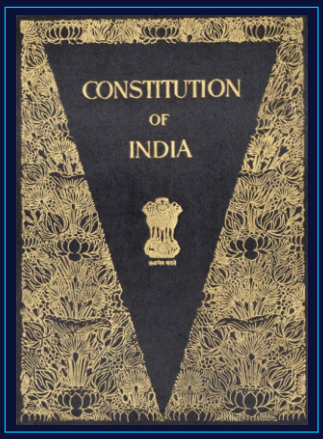
CONSTITUTION DAY LECTURE - 2025



Constitutional Criminality and Democratic Morality

November 26, 2025

By

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About Dr. BRAOU

The University, initially known as Andhra Pradesh Open University, was set up on 26th August 1982 through an Act of the A.P.State Legislature (APOU Act 1982). Subsequently the University was renamed as Dr.B.R.Ambedkar Open University on 26th October, 1991. The establishment of this University, the first of its kind in India, heralded an era of affirmative action on the part of the Government to provide opportunities of higher education to all sections of the society to meet the changing individual and social needs. The University is providing services to the student community through a wide network of 104 study centres spread across Telangana state including 10 Regional Co-ordination centres and 6 centres exclusively meant for women learners. Prison inmates serving life sentence also enroll themselves to pursue education through exclusive study centres at Central Prison - Cherlapally, Warangal and an exclusive Study Centre for Army personnel and their family members is established at AOC, Secunderabad. The University offers UG, PG, Diploma, Certificate and Ph.D. programmes including Professional Programmes, paving the way for life long learning.

Constitutional Criminality & Democratic Morality

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The Constitution Day

BRAOU - Dr. B.R. Ambedkar University - Hyderabad

26.11.2025

We need to protect the Constitution of India, Basic Structure, PILs, and the soul of India reflected in the preamble.

Who? We, the people of India.

What? Resolved. Sovereign Socialist Secular Democratic outlines its core objectives.

To secure

- ✓ **justice,**
- ✓ **liberty,** and
- ✓ **equality** for all citizens,

and to promote

- ✓ **fraternity**,

ensuring

- ✓ **the dignity of the individual and**
- ✓ **the unity and integrity of the nation.**

Preamble of the Constitution of India Drafted

- Drafted by Jawaharlal Nehru, it was adopted by the Constituent Assembly on November 26, 1949, and became effective on January 26, 1950

Opinion

Secularism in Bharath Constitution Today

Whenever opportunity, the Supreme Court reminds the Government about core values of the Constitution of India, i.e., Bharath, most importantly 'preamble'. This time on 21.10.2024, (yesterday) the Supreme Court explained the basic structure including socialist and secular qualities.

Justice Sanjiv Khanna, is going to be chief justice of India, and Justice Sanjay Kumar said: "This court has in a number of judgments held that secularism was always part of the Basic Structure of the Constitution. If one looks right to equality and the word 'fraternity' used in the Constitution, there is a clear indication that secularism has been held as the core feature of the Constitution."

Advocate Ashwini Upadhyay, a petitioner, claimed that the term "socialism' would curtail personal liberty and individualism. He said that he was not against the words "socialist, secular, and integrity" or their insertion in the Constitution but against the insertion of these words into the Preamble in 1976 and that too with a retrospective effect from November 26, 1949. Justice Khanna disagreed with the argument of Upadhyay. He claimed: "One should not take the meaning adopted in Western countries.. Socialism can also mean that there should be equality of opportunity and the wealth of the country should be distributed equally."

Advocate said: The Preamble was amended in December 1976 by the Indira Gandhi government to introduce the words "socialist" and "secular". The phrase "unity of the nation" was replaced with "unity and integrity of the nation". The changes were made in the Preamble through the 42nd Constitution Amendment during the Emergency. Originally, the text of the Preamble declared India as a "sovereign, democratic republic". The words "socialist" and "secular" were inserted between "sovereign" and "democratic".

Though the Constitution of India did not talk about one most important limitation called 'do not disturb the basic structure. The largest Bench in the history of the Supreme Court (13 judges) in the Kesavananda Bharati case had held that the Preamble was an integral part of the



Constitution, and was subject to the amending power of Parliament, provided the Basic Structure was not tinkered with.

Because of this judgment, our Indian Constitution is surviving as democratic, in spite of violation of the original system by different Governments. Even recently, the people of India voted for the protection of the Constitution. The Supreme Court is the only source of democracy as guarded. It protected the preamble, which is the real value of the rule of law.

