



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

ROLE OF JUDICIARY IN EVALUATING THE FUNCTIONS OF THE GOVERNOR: A CRITICAL ANALYSIS FUNCTIONS EVALUATING THE GOVERNOR

AUTHORED BY - S.SAMRIDH¹

I. Abstract

The Governor's office is the linchpin of the Indian constitutional scheme of things, resulting in effective linkage between the Union and the States in a federal structure. Gubernatorial powers of the Governor are a matter of cooperation. But it is a matter of constant issue in constitutional and political disputes, primarily with respect to the optionality of the Governor's power, and federal and sovereign commitment. This study focuses on the changing role of the Indian judiciary in determining the governor's functions and powers. It looks at the judicial journey from an early finding of deference to the doctrine of executive immunity to a modern form of rigorous scrutiny. We look at landmark cases in the Indian context, such as S.R. Bommai v. Union of India² and Nabam Rebia v. Deputy Speaker³, and analyze recent judgments on legislative assent and government formation, to identify the governor's evolving supervisory roles. The study explores whether judicial activism has reduced the politicization of the governor's office and fulfilled the promise of constitutionalism while questioning the separation of powers regarding judicial overreach and the political thicket. The article concludes that the judiciary, as the guardian of the constitution, has fortified the values of federalism and parliamentary democracy by stating that the Governor's discretion, no matter how broad, is not unfettered and requires constitutional morality and substantive due process.

[KEYWORDS: Governor's office, Gubernatorial, Indian Judiciary, Federalism, constitutional contravention, Discretionary Power, Judicial Oversight, Judicial Scrutiny, Constitutional Accountability, Parliamentary Democracy, Constitutional Values]

A. Problem Statement

The issue of federalism in India continues to be problematic due to an institution inherited from

¹ 3RD year law student, CHRIST (Deemed to be University).

² S.R. Bommai v. Union of India, (1994) 3 SCC 1.

³ Nabam Rebia & Bamang Felix v. Deputy Speaker, (2016) 8 SCC 1.

the colonial past - the Governor. The issue arises from the conflicting responsibilities of the Governor, who is, on one hand, a constitutional functionary and ceremonial head of a state who is bound by ministerial advice of the elected state government. On the other hand, they are appointed by, and accountable to, the central government, and in that role, the Governor represents the central government. There is constant frisson because of the tension, made problematic by Articles 163⁴ and 200's⁵ ambiguous language, where the Governor's office has been quite menacingly used to destabilize state governments sanctioned by an opposition party to the central government. Initially, the issue has emerged most viscerally through Article 356⁶, with the Governor advising the central government to dismiss a state government. Despite the Supreme Court's landmark decision in *S.R. Bommai*, stopping the hijacking of the political process, a new, and perhaps even more insidious approach has emerged - which is a failure to act. Today, a Governor can veto judicial or other processes and bring the entire legislative agenda of a state to a halt, simply by sitting on state bills indefinitely, while exercising something like a 'pocket veto', which has no constitutional sanction. This undermines the will of the people and leads to administrative paralysis. The Court is stepping in to resolve a political impasse, given that repeated calls for reform from commissions like Sarkaria⁷ and Punchhi⁸ have fallen on deaf ears. It raises serious issues regarding the judiciary's role in resolving what is, essentially, a political impasse.

B. Research Questions

In order to get at the essence of this problem, the paper will examine a number of questions:

1. What judicial trajectory has the Indian judiciary taken in respect of the Governor's powers, and why did it eventually move to a stage of scrutiny?
2. What particular ambiguities in the Constitution, and specifically Articles 163, 200, and 356, perhaps allowed for the Governor's office to be triggered for political use?⁹
3. What were the innovative legal rules set down in the landmark cases *S.R. Bommai*, *Rameshwar Prasad*¹⁰, and *Nabam Rebia*, which curtailed the Governor's preferential power?

⁴ India Const. art. 163.

⁵ India Const. art. 200.

⁶ India Const. art. 356

⁷ Comm'n on Ctr.-State Rels., *Report* (1988) (Sarkaria Comm'n).

⁸ Comm'n on Ctr.-State Rels., *Report* (2010) (Punchhi Comm'n).

⁹ India Const. arts. 163, 200, 356.

¹⁰ *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1.

4. How does the recent judgment in *State of Tamil Nadu v. Governor of Tamil Nadu* finally pin down a set of specific rules that the Governor must adhere to in relation to his handling of state legislation?¹¹
5. Is the judiciary's increasing involvement a much-needed defence of Constitutional principles or crossing the threshold into the executive sphere and upsetting the delicate equilibrium of power-sharing?

C. Importance of Research

Why is this research important? The Governor's role is not merely a dusty constitutional complication; it is a flashpoint in Centre-state relations. The overt abuse of the Governor's powers presents a direct threat to the autonomy of states and the integrity of the exercise of the authority to dismiss the governments that the people elect. This study provides insights into how the rule of law can be upheld when political conventions erode, and what political stakeholders can learn from how courts responded. The discussion here is useful to any who cares for the constitutional vitality of India, from the legal scholar, formal or informal government official, or student wanting to discern the real-world flashpoints within our democracy.

D. Scope and Limitation of Research

This study aims to focus singularly on the legal analysis of the judiciary as it examines the role of the Governor. I concern myself with articles in the Constitution that deal with the discretion of the Governor, and powers to recommend President's Rule (Article 356), and their obligations with respect to measures presented by the legislature (Article 200). The frame for the argument is the evolution of legal interpretation in the Supreme Court. It is worth remembering what the study will not do. The study will not recount all of the political controversies around Governors in India's past. Instead, it isolates political controversies that led to Supreme Court judgments that altered constitutional law. Similarly, it will not provide a numeric account of latencies in the legislature in each state, but will consider the legal responses the courts have created to solve this problem.

E. Research Objectives

The objectives of the study are simple:

¹¹ *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025 INSC 481 (Supreme Ct. India Apr. 8, 2025)

1. To chronicle the transitioning legal view of the Governor's powers, and show the emphatic transition from "no interference" to "intervening."
2. To analyze the constitutional provision on the Governor and dissect the indeterminate provisions that have been exploited in the past. To examine the major legal issues raised by prominent Supreme Court cases that have established clear limits to the Governor's powers.
3. To provide a comprehensive analysis of the *State of Tamil Nadu v. Governor of Tamil Nadu* case to investigate its implications for future state law-making.
4. To consider the pros and cons of the judiciary taking on this role, before coming to a conclusion on whether it functions as a constitutional steward or judicial overreacher in this situation.

F. Research Methodology

To develop my argument, I will take a doctrinal and analytical approach, which entails closely examining legal texts. My analysis is based on the following two main elements.

- **Primary:** I will conduct a close review of the Indian Constitution, with a focus on Article 154¹², 163, 200, 201¹³, and 356. I will also review the full opinions of the important Supreme Court cases that serve as the foundation for this paper.
- **Secondary:** This legal analysis will be bolstered by reviewing a number of credible scholarly resources, including, but not limited to, books on Indian constitutional law, law journal articles, and the Sarkaria Commission¹⁴ and Punchhi¹⁵ Commission Reports, and writings by legal scholars.

By drawing upon these materials, I will be able to provide a plain and critical assessment of how the judiciary encroached upon the limits and boundaries of the powers of the Governor.

II. Literature Review

The role of the Governor has been disputed by academics for an extended period, and notable works suggest that the office represents a major dysfunction in Centre-state relationships. Pioneering reports such as the Sarkaria Commission¹⁶ (1988) and Punchhi Commission¹⁷

¹² India Const. art. 154.

¹³ India Const. art. 201.

¹⁴ Id at 6.

¹⁵ Id at 7

¹⁶ Id at 14

¹⁷ Id at 15

(2010) had already identified the fundamental problem: the appointment procedure for the Governor lacks secure tenure, and as a result, the Governor becomes susceptible to influence from the central authority. In broad strokes, academic literature is generally in consensus that this condition pushes the Governor to be more of a political emissary of the Centre than a neutral Head of State.

Historically, much of the ink spent on the discussion has been driven by the blatant misuse of Article 356¹⁸. The Supreme Court's injunctive, forceful judgment in *S.R. Bommai v. Union of India (1994)*¹⁹ inevitably brought a flurry of academic commentary. Most of it labelled the judgement as a critical success for the Supreme Court, by bringing the President's Rule under judicial scrutiny and entrenching the "floor test."²⁰ This case is viewed as the moment the judiciary drew a line in the sand. Later, the judgment in *Nabam Rebia v. Deputy Speaker (2016)* was depicted as a logical sequitur, following the same principles of judicial scrutiny over the Governor's authority over the legislative assembly.

What has received less attention is the connection between these different judicial actions. The issue of the Governor using a "pocket veto" to block bills under Article 200 will often be described in a research paper as the "problems" to be analyzed, to isolate a new political issue. The goal of this paper is to explore that connection. I argue that the Supreme Court's finding in the *State of Tamil Nadu v. Governor of Tamil Nadu (2025)* case is not a unique solution to a newly discovered problem. Rather, it is the culmination of the courts' long-standing jurisprudential project to hold the office of Governor accountable consistent with constitutional expectations. This research connects the court's earlier lawsuit concerning Article 356 versus its latest cutthroat intervention concerning Article 200, and presents both cases as a single, coherent journey concerning some judicial enforcement of constitutional morality. In doing so, this paper takes a broad perspective that presents a fuller experience of the vital judicial role as the ultimate arbiter of the Governor's powers.

Introduction

Dr. B.R. Ambedkar, the architect of the Indian Constitution, perceived the Governor as "purely ornamental" head of the State; a nominal head who would act in the name of the Council of

¹⁸ Id at 6

¹⁹ Id at 2

²⁰ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1, ¶ 116.

Ministers, who were an elected body. Same as the Union level. This framework was essential, as it provided a parliamentary system of governance at the States that is mirrored at the Union level. Nevertheless, as constitutional text, it presents a duality of role for the Governor; the Governor is the head of the state executive, but also representative of the Union government, whose obligation it is to "preserve, protect and defend" the Constitution. This duality is most manifest in the area of the Governor's discretion, an area that is sufficiently vague in the Constitution. In the span of 70 years of the Indian Republic, the exercise of this discretion has been alleged to be politicized, driven largely by the Centre and the political needs of the ruling party rather than the constitutional obligation. Governors have been involved in the formation and disbandment of state governments; reserving legislation for the consideration of the President; as well as recommending President Rule under Article 356 in scenarios that have put stress on the Indian federal structure. This has politicized the role and led to constitutional conflicts, which have led the judiciary to step in.

This paper will address a key question: To what extent and on what constitutional basis has the Indian judiciary reviewed the official function of the Governor? It suggests that there has been a drastic shift in the way courts have approached the matter. The initial "hands-off" principle that provided nearly complete immunity to the Governor's actions has been systematically dismantled. The Supreme Court has now established a regimen of substantive review, with the principle that no public functionary, regardless of how exalted, is free from the Constitution. This project shall examine the constitutional provisions regulating the office of the Governor, map the historical evolution of judicial review through leading case-law, analyze relevant issues for continuing studies, the response of the judiciary, and hopefully, reflect on the consequences of this oversight by the judiciary for Indian democracy. The primary argument is that the judiciary has a critical function in curtailing executive overreach and reminding all otherwise that gubernatorial discretion is not a grant for arbitrary power but a constitutional fiduciary duty bound by the law and the Constitution.

The Constitutional Design and Discretionary Dilemma

The constitutional position and functions of the Governor are mostly described in Part VI of the Constitution. Article 154 vests in a Governor the executive authority of the State, and it is to be exercised, directly or through subordinate officers. However, the essential element of a

Governor's function in parliamentary government is contained in Article 163(1)²¹, which states that there shall be a Council of Ministers headed by the Chief Minister to "aid and advise" the Governor in the performance of those functions. The one important exception to this clause is to be found in the very same clause: "except in so far as he is, by or under this Constitution, to exercise his functions, or any of them, in his discretion." This 'discretionary' power is the source of ambiguity and dispute. Article 163(2)²² goes further by providing that if any question arises as to whether any matter is to be exercised by the Governor in his discretion, the call is entirely that of Governor "shall be final, and the validity of anything done by the Governor shall not be called in question on the ground of whether he ought or ought not acted in his discretion." A straightforward reading detects a total bar to judicial oversight of the exercise of discretionary power. In terms of the agenda of the Constituent Assembly, these powers were indeed designed for rare and exceptional situations, like appointing a Chief Minister where the elections were fractured, or between the President and a bill that violated the prerogative powers of the High Court. But discretion has come to these powers into awful areas, and has resulted in major public and political consequences:

- 1. Appointment of the Chief Minister (Article 164)²³** - Where there are no parties or coalition with a clear majority, the discretion of the Governor in terms of inviting a leader to form the government is paramount. The Governor's choice of whom to call first, and how long to give that party or coalition to establish a majority on the floor, is a political decision.
- 2. Summon, Prorogue, and Dissolve the Assembly (Article 174)²⁴**: While these powers are typically carried out on, and with, Advice of the cabinet, there is an issue where a Governor acts unilaterally, such as not calling for a session that a cabinet facing a no-confidence motion wishes for, or dissolving the assembly early, in order to deny the formation of an alternative government.
- 3. Assent to Bills (Article 200)** - The article gives the Governor one of four options while dealing with a bill: he/she can give assent, refuse assent, return the bill for reconsideration, or reserve the bill for the consideration of the President. It is the option to refuse assent, and the unaccountable time taken to enact these options has become a major flashpoint, allowing Governors to basically veto legislation that the state

²¹ India Const. art. 163, cl. 1.

²² India Const. art. 163, cl. 2.

²³ India Const. art. 164.

²⁴ India Const. art. 174.

legislature has passed.

- 4. President's Rule (Article 356)** - The basis on which the Governor's recommendation to establish President's rule is based on the Governor's satisfaction that the State of disobedience is extreme, and the proposal has to be based on the satisfaction that the State is being disturbed. Misuse of this provision to remove unpopular state governments has been one of the major threats to Indian federalism. The additional complexity is the immunity provided to the Governor under Article 361 that states they "shall not be answerable to any court for the exercise and performance of the powers and duties of his office". This provision, which is intended to protect the dignity and autonomy of the office, was initially interpreted as a blanket protection from judicial review of any and all of the Governor's constitutional acts. The conjunction of vaguely delineated discretionary powers under Article 163, and the personal immunity under Article 361²⁵ Resulted in a constitutional grey area that the judiciary was eventually tasked to clarify.

The History of Judicial Review: From Immunity to Examination

The history of the judiciary's attempts to establish control over the Governor's actions has been hesitant and gradual. In the early decades of the republic, the courts were strict constitutional textualists and adhered to a strong doctrine of non-justiciability. Article 361 Personal immunity was often conflated with the immunity of the actions. It was believed that discretionary acts of the Governor were political and thus were beyond the authority of the courts.

The initial paradigm shift in this thought process came in the form of the Supreme Court judgment in *Shamsher Singh v. State of Punjab (1974)*²⁶. This decision by a seven-member bench explained the nature of executive power in the parliamentary system. It was held unequivocally that both the President and the Governor in Indian States are constitutional heads and they will act upon the advice of their respective Council of Ministers. The Court went ahead and clarified the narrow lanes of gubernatorial discretion by limiting discretion to express provisions of the Constitution. Justice Krishna Iyer, in his concurring opinion, memorably remarked that the "magic of discretion" should not be allowed to 'mesmerise the court'²⁷ Into surrendering its responsibility of judicial review. Although Shamsher Singh did

²⁵ India Const. art. 361.

²⁶ *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831.

²⁷ *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831, ¶ 57 (Iyer, J., concurring).

not directly concern itself with challenges to discretionary acts, it nonetheless established the foundational, by demystifying the powers of the Governor and anchoring them to the cabinet's advice, and lessening the discretionary space.

The remedial evolution would be to distinguish between the Governor's immunity from personal liability and the justiciability of his orders. The courts began to reason that while a governor cannot be impleaded personally and made to answer to a court, the legality of his orders can be questioned. Immunity under Article 361 attaches to a Governor's person, not to actions of his post. An unconstitutional order from a Governor may lead to a petition and be set aside in a 'mandamus' petition, even if the Governor cannot be mandamus, to defend it. This conceptual separation was important here to permit citizens to seek judicial remedy against arbitrary executive action without violating the head of state's personal immunity. It opened the door to direct review of the constitutional validity of acts of the Governor as acts rather than actors.

As such, this jurisprudential evolution led to a line of important cases regarding the most vexing use of gubernatorial power, especially the cases of imposition of the President's Rule under Article 356. There was an emerging willingness for the judiciary to not simply be a bystander and ready to enter the 'political thicket' to impose constitutional limits.

Key Decisions Influencing Judicial Intervention

The authentic use of judicial authority in the Governor's spheres came to light in a series of cases dealing with the abuse of Article 356. These rulings altered the state of Center-state relations and confiscated the area of precluding judicial review that had previously been seen as a constitutional 'no-go' area.

S.R. Bommai v. Union of India (1994)

The most consequential constitutional ruling on Indian federalism was decided by a nine-member bench in S.R. Bommai v. Union of India. The case consisted of lawsuits stemming from the dismissals of a number of state governments and the application of President's Rule under Article 356. The Court made a landmark ruling when it determined that a proclamation of the President's rule is not ceremonial and that the action is subject to judicial review. The Court laid down a number of salient principles that directly influenced the analysis of a Governor's actions:

- 1. Justiciability of Satisfaction:** The ruling made clear that the “satisfaction” of the President (based on the Governor’s report) is not an entirely subjective determination. It must be grounded in objectively reasonable material that is verifiable and relevant. The Courts can inquire whether the material relied on by the Governor was sufficient, relevant, and not imported mala fide or otherwise irrelevant considerations.²⁸
- 2. Primacy of the Floor Test:** The ruling held that the only and ultimate authority to determine the majority of a government is the floor of the Legislative Assembly, not the subjective knowledge of the Governor in private. A Governor cannot simply assert that a government has lost the majority without a floor test. Once again, this provision directly restricted the Governor from dismissing governments based on parades of MLAs and letters of dissent.
- 3. Restriction on Presidential Power:** The Court held that the power under Article 356 is an exceptional power and should therefore be exercised cautiously and as a last resort. It also held that the President must wait upon issuing the proclamation before dissolving the state assembly, which must be kept in suspended animation until such time as Parliament may approve the proclamation, to allow for the opportunity for the judiciary to intervene and restore the government that had been dismissed.
The Bommai judgment provided a significant check on the arbitrary exercise of central government power when acting through a Governor. The judiciary was vested with the power to review the Governor’s report and the reasons for the Governor recommending President’s Rule, thereby providing an added level of accountability. The judgment tipped the balance of power significantly in that it placed a substantial burden on the Centre to dismiss popularly elected state governments for political reasons.

Rameshwar Prasad v. Union of India (2006)

The principles of Bommai were further strengthened and extended in the case of *Rameshwar Prasad v. Union of India*, which caused the Bihar Legislative Assembly to be dissolved prematurely. The Governor, Buta Singh, recommended the assembly’s dissolution when it had not even met for one session, noting that political horse-trading and immorality were being engaged to form a government. In a majority opinion, the Supreme Court nullified the presidential proclamation, declaring it unconstitutional. The Court went further than Bommai and examined the factual underpinning of the Governor's report in significant detail. The

²⁸ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1, ¶ 388.

Governor's advice was based on pure suspicion and unproven claims of poaching MLAs.

Important points from the judgment include:

1. The Governor's report must be grounded in "objective material" and not in whimsy, political bias, or conjecture.
2. A Governor cannot stop the formation of a government based on the fear that it will be short-lived or will occur in an unscrupulous manner. Democracy must be left to unfold in the House.
3. The Court affirmed its power not simply to review but to order relief by quashing the proclamation, even when the dissolution was an irreversible act.

The Rameshwar Prasad case showed the judiciary's readiness to engage in a deeper level of review of the Governor's act, switching from a review of only the process to a review of the merits of the act. It sent a definitive message that the office of the Governor must not be used as a political instrument to reject the will of the people.²⁹

Modern Jurisprudence and the Expanding Horizons of Review

In the past number of years, the Supreme Court has continued to push the horizons of judicial review, particularly newer and yet familiar challenges posed by the exercise of gubernatorial authority. The present-day jurisprudence showcases a judiciary that is increasingly aggressive in upholding democratic values and the constitutional structure against invasion by the Executive.

Nabam Rebia and Bamang Felix v. Deputy Speaker (2016)

This case, which revolved around a constitutional impasse in Arunachal Pradesh, is a landmark case in its own right. The Governor, J.P. Rajkhowa, convened the assembly session without the aid and advice of the Chief Minister to allow a floor test against the sitting government. The Supreme Court held that the Governor's actions were unconstitutional in a unanimous ruling.

The Court made a categorically pronounced statement on the ambit of discretion in Article 174 (summoning the House). The Court held that the Governor's discretion stood constrained and not absolute, or arbitrary. The Governor could only summon, prorogue, or dissolve the House

²⁹ *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1, ¶ 173.

with the aid and advice of the Council of Ministers. An exception could conceivably arise in circumstances of the loss of confidence and avoidance of a floor test, but in such cases, the action must be aligned with sound constitutional principles.³⁰ The Court articulated that the Governor was “no sum total of omniscient authority” and their actions must be “consistent with the democratic conventions and the spirit of the Constitution.”

The most notable feature of the *Nabam Rebia* remedy lay in time. The Court ordered the previous government back, essentially reversing the clock to the state prior to the Governor’s unconstitutional activity. This “status quo ante” remedy greatly enhanced the Court’s ability to remedy constitutional wrong.³¹

The 2022 Maharashtra Political Crisis

In the decision of *Subhash Desai v Principal Secretary, Governor of Maharashtra (2023)*³², the Supreme Court of India closely examined the Governor’s exercise of discretion in the context of an intra-party rebel MLA rebellion. The case arose in the context of a revolt within the Shiv Sena party that resulted in the resignation from the Uddhav Thackeray-led government. In this case, the decisive action was taken by the Governor, Bhagat Singh Koshiyari, calling for a floor test on the basis of subsequent representations from the rebel MLAs. In that context, the Court was not able to /did not overturn Thackeray’s resignation, because he resigned and did not have a floor test. The Court still made comments to judge the Governor’s exercise of discretion. The Court ruled inter alia:

A Governor cannot call a floor test solely based on dissatisfaction in a political party. A floor test is not to solve intra-party angst but to assess whether or not an incumbent Chief Minister has the confidence of the House. The Governor had no objective information that showed in any way that the incumbent government was in minority. Considering the letters of faction, Members of the legislative assembly of the ruling constituencies were a poor use of discretion. The Governor must not exercise discretion to “legitimize an act of political defection.”

This ruling is significant, as it adds to the *Bomma* test. It provided that not all form of unhappiness with a Chief Minister constitutes a defense for a floor test, and the Governor must

³⁰ *Nabam Rebia & Bamang Felix v. Deputy Speaker*, (2016) 8 SCC 1, ¶ 150.

³¹ *Nabam Rebia & Bamang Felix v. Deputy Speaker*, (2016) 8 SCC 1, ¶ 193.

³² *Subhash Desai v. Principal Sec’y, Governor of Maharashtra*, 2023 SCC OnLine SC 607.

use discretion to resolve a realistic loss of majority (an act of intra-party tussle) / a general defect.

De-cluttering Governor's approval of Bills: New Flashpoint

A novel area of heated litigation arose relative to the Governor's discretion under Article 200 in regard to assent to Bills or refusal to assent to bills. In opposition-ruled states (i.e., Punjab, Tamil Nadu, Telangana, and Kerala), the Governor refused to take action on Bills, or otherwise "pocket veto" Bills longer than those drafted by the state legislature after being passed by the Assembly. In late 2023, the Supreme Court intervened (in the issue of Policy: *Principal Secretary to Governor v State of Punjab*, the Supreme Court ruled that the Governor can never assent to bills. The decisions stated the state of expectation of how "as soon as is can" means in Article 200 - that the Governor must act "timely" on Bills. After an expressed disagreement, the Governor must send the bill back to the legislature; if declining to assent and the other house accepts the bill, the Governor must assent. And they stated, "the power to refuse assent cannot defeat the usual proper process of legislature-making."³³

This case is an important confirmation of legislative sovereignty at the state level. Ultimately, preventing a non-elected partisan head of state from defeating the legislative will of the elected members of the political party essentially undermines the constitutional legality of the legislative will. It notably, vitally stated that the powers of the Governor are not to be part of the elected legislature, nor used to exercise legislative escape by sanctioning changes to legislative understanding, which are the powers and special constituency of a parliamentary system of democracy.

Critical Investigation: Finding the Right Balance between Discretion, Immunity, and Constitutionalism

The judicial assertiveness toward the functions of the Governor is a direct reaction to an increasingly political office, which, ideally, was supposed to be dignified and non-political, has been used as a vehicle to advance the political purposes of the national government. Hence, the judiciary was left to be the constitutional umpire. The situation warrants increased judicial scrutiny, but comes with its own complexities and critiques.

³³ India Const. art. 200.

The primary reason for judicial scrutiny is because of constitutionalism, meaning that all public power is bounded by the constitution, and complies with the rule of law. The Supreme Court has made it clear, several times, that the Governor's discretion is not an absolute power but a constitutional duty which must be exercised reasonably, honestly, and in public interest. By signalling that the Governor's discretion can be scrutinized for mala fides, unreasonableness, and constitutional grounds, the judiciary preserves the Constitution from executive whim. This is an important function of the judiciary, as it furthers the federal balance by safeguarding state governments from arbitrary firing or legislative standstill.

This activism, however, has suffered its own critiques in that it makes the judiciary the "political thicket," the place courts shy away from entering. Critics of the court's contention that the establishment of governments and the timing of assembly meetings are intrinsically political matters for political resolution, not legal resolution. The counter-argument that has been adopted by the Indian Supreme Court is that where a political question raises an issue of construction of the Constitution or contravening its basic structure, the courts have a role to play. The Court does not replace the Governor's political discretion with its own, but guarantees that the Governor exercises political discretion according to the Constitution. The courts have limitations to their review, also. The court reviews actions post facto. For example, in the Maharashtra and Bihar cases, by the time the judgment is delivered, the political situation has likely changed, making an effective remedy nearly impossible. The Court can reinstate a government on paper, but the requisite political coalition may have likely failed. This shows that judicial review is a necessary but insufficient check for executive misuse of power.

The trajectory of judicial review suggests a recalibration of the separation of powers in India, suggesting a paradigm in which the judiciary serves as a significant check on the executive when the executive imperils democracy and federalism. The possibility of being labeled an equivalent of judicial overreach exists, yet the case law from Bommai to the present shows a court conscious of its position as the protector of the Constitution's heart. The judiciary has not sought to usurp the Governor's functions but to ensure that they are performed within the four corners of the Constitution.

Conclusion

The relationship between the Governor's office and the judiciary in India has evolved from one of constitutionally mandated distance to one of engaged, and often necessary, oversight. The

initial interpretation of gubernatorial discretion and immunity as an unbreachable fortress has been forcefully dismantled by a judiciary committed to the rule of law. The Supreme Court has, through a series of brave and constitutionally important judgments, concluded that the Governor is not a monarch but a constitutional functionary, subject to the law and responsible for their actions. The jurisprudence, from the foundational assertions of *Shamsher Singh*³⁴ and *S.R. Bommai*³⁵ to the recent clarifications in *Nabam Rebia*³⁶ and the cases regarding legislative assent, is about the consistent theme that discretion is not dictatorship. The judiciary has repeatedly told us that the floor of the legislature is the only forum for establishing a government's majority, that the satisfaction of the Governor must be based on objective facts, and that the lawful legislative will of the people may not be thwarted by an unelected delegate. While you have made it clear that judicial review is an essential correction, not a simple fix. The ongoing concerns in the Governor's office speak to a larger malaise in the country's political fabric. The real solution will not lie simply in courtrooms, but in systemic reforms that protect the Governor's office from political meddling. Reforms, like those proposed by the Sarkaria Commission (1988) and the Punchhi Commission (2010), getting fixed terms for Governors, appointment procedures involving consultation with the Chief Minister, and clearer guidelines for the exercise of discretion have gone largely unnoticed and ignored. Until political reform occurs, the judiciary will be the primary, and often the last, shield against the usurpation of constitutional principles by the Governor's office. In acting as the sentinel on the *qui vive*, the Indian judiciary has not only enunciated the parameters for gubernatorial power but also, in doing so, reaffirmed India's democratic and federal character. Whether this tenuous judicial oversight continues will be the key to the strength and vitality of Indian constitutionalism in the years ahead.

³⁴ *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831.

³⁵ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1

³⁶ *Nabam Rebia & Bamang Felix v. Deputy Speaker*, (2016) 8 SCC 1.