Guidelines for Article 254(2) Reservations:** The Union Ministry of Home Affairs, in consultation with the Inter-State Council, must publish transparent, objective criteria detailing the specific legal grounds on which state legislation on concurrent subjects will be considered "repugnant" or contrary to national policy. This proactive measure will provide state legislatures with the necessary legal oresight when drafting specialized criminal laws, thereby preventing arbitrary and politically motivated withholdings by the Governor.

The enduring vitality of the Indian Republic relies fundamentally on the harmonious, cooperative coexistence of national unity and regional autonomy. Left unchecked by judicial fortitude or legislative reform, the continued weaponization of the Governor's office threatens to permanently silence the democratic voice of the States, rendering the federal structure of the Constitution a mere academic fiction.

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