Advocate Sriram Parakkat, appearing for CPI leader Binoy Viswam, said the 42nd amendment was indeed "infamous". It had after all tried to reduce the power of the Supreme Court and the High Courts. "While subsequent amendments more or less restored the Constitution to what it was pre-1976, this change was made in the Preamble,, that we are secular and socialist,, was retained," Mr. Parakkat submitted.

Accused of breaching secularism

"A law per se regulating an institution belonging to a particular community does not ipso facto [by the fact itself] offend the principle of secularism," said Chief Justice of India D.Y. Chandrachud, heading a three-judge Bench, made such an oral observation. The bench said that laws that regulate institutions run by religious or linguistic minorities, for that very reason alone, cannot be accused of breaching secularism. , was hearing a challenge to a decision of the Allahabad High Court to strike down the Uttar Pradesh Board of Madrasa Education Act, 2004. The Act regulated madrasas in the State. The High Court concluded that the law violated the principles of secularism. It had ordered the transfer of its students, especially those in recognized madrasas, to regular schools. Petitioners claimed in the top court that the verdict had affected the lives of nearly 17 lakh students spread across 16,000 madrasas in Uttar Pradesh.

The CJI referred to another Act the Hindu Religious Endowments and Charitable Institutions Act, which provided for the "proper administration of religious institutions., and is there in all States from Maharashtra to Tamil Nadu'. He said a State had a right to legislate to improve the excellence of a government-aided minority-run institution. The CJI emphasized: "It is within a State's vital interest. These are young children who come to madrasas. They need a broad-based education.. They should learn the essentials of subjects required to lead a proper life, so they become worthy citizens."

One should see Article 30 of our Constitution. The CJI pointed out that Article 30 enabled minorities to establish and administer their institutions which were not entirely confined to teaching of their religion. He remarked that 'there is no compulsion that a Buddhist institution should teach only Buddhism." Petitioners argued that the High Court had found that madrasas violated Article 28 of the Constitution, which prohibited "religious instruction" in educational institutions fully funded by the State.

Soon there will be a judgement on this point. But his observations are valid and need to be discussed. It is very significant because of values of established within the Preamble.

Dr. Madabhushi Sridhar
Former Central Information Commissioner, Professor of law, Mahindra University, Hyderabad.

Constitutional Morality

- **There is a need to discuss "Constitutional Criminality & Democratic Morality."**
- **Constitutional Criminality and Democratic Integrity**
- **The Indian Constitution has rejected and disagreed with both the Left and Right groups. The center is destroying left, right, and center.**
  1. **Constitutional Integrity**
  2. **Constitutional Morality**
  3. **Constitutional Criminality**
  4. **Constitutional Civil wrongs**
  5. **Constitutional Propriety**
  6. **Constitutional Democracy**

Constitutional Morality

'Morals, Ethics, and not lying or avoiding the falsehood' arise from our National Motto, ***Satyam Eva Jayathe***. Only 'truth' wins, nothing else. Even if a serious violation of the provisions of the Constitution of India, it does not have the power to punish the violators. They may be shocked to hear this.

The entire Constitution is a code of morality. We need to understand this. There is no penal code or penal Constitution. Every day, we are violating this morality. Break Oath, destroy the ethics, it's a common day activity.

In a family somewhere some sometimes, one should remember, understand, and tell the reality or truth, at least to mother, father, brother, and wife. I was surprised to know that somebody had to file a petition under the Right to Information Act to tell the truth! Will that 'public information officer' tell the truth? Is it a morality code or a penal law that imposes a penalty, at least for not giving information? Whether the wife is entitled to know the monthly salary of the husband was before me as Central Information Commissioner, such a simple 'truth', if she wants it known. Morality and ***Satyam Eva Jayate***, the Constitutional Motto, and part of Constitutional Morality.

Not the letter, but the spirit

In fact, there is nothing like 'Constitutional Morality', but one can understand thatit is the core philosophy and ethical code embedded within the Indian Constitution. It means adhering not merely to the **letter** of the law, but to its **spirit** and fundamental values (like equality, liberty, and fraternity). It is an essential check on majoritarianism and arbitrary power, often championed by the Supreme Court.

(National Law Day: The Constitution**was adopted** by the Indian Constituent Assembly on 26 November 1949 and came into effect on 26 January 1950. 26 January was chosen as the date for Republic Day as it was on the date of 1930 when the Declaration of Indian Independence was proclaimed by the Indian National Congress.On this day, the citizenship, Elections, Provisional Parliament are functional on this day.

Protecting the basic democracy is constitutional morality. It is the basic structure of our Constitution. When the Constituent Assembly finalised our Constitution on 26 November 1949, it did not come across the concept of 'basic structure'. If Ambedkar were living and available, he would have surely incorporated as an important part of our Constitution, wherever possible, at least in the Preamble. Ambedkar should have used the concept of the PIL, which has totally changed the structure of functioning of the Supreme Court and our governance and democracy. It is a conscience of the Constitution of India.

The Constitutional morality is expected to prevent tyranny. It acts as a higher standard to prevent the elected majority from using its power to violate fundamental rights or principles.

The **Dominant Majority** can protect itself. But what about the minority? That morality ensures that the rights and interests of minority groups are upheld, even if unpopular with the majority.

The Constitution is expected to be dynamic, not just a legislative statement with some power, as passed by a majority of MPs. This dynamic evolutionallows the Constitution to adapt to changing societal needs and values over time without requiring frequent formal amendments.

Simultaneously, it has its own issues, primarily 'constitutional morality', an ambiguous concept allowing judges to impose their **personal values** or **political ideology** in the name of "morality." We need to protect the basic structure of our constitutional democracy from personal values and political ideology. The challenge before now is that the 130th Amendment was made in a hurry.

The judiciary encroaching:

Critics argue that excessive reliance on constitutional morality can lead to the judiciary encroaching upon the legislative or executive domains. One can find many examples under the head of Governance and Parliamentary democracy. Again, the 130th Amendment can be quoted as an example.

It may lead to friction between the judiciary and the legislature/executive when constitutional-morality-based rulings invalidate popular legislation.

Constitutional Integrity & Propriety

In functional democracy, the people need **Constitutional Integrity**, whichrefers to the state of the Constitution being whole, sound, and unimpaired. It is about maintaining the basic structure, coherence, and fidelity to its foundational principles.

Upholds Rule of Law: Constitutional Integrity shouldensure the stability of the legal framework and guarantee that governance is predictable and fair.

However, the Constitutional **Propriety** refers to the ethical and appropriate behavior of all constitutional functionaries (President, Governor, Speaker, MPs, MLAs, Judges, etc.) in accordance with the established norms and conventions of the Constitution.

Promotes Trust: Constitutional Propriety, especially, builds public faith in democratic institutions by ensuring office holders act responsibly and impartially.

One should avoid theRigidity: Strict adherence to integrity can sometimes hinder necessary constitutional evolution or reform needed to address new challenges, and **Vagueness in Practice,** the propriety can be difficult to enforce legally, as it often involves **unwritten conventions** and political ethics rather than explicit laws.

Constitutional Criminality & Civil Wrongs

These concepts, particularly **Constitutional Criminality**, are not formal legal terms but are used in political/academic discourse (like "Constitutional Criminality & Democratic Morality") to describe deep-seated failures of the constitutional system.

Criminality: The willful, systematic, or widespread violation of constitutional duties, fundamental rights, or the basic structure by those in power, often for political gain.
Example: Mass defections, deliberate institutional sabotage (as suggested in your article).

*Identifies Systemic Failure***:** Helps expose and name the gravest threats to democracy that go beyond simple legal violations (e.g., crimes against the Constitution).

The problem is the Risk of Politicization:it could be weaponized by political opponents, diluting its genuine meaning and turning it into a mere political slogan.

However, the **Constitutional Civil Wrongs are different.** Actions by the State or its functionaries that cause injury to citizens by violating their constitutional rights, leading to claims for compensation (e.g., police brutality, illegal detention).

Provides Legal Recourse: Directly empowers the judiciary to protect citizens and compensate them for State-inflicted injury under public law remedies.

Slow Litigation: Like all civil remedies, enforcement can be delayed due to the slow nature of the legal process. Like working the remedy of anti-defection, which was part of the Constitution after the amendment, that turned into a ‘penal’ code to some extent. We are

convenient to the common delay and pendency. By the time the five-year term time passed, the anti-defection penal rule did not work.

The Center's Role and Constitutional Democracy

"The Indian Constitution has rejected and disagreed with both the Left and Right groups. The center is destroying left, right, and center" touches upon the **centrist, liberal-democratic** nature of the Constitution and the current challenges to it.

Inclusion & Stability: By not aligning completely with one ideological extreme, the Constitution created a broad, flexible framework capable of accommodating diverse political groups and ensuring stability.

Best System: Offers a robust system where power is limited by law (Constitution), ensuring liberty, accountability, and political participation.

The Demerits

Lack of Sharp Direction: Critics from both the Left (for being too conservative) and the Right (for being too secular/socialist) argue the Constitution lacks a strong, clear ideological mandate.

Erosion of Pluralism: If a dominant 'center' (usually referring to the ruling establishment) crushes all dissent and diversity, it undermines the very pluralism the Constitution was designed to protect.

Vulnerability: Highly dependent on the **good faith** and **morality** of the people and the functionaries who operate the system. Failures in Constitutional Morality/Integrity threaten the entire structure.

In summary, concepts like **Constitutional Morality** and **Integrity** are crucial aspirations for a healthy democracy, acting as essential checks. Meanwhile, terms like **Constitutional Criminality** serve as critical lenses to identify and discuss the systemic decay or abuse of power when those aspirations fail.

A test of the Value of Oath and the cost of Constitutionality

The ‘oath’ was forgotten.

Even once, under the leadership of Indira Gandhi, the Union of India did not think of impeaching the President, which is a blatant violation of the Constitution of India and the oath to preserve, protect, and defend the rule of law.

To preserve, protect, and defend the Constitution

India suffered a serious violation of rights that it never thought of. Exactly 50 years ago, the then-President had an opportunity to avoid the Emergency. Then why did Fakhruddin Ali Ahmed, as President of India, not face impeachment proceedings related to the imposition of the Emergency in 1975? While he did declare the Emergency and give his

assent to related actions, the Constitution of India provides a mechanism for impeachment, but it wasn't initiated in his case. For suspending the freedom of speech and expression, he deserved to be impeached, including the Emergency, without a cabinet resolution. Simply what the PM wanted, and the President signed blindly whenever ordered.

One should examine Article 352 of our Constitution to read that empowers the President to impose a national Emergency on his satisfaction that the security of India or any part of it is threatened by war, external aggression, or internal disturbance. Article 74 of the Constitution, as it then stood, provided for "a Council of Ministers with the Prime Minister at the head to aid and advise the President".

The Union Council of Ministers had not met and advised the proclamation of an Emergency. Ahmed signed the bill of amendment. The expression "internal disturbance" was termed to "armed rebellion" by the forty-fourth Constitutional Amendment Act, which also added in Section 74 that the President "may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration."

When a President forgot his oath to 'Preserve, protect, and defend'.

The President of ***Bharat*** (***BhāratkēRāṣṭrapati***) is the head of state of the Republic of India. The president is supposed to be a nominal head of the executive, the first citizen of the country, as well as the supreme commander of the Indian Armed Forces. The office of the president was created when India became a republic on 26 January 1950, when its Constitution came into force. One should read Article 60 'Oath or affirmation' by the President, which says:

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say—

> *"I, A.B., do swear in the name of God/solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."*

It means the President should have read out the form of the oath of office, "the ability to preserve, protect, and defend the Constitution". The 'oath' is that the only President, under Article 60, especially states what he or she would do to protect the Constitution, while all others promise to uphold allegiance, etc. That is the unique privilege of the President, who needs to understand and implement it. Not only Fakhruddin, but every President should remember the 'oath'.

That's how Rashtrapati Bhawan lost and found "the Constitution of India."

How does the President reach *satisfaction*?The President's satisfaction refers to it in a constitutional sense, which means that it is the '***satisfaction***' of his Council of Ministers. The President acts on the advice of the Council of Ministers in most matters, including the giving of assent to bills or many more significant bills, like amendments. Therefore, when a provision requires the President's satisfaction, it means that the Council of Ministers must be

satisfied with the provision before it is presented to the President for his assent. The Ministers of the Union play a crucial role in the functioning of the President's office. They are responsible for advising the President on various matters, including giving assent to recommendations by the Prime Minister and Cabinet. The Constitution vests the executive power of the Union in the President, but this power is to be exercised on the aid and advice of the Council of Ministers.

A criminal wrong 'ratified'!

Indira Gandhi requested a compliant President Fakhruddin Ali Ahmed to proclaim a state of emergency. Unfortunately, the President did not know that it was approved the proposal had been approved by the PM without discussion with the Union Cabinet. The President learned only after the 'ratification' of the Cabinet the next morning. Earlier, within three hours after the imposition of the Emergency, the electricity to all major newspapers was cut, and the political opposition was arrested.

***When Rashtrapati Bhavan* has lost and found 'the Constitution'!**

Author *Gyan Prakash* picked up this excerpt from the book Emergency Chronicles: Indira Gandhi and Democracy's Turning Point, the *Penguin Random House*. He wrote:

> *"President Fakhruddin Ali Ahmed summoned his secretary, K. Balachandran, at around 11:15 p.m. on June 25, 1975.*
>
> **Top Secret**
>
> *Ten minutes later, Balachandran met the pajama-clad president in the private sitting room of his official residence at Rashtrapati Bhavan. The president handed his secretary a one-page letter from Indira Gandhi marked "Top Secret." Referring to the prime minister's discussion with the president earlier that day, the letter said she received information that internal disturbances posed an imminent threat to India's internal security. It requested a proclamation of Emergency under Article 352 (1) if the president was satisfied with this score. She would have preferred to have first consulted the cabinet, but there was no time to lose. Therefore, she was invoking a departure from the Transaction of Business Rules in the exercise of her powers under Rule 12 thereof.*
>
> ***The president asked for his aide's opinion on the letter, which did not have the proposed proclamation attached. Balachandran said that such a proclamation was constitutionally impermissible on more than one ground.***
>
> **That means he knew the blunder!**
>
> *At this, the president said that he wanted to consult the Constitution. Balachandran retreated to his office to locate a copy.*
>
> *Meanwhile, the deputy secretary in the president's Secretariat showed up. The two officials launched into a discussion about the constitutionality of the prime minister's proposal before* ***they returned to President Ahmed with a copy of the Constitution****. Balachandran explained that the president's satisfaction that internal disturbances posed a threat to internal security was constitutionally irrelevant. What the Constitution required was the advice of the Council of Ministers.*

Balachandran withdrew when the president said he wanted to speak to the prime minister. When he re-entered the room ten minutes later, President Ahmed informed him that R.K. Dhawan had come over with ***a draft Emergency Proclamation, which he had signed.***

Then the president swallowed a tranquilizer and went to bed. And the Rashtrapati Bhavan will not find a copy of the 'Constitution'.

The author Gyan Prakash explained the sordid episode as follows

This late-night concern for constitutional propriety is revealing. What we see unfolding in the hunt for a copy of the Constitution, the leafing through its pages to make sure that the draft proclamation met the letter of the law, is the meticulous process of the paradoxical suspension of the law by law. The substance of the discussion concerns the legality of the procedures to follow in issuing the Emergency proclamation. The political will behind the act goes unmentioned. This is because Article 352 (1) of the Constitution itself had left the judgment of the necessity for the Emergency proclamation outside the law.

The doctrine of necessity regards the judgment of crisis conditions as something that the law itself cannot handle; it is a lacuna in the juridical order that the executive is obligated to remedy. This leaves the sovereign to define the conditions necessitating the suspension of law. Accordingly, the discussion at Rashtrapati Bhavan did not refer to the politics of the Emergency proclamation.

Instead of resigning, he signed!

That happened because of manipulation and misinformation, to say the least, because the President did not read the Constitution of India, or his secretary did not find a copy, before he signed. Instead of resigning from the position as President, he has resigned! At least, somebody should have been impeached.

Latest Judgment of the Supreme Court on 20.11.2025

Hon. President, please reject this advice!

Dr. Madabhushi Sridhar Acharyulu, *LLD,Professor, Mahindra University, Hyderabad.*

The Supreme Court's November 20, 2025, judgment, an advisory opinion on a Presidential Reference, stated that the judiciary cannot impose fixed timelines on the President and Governors for processing state bills. The decision clarified that while prolonged inaction is unconstitutional and subject to limited judicial review, the specific timeframes previously suggested by the court were an overreach of judicial power.

Are there any merits in this Judgment? They look like merits, but most of them, or all of them, violate the principles of the Indian Constitution. Because:

- ***Does it uphold Separation of Powers***: The ruling reinforces the constitutional doctrine of separation of powers by preventing the judiciary from encroaching on the functions of the executive (the Governors and President).
- ***Will maintain Constitutional Flexibility*:** The Court noted that the Constitution uses flexible language like "as soon as possible" in Articles 200 and 201, which deliberately avoids rigid deadlines to account for the unique context of each bill.
- ***Can preserves Discretionