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LEGISLATIVE DISCRETION OF THE GOVERNOR: AN ACADEMIC COMMENT ON RECENT JUDGMENTS OF SUPREME COURT

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I. INTRODUCTION- The discretion of the Governor to give assent to the Bills passed by the State Legislatures and in some cases referring it to the President of India for consideration along with the discretion of the later to grant or refuse the assent, more so the time limits there for has acquired a considerable importance. It is so for the reason that the Union Government hold the view that such discretion is beyond the scope of judicial interference and some State Governments and the opposition parties feel it undue interference of the Centre in the affairs of the elected State legislatures, thereby posing a potential danger to the federal structure of Indian Polity. The Hon'ble Supreme Court delivered its judgments in *The State of Tamil Nadu v. Governor of Tamil Nadu*¹ and in *the State of Punjab v. Principal Secretary to the Governor of Punjab and another*² wherein the Apex Court benches delivered their judgments in favor of the States. The President of India exercised her power to seek advice of the Supreme Court under Article 143 and the advice of the 5 Judges Bench has been given to the President³ In addition, we have the Reports of the Constitution Commissions on the point⁴.

¹ 2025 INSC 481,(2025) 8 SCC 1.

² 2023 INSC 1017, (2024) 1 SCC 584.

³ Presidential Reference No. 1 of 2025, 2025 INSC 1333.

⁴ Sarkaria Commission, 1987 and Punchhi Commission, 2010.

In such a situation, this paper makes a humble analysis of constitutional provisions on legislative discretionary power of the Governor, discusses the SC judgments in Punjab & Tamil Nadu cases before discussing the Advisory Opinion, identifies the ‘constitutional morality’ qua Governor’s legislative discretion and concluding with the possible future course.

II. GOVERNOR’S LEGISLATIVE DISCRETION UNDER THE CONSTITUTION

– The Constitution of India, framed on the premise of the Federal Structure in a Parliamentary Democracy, deals with the Legislative Power of the Governor under Chapter III of Part VI, titled ‘The State Legislature’. The Governor has a right to address the sessions of State Legislature under Articles 175 and 176. Under the Head ‘Legislative Procedure’, Articles 200 and 201 deal with the discretionary powers of the Governor. Article 200 provides for giving assent by the Governor to the Bills passed by the Legislature in the words:

“200. When a Bill has been passed by the--, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent there from or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may reconsider the Bill accordingly, and if the Bill is again passed by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent there from:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.”

Article 201 deals with the Bills which the Governor reserves for the consideration of the President. It reads as under:

“201. When a Bill is reserved by the Governor for the consideration of the President, the President shall declare either he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his reconsideration.”

Articles 175 and 176 provide for the power of the Governor to address the State Legislature. To find out if we can get something relevant to the core of this article, we refer to these provisions as under:

“175. (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.”

Article 176 specifically deals with special address of the Governor to the sessions first after Assembly Elections and the first annual session to provide:

“176. (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the causes of its summons.”

Analyzing the said constitutional provisions to read the nature of the power of the Governor regarding giving assent to the Bills, the author would like to emphasize:

(i) There are three options in the name of discretions vested in the Governor viz., to grant assent to the Bills passed by the State Legislature, withholding assent and returning the Bill for reconsideration by the Legislature, and withholding the Bill and sending the same to the President of India for his/her consideration. The Tamil Nadu judgment rightly rejected the plea of fourth option pleaded by the Attorney General that Governor could also withhold assent even without mandating the return of the Bill without reconsideration in the light of its judgment in *State of Punjab v. Principal Secretary to the Governor of Punjab* (2024).

(ii) The Governor is the head of the State Legislature like the President in case of Parliament. In this capacity he has a right to address its sessions, send messages and keep a supervisory eye on its functioning as the functionary of the Constitution of India bedrocked on Parliamentary Democracy with a federal setup as a part of its basic structure.

(iii) In case of Governor's discretion to withhold the assent it can be safely be read from the language of Article 200 that the same should not be unduly delayed. The words 'as soon as possible after presentation to him the Bill' sufficiently convey this intention of the constitution makers.

(iv) The power of the President, like that of Governor, in a Parliamentary Democracy identically is not without moral/legal bindings for doing the desirable duty of granting assent or sending for reconsideration. Does the mandate of reconsideration by the State Legislature within six months prescribed under Article 201 not impliedly speak of similar obligation of the President of India? The Supreme Court Judgment in the Tamil Nadu case does prescribe the time limits for discharging this constitutional duty with 3 months, a balanced view came forth in Punjab case but the Advisory opinion given 5 Judges Bench holds that the Constitution does not impose time limits but the Governors must not keep the decisions pending for long periods. (opinion handed over to the President on 20th November, 2025).

III. SC IN PUNJAB & TAMIL NADU- In the Punjab case (State of Punjab v. Principal Secretary to Governor of Punjab,⁵ , 3- Judges Division Bench of the Hon'ble Supreme Court dealt with the Governor's power to withhold assent to the Bills passed by the State Legislature on the ground that the Assembly Session in which the Bills were passed was not legal; and whether the law permits the Speaker of Vidhan Sabha to reconvene a sitting the House which was adjourned but not prorogued. This paper is concerned with the first issue only. After examining the earlier judgments in Shamsheer Singh v. State of Punjab⁶, S. R. Bommai v. Union of India⁷ and State⁸, the Court inter alia observed in Para 25 of the judgment as:

“The Governor, as an unelected Head of the State, is entrusted with certain constitutional powers. However, this power cannot be used to thwart the normal course of lawmaking by the State Legislatures. Consequently, if the Governor decides to withhold the assent under the substantive part of Article 200, the logical course of action is to pursue the course indicated in the first proviso of remitting the Bill to the state legislature for reconsideration. ---- the power to withhold assent under the substantive part of Article 200 must be read together with the consequential course of action to be adopted by the Governor under the first proviso. If the first proviso is not read in juxtaposition to the power to withhold assent conferred by the substantive part of Article 200, the Governor as the unelected Head of State would be in a position to virtually veto the functioning of the legislative domain by the duly elected legislature by simply declaring that assent is withheld without any further recourse. Such a course of action would be contrary to fundamental principles of a constitutional democracy based on a Parliamentary pattern of Governance.-----.”

However, the Court concluded, “The Legislative Assembly comprises of duly elected Members of the Legislature. During the

⁵ supra note 2

⁶ (1974)2 SCC 831

⁷ 1994 3 SCC 1

⁸ NCT of Delhi v. Union of India, (2018) 8 SCC 501.

tenure of the Assembly, the House is governed by the decisions which are taken by the Speaker in matters of adjournment and prorogation. We are, therefore, of the view that the Governor of Punjab must now proceed to take a decision on the Bills which have been submitted for assent on the basis that the sitting of the House which was conducted on 19 June 2023, 20 June 2023 and 20 October 2023 was constitutionally valid.(Para44). We clarify that we have not expressed any opinion in regard to the manner in which the Governor will exercise his jurisdiction on the Bills in question presented to him. However, he must act in a manner consistent with the provisions of Article 200 of the Constitution.” The judgment by Two Judges Division Bench of the Supreme Court in the Tamil Nadu case⁹ is much more relevant for the reasons of its direct relevance to the subject matter of this paper, the straight language used in it that provoked Union and State Governments to assert their positions and also because the senior most 5 Judges of the Supreme Court constituting the Constitution Bench gave their unanimous opinion largely on the points decided in this judgment since the 14 - points for seeking opinion by the President of India arose from this judgment.

The judgment *inter alia* fixed time limits for the Governor to exercise his power of giving or refusing the assent under Article 200. The matter was pendency of 12 Bills for assent of the Governor passed by the Tamil Nadu State Assembly between 13 January 2020 and 28 April 2023. After the Tamil Nadu Government’s writ petition under Article 32, the Governor refused assent to 10 Bills and reserved the other two for consideration of the President on 13 November 2023. The Assembly re-passed the 10 Bills on 18 November 2023 and sent to the Governor for assent.

The judgment interprets the assent giving powers under Articles 200 and 201 referring to its earlier judgments in *B.K. Pavitra v. Union of India*¹⁰ *Shamsher Singh v. State of Punjab*¹¹, MP Special

⁹ supra note 1

¹⁰ (2019)16 SCC 129.

¹¹ AIR 1974 SC 2192.

Police Establishment v. State of MP¹², the Court held that as a general rule, the Governor is required to act on the aid and advice of Council of Ministers but in exceptional situations wherein adherence to such advice could endanger democratic principles like involving peril to democracy, manifest bias of the Council of Ministers' advice and a complete breakdown of the rule of law, the Governor may enjoy of his discretionary power to act without the advice of Council of Ministers. Commenting on the conduct of Tamil Nadu Governor, Justice J.B. Pardiwala observed, "While the framers of the Constitution set out with the vision (that) the Governor would be the constitutional head, a sagacious counselor and advisor to the ministry – someone who can pour oil over troubled waters – what has unfolded before us in this litigation has been quite the opposite. This Court has been called upon to calm the troubled waters stirred by the ensuing long-drawn battle of high constitutional order between the petitioner and the respondent."

Referring to 3 options available to the Governor under Article 200, the Division Bench held that Governor lacks an 'absolute veto power'. The Court declared that the phrase "withhold assent" signifies a temporary deferral of assent and not denial of assent. The Court expressed that three options available to the Governor under Article 200 are mutually exclusive that once the Governor exercises one option then others become unavailable. Once Governor withholds assent, and state legislature reconsidered and passed the Bill without any changes or with the changes recommended by the Governor, there remains no scope to subsequently reserve the Bill for presidential consideration.

The Division Bench of Tamil Nadu case declared that Governor's inaction under Article 200 is subject to judicial review. The Court underscored the need for well-defined standards to assess its justiciability. For the purpose, it prescribed the time limits for the Governor to take action under Article 200 as under:

(i) Withholding assent or reserving a Bill for consideration of the President on the advice of Council of Ministers – Such action

¹² 2004 INSC 642, 5JJ Constitution Bench.

must be taken immediately, subject to a maximum of ONE MONTH period.

(ii) Withholding assent contrary to the advice of the State Council of Ministers – The Bill must be returned to the legislature within THREE MONTHS, accompanied by the message explaining the objections.

(iii) Reserving a Bill for consideration of the President contrary to advice of the State Council of Ministers – Such reservation must be made within THREE MONTHS.

(iv) Bills re-passed by the State Legislature after re-consideration suggested by the Governor – The Governor must grant assent immediately subject to a maximum period of ONE MONTH.

IV. ADVISORY OPINION OF THE SC- In view of the Tamil Nadu judgment and contradictory views of the Union Government and some State Governments, the President of India referred the matter to the Supreme Court on 13th May, 2025, exercising her jurisdiction under Article 143(1) seeking its opinion on 14 questions related to interpretation of Governor's powers under Articles 200 and 201 along with some related questions. The CJI placed the reference before the 5-JJ Constitution Bench on 22th July 2025, the Attorney General was requested to assist the Bench and States/ UTs were asked to file written submissions. The Bench gave its opinion on 11 of the 14 questions, declined to answer question numbers 12 and 14 and held question number 13 answered in question 10. Senior Advocates of the Union Governments and State Governments/UTs made submissions referring to the leading decisions on the relevant points (Namely, when Governor can exercise discretion under Article 200 contrary to advice of Council of Ministers, extent of Judicial Review in such action of the Governor, can time lines be fixed for exercising discretion under Articles 200 and 201 etc.) before the Apex Court, resulting in the *inter alia* following advice:

(i) Interpretation of Article 200 in the background of its placement and Governor's role as part of State legislature – The

Court observed¹³: “The Governor’s recommendation is constitutionally made a prerequisite for demand of grant under Article 203 (3) and for introducing, moving and passing a Money Bill under Article 207. It can thus be discerned that the Constitution enjoins several legislative functions upon the Governor and crucial legislative functions of the State legislature, including the entire ambit of financial statements, appropriations and money bills are constitutionally triggered only upon the recommendation of the Governor. It is against this backdrop that Article 200 of the Constitution needs to be interpreted”.

(ii) The background of Article 200 comes from section 12 of the Government of India Act, 1919 and section 75 of the Government of India Act, 1935. The reality of deletion of words ‘in his discretion’ in Article 175 of the Draft Constitution debated in the Constituent Assembly Debates, which is Article 200 (Proviso) of the Constitution is useful in interpreting the Governor’s discretionary power. Taking support from the interpretations by the Constitution Benches in *State of Bihar v. Kameshwar Singh*¹⁴, *Union of India v. Valluri Bsavaiah Chowdhary*¹⁵ and 3 Judges Division Bench in *Hoechst Pharmaceuticals Ltd. v. State of Bihar*¹⁶ and their non-use and uncalled- for-use in the Punjab and Tamil Nadu cases, the Constitution Bench acting in the advisory jurisdiction found the new meaning of discretion vested in the Governor. The Court observed that the Constitution prescribes the process of DIALOGUE between the constitutional authorities in case there is a difference of opinion. Under Para 51, the Apex Court observed:

“We are of the firm opinion that if two interpretations are possible, then an interpretation that favors a dialogic process, which encourages institutional comity and deliberation between constitutional institutions – in this case that of the Governor and the House(s) – must be preferred over an interpretation that limits or eschews such a dialogue. Such an interpretation prevents

¹³ Para 34.

¹⁴(1952) 1 SCC 528, Para 235.

¹⁵(1979) 3 SCC 324.

¹⁶ (1983) 4 SCC 45.

institutional redundancy. We observe a deliberate constitutional design in incorporating the Governor within the definition of Legislature in Article 168. The institution of the Governor and the House(s) *coupled* together in this process under Article 201. One institution sends a message (suggestions) initiating this dialogic process and the other deliberates upon this message. We find that this dialogic process is in consonance with the functional roles assigned to both these institutions”.

(iii) The Bench has beautifully interpreted the nature of federalism adopted in the Constitution and given a positive meaning to the principle of ‘checks and balances’ therein, demanding not an obstructionist approach but solution with the conciliatory approach of dialogue. In the words of the Bench, Article 200 (First Proviso) conveys: ¹⁷

“Whatever be the description of Indian federalism, we think that it would be against the principle of federalism and a derogation of the powers of the State legislatures, to permit the Governor to withhold a Bill without following the dialogic process in the first proviso to Article 200. In our opinion, the first proviso initiating a constitutional conversation between the institution of the Governor and the House (or Houses), and the option to reserve the Bill for the consideration of the President under the substantive part of Article 200, exemplify the *cooperative* spirit of Indian federalism, and also brings out different facets of the check-and-balances model that the Constitution has envisaged. We are accustomed to the traditional view of checks-and-balances, where the decision was taken by one institution or branch is set at naught by the other. In our considered opinion, this understanding must give way to a more nuanced one. A dialogic process, which has the potential to understand and reflect on conflicting or opposing perspectives, to reconcile and to move forward in a constructive manner, is an equally potent and checks-and-balances system that the Constitution has prescribed. Once this perspective is grasped, the persons who occupy various constitutional offices or institutions will also do well to ingrain in themselves that dialogue, reconciliation and balance, and not

¹⁷ Para 64.

obstructionism is the essence of constitutionalism that we practice in this Republic”.

(iv) On the point of Governor being bound to act on the ‘aid advice of the council of ministers’, even while exercising discretion under Article 200/201, the Constitution Bench after examining the judgments including the one in Tamil Nadu, and Dr. B.R. Ambedkar’s arguments in Constituent Assembly Debate on 1st June, 1949¹⁸ and on July 30, 1949¹⁹, reiterated the dialogic method to resolve any difference of opinion, normal rule of acting on the advice required in the Parliamentary Form of Democracy but also acting against the advice when so required as the constitutional functionary. The Bench declared, “We clarify, as we have already held, that the Governor has no option to withhold a Bill *simpliciter*. Therefore, it is not that the discretion so conferred, allows a situation wherein the Governor could frustrate a Bill in perpetuity. The three clear options that he has, is to grant assent, withhold assent and return the Bill to the legislature for reconsideration, or reserve the Bill for consideration of the President, and he *can exercise his discretion* in choosing any of these three options, having given due regard to the aid and advice tendered by the Council of Ministers, and keeping in his mind his duty – to protect and defend, the Constitution”.

(v) The Hon’ble Bench has dealt with the scope of Governor’s discretion after he receives the Bill after reconsideration by the State Legislature. The Bench has clarified that the Governor, in such a case, has the discretion to grant assent or send it to the President for his consideration. Marking a difference of words in Articles 200 and 201, the Bench held, ²⁰ “We have already held that the first proviso conditions the word ‘withhold’, to mean withhold and return to the Legislature. The first proviso cannot be read in a manner so as to condition the option of the Governor to reserve the Bill for President’s consideration as well. Therefore, when the Bill is returned to the Governor, he is still left with two options – either to grant his assent, or to refer it for the President’s

¹⁸ Constituent Assembly Debates, Volume VII, p. 501.

¹⁹ Constituent Assembly Debates, Vol. IX.

²⁰ Para 99.

consideration (It) is irrespective of whether the Bill is returned by the Legislature in its amended or un-amended form”.

(vi) The most heat-generating order of the Tamil Nadu case was that of fixing time-lines for exercising discretion by the Governor and the President under the constitutional requirement of doing so ‘as soon as possible’, also going to the extent of “deemed consent” after the lapse of time prescribed. The Constitution Bench found this order of the Tamil Nadu case against the provisions of the Constitution and amounting to taking over the power of the Court by the Judiciary. Holding that ‘as soon as is possible’ asks the Governor not to delay the action unreasonably and to frustrate the Bill but no time limits can be fixed for exercising discretion by the Governor or the President. The noteworthy words of the judgment on the point are, “The text of Articles 200 and 201, has been framed in such a manner, so as to provide a sense of elasticity, for constitutional authorities to perform their functions, keeping in mind the diverse context and situations, and by consequence the need for balancing that might arise in the process of law making in a federal, and democratic country like ours. The imposition of timelines would be strictly contrary to this elasticity that the Constitution so carefully preserves”.²¹ On the basis of interpretation that no time limits can be fixed for exercising discretion by the Governor or the President, it was held there cannot exist any rule of ‘Deemed Consent’. The Bench declared, “We have no hesitation in concluding that deemed consent of the Governor, or President, under Article 200 or 201 at the expiry of a judicially set timeline, is virtually a takeover, and substitution, of the executive functions by the Judiciary, through judicial pronouncement, which is impermissible which is permissible within the contours of our written of our written Constitution”. A bureaucrat R. Rangarajan, in his article ‘Can timelines be fixed for Governors?’ relies upon Sarkaria Commission (1987), Punchhi Commission (2010), Supreme Court judgments in *Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*²² and

²¹ Para 115.

²² (2016) 8 SCC 1.

Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly on delay by the Speaker in deciding disqualification under Tenth Schedule²³ cases expressed that 'The Centre and Governors should follow the timeline prescribed by the April 2025 judgment to uphold democratic and federal principles'.

(vii) Another important question referred by the President for advice of the Supreme Court, arising from the Tamil Nadu judgment, was whether the functions of the Governor or the President under Articles 200 and 201 are justiciable or not? The Bench, while interpreting the provisions, observed that 'the judgment of this Court in State of Tamil Nadu is the first to hold that the exercise of functions under Articles 200 and 201 are justiciable'. Holding that this power is not justiciable, because it is only 'the initiation of a dialogic process' and the judicial review is available of the law made by the legislature but not before it becomes the law. During the in-between stage of law making, the dialogic process is only 'advisory, persuasive, deliberative, meditative and consultative'. Therefore, judicial intervention during this stage of Articles 200 and 201 can be only through President's power of seeking advice of the Supreme Court under Article 143. The Bench declared, "The discharge of functions under Articles 200 and 201, however, is simply initiation of a dialogic process, which cannot be the subject of judicial review".²⁴ "The only limited scope and known constitutional route through which the judiciary can look into a Bill, is if the President, in exercise of Article 143, referred such a Bill to the Supreme Court to opine on, in discharge of its advisory jurisdiction".²⁵ "The concept of accountability, and checks and balances, courses through the provisions of the Constitution. Thus, the Legislature which represents the people's will, is only effective, if the Governor acts, under Article 200. --- Thus, it is correct that the Court cannot supplant the wisdom of the Governor and enter a merits-review of this decision so taken.

²³ 2020 INSC 65.

²⁴ Para 139.

²⁵ Para 148.

However, where the Governor chooses to not act under Article 200, resulting in prolonged tendency in Bills without initiating the dialogic process that the Constitution envisions, thus frustrating the outcome of the Legislature's functions and efforts – Constitutional Courts can exercise limited judicial review”²⁶This was made further clear while interpreting the scope of judicial review in the light of Governor's immunity under Article 361 in the words, “This limited judicial review, cannot be overcome on the pretext of Article 361, which offers personal immunity to the Governor. The constitutional office of the Governor is definitely subject to the jurisdiction of the court, to prevent prolonged and evasive constitutional inaction”.²⁷

In the opinion of this author, the advisory judgment of is a landmark and path breaking that gives new meanings to the principles of separation of powers and checks and balances. It is a wonderful attempt of the Apex Court to find conciliatory approach necessary for the constitutional authorities by adopting the dialogue method to reduce tensions and difference between them. However, a different opinion has been expressed by Mr. Sruthisagar Yamuman, a doctoral candidate in comparative constitutional law at the Central European University, Vienna and Mr. K. Venkataramnam, a former journalist in their article: ‘Restoring the ‘menace’ of unfettered discretion’²⁸. The authors comparing the opinion with Tamil Nadu case (rightly decided as per them) conclude: “For one thing, the power of granting assent is a procedural aspect of law-making and cannot be elevated to the level of a preliminary judicial review by Raj Bhawan. Any such conception of the assenting power will render it more a ‘check’ than a ‘balance’. In the ultimate analysis, the verdict, be it legally binding or inexorably persuasive, is an instance of constitutional retrogression; a retreat from a principled restraint on gubernatorial power and an unwanted fillip to the Union's domination over the States.”

²⁶ Para 156.

²⁷ Para 164

²⁸ The Hindu, December 16, 2025.

V. CONSTITUTIONAL MORALITY vis-à-vis LEGISLATIVE DISCRETION

‘Constitutional Morality’, as a term, is not new. Justice N. Anand Venkatesh in his article “The contours of constitutional Morality”²⁹ quotes historian George Grote³⁰ writing ‘—the Greeks found it necessary to protect their Constitution by kindling “a passionate attachment”. Grote names it ‘constitutional morality’.

Dr. B.R. Ambedkar, in his debate in the Constituent Assembly, quoted George Grote’s passage defining the term as, “A paramount reverence for the forms of the constitution, enforcing obedience to the authorities acting under and within those forms, yet combined with the habit of open speech, of action subject only to definite legal control, and unrestricted censure of those very authorities as to all their public acts, combined too with a perfect confidence in the bosom of every citizen, amidst the bitterness of party contest, that the forms of the constitution will not be less sacred in the eyes of his opponents than in his own”. Dr. Ambedkar added to this paragraph that we need to cultivate constitutional morality as our needs, soil and aspirations. In his words, ”Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic”.³¹ Prof. Dicey names conventions of the constitution as constitutional morality, which is as important as the enacted law.³²

Supreme Court of India has defined or underscored the importance of constitutional morality. In *S.P. Gupta v President of India*³³ Justice Venkataramiah observed, “A convention is a rule of constitutional practice which is neither enacted by Parliament as a formal legislation nor enforced by courts, yet its

²⁹ The Hindu, October 27, 2025.

³⁰ History of Greece (1846).

³¹ Ibid.

³² A. V. Dicey An Introduction to the Study of the Law of the Constitution , 10th Ed, Macmillan Universal Book Traders, 1994 Ch IV, p.183.

³³ (AIR 1982 SC 149.)

violation is considered to be a serious breach of constitutional morality leading to grave political consequences to those who have indulged in such violations". In *Manoj Narula v. Union of India* ³⁴the CJ observed: "The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner". In *State* ³⁵, the Court observed that the constitutional morality did not mean mere allegiance to the substantive provisions and principles of the Constitution. The Court identified liberal values and consensual decision making amongst state agencies as facets of this concept. To this were added responsibilities and duties that it imposed on those who held constitutional offices. In *K.S. Puttaswamy (Retd.) v. Union of India*, ³⁶Supreme Court opined that the constitutional morality demands government not to act in a manner that violated rule of law. Violation of constitutional morality must be equated with violation of orders of the Court.

Justice K. Anand Venkatesh concludes his article underscoring the role of constitutional morality in making constitutional objectives and provisions into ground level realities. In his own words, "The road forward for India lies in continually cultivating constitutional morality among citizens, lawmakers, and judges alike. It is the living ethos that will transform constitutional guarantees into tangible practice, fostering inclusion, protecting minorities, and ensuring equality in a rapidly changing society. As B.R. Ambedkar poignantly advised, constitutional morality is not inherited but must be nurtured and embraced. Its vitality is the difference between a constitution that is merely a document and one that is vibrant, equitable reality for all Indians. It is only then that democracy can be a vital ingredient and not a mere top dressing on Indian soil". ³⁷

The Advisory Bench also referred to the constitutional morality under the heading 'Values that should govern and guide

³⁴ (2014) 9 SCC 1)

³⁵ (NCT of Delhi v. Union of India (2020) 12 SCC 259)

³⁶ (2019) 1 SCC 1.)

³⁷ supra note ----, The Hindu, October 27, 2025.

Constitutional Interpretation'. Referring to the American and British constitutional systems, it marked the difference that our constitutional reality, background is entirely our own and governed by its different morality. The Bench observed, "This Court believes that our constitutional truth does not lay in either of these extremes but is grounded in the way we have successfully, and if we may add, proudly, worked our Constitution over three quarters of a century. While our Constitutional text may have been inspired by comparative outlook, its interpretation and working, we believe is truly swadeshi". ----- the Indian Constitution is not just transformative in its adoption, it has been and continues to be transformative in its practice and interpretation, shedding its colonial vestiges for a vibrant and evolving swadeshi foundation"³⁸ As such, our constitutional morality is to strengthen the cooperative separation of powers added with conciliatory and dialogic principle of checks and balances to achieve our objectives set out in the Preamble of the Constitution³⁹

Constitutional morality is the unwritten spirit of the Constitution that guides the constitutional authorities to act in its manner finding meanings of the unwritten. This author equates the unique Indian term 'dharma' of each constitutional authority and every Indian citizen in their given tasks and situations. It is important for every democracy but in a developing, diverse and determined like ours, constitutional morality becomes a desideratum.

VI. CONCLUSION

The most important question of current relevance is:- What is the effect of advisory opinion given by the Constitution Bench consisting of 5 senior most Judges of the Apex Court? We find this answer from the judgment itself while addressing the preliminary objections regarding the maintainability of the proceedings. The advisory opinion has earlier been sought in 15

³⁸ Paras 32 and 33

³⁹ key to interpretation, held in *Keshavananda Bharti v. State of Kerala*, AIR 1973 SC 1461.

cases and in each case such objection was raised. Quoting from Natural Resources Allocation, I Re, Special Reference No. 1 of 2012 (2012) 10SCC 1). The Bench made it clear that it had the constitutional duty to provide advice to the President “to authoritatively clarify the roles of constitutional institutions, when doubts as to their roles and powers are raised. However, --- this Court is well within its constitutional duty to refuse to answer questions that are purely speculative, over broad, vague, purely political in nature and beyond its institutional capacities”. The Hon’ble Bench relying upon the decision In Re Cauvery Water Disputes Tribunal ⁴⁰ held that the advisory opinion is not the order of the Appellate Court but only an interpretation for guidance of the institutions to act in future. The Bench marked the difference of advisory opinion from the judgment in Appeal as “sitting in appeal” would mean the variation, or vacation of the operative order in a concluded *lis*. It was held that Article 143 cannot be invoked to overturn a concluded adjudication inter-se parties, but this cannot be conflated with the authority of this Court to general questions of law referred to it by the Hon’ble President, that hold constitutional importance. In this regard, the submission made by the Attorney General and Solicitor General – that the present reference seeks clarification of constitutional principles for future governance, and not the setting aside of an already awarded decree, or the relief granted therein – is hereby, duly accepted”.⁴¹

In the light of this fact, the prevailing situation emerges that the judgments in Tamil Nadu case and in Punjab case are binding precedents and the beautifully given Apex Court opinion to the President, even being of 5 senior most judges and unanimous in their judgment holding much more judicial value than the two division bench judgments in controversy, may not settle the controversies and conflicts between constitutional authorities overnight. Therefore, while appreciating the depth, length, breadth, objectivity and cultural values of Indian society in which the Advising Bench has interpreted the Constitution and found a

⁴⁰ (1993 Supp (1) SCC 96)

⁴¹ para 27.

simple and sumptuous solution to settle all controversies and contradictions in three words “cooperative federalism, “conciliatory approach of constitutional authorities” and “dialogic method to settle issues of conflicts”. What is urgently required for the Union Government is to file an Appeal against the judgment and order in Tamil Nadu case. It will not only achieve a binding better judgment but shall certainly help Indian society to nurture constitutional morality suited to our needs and aspirations as a fast developing and largest democracy of the world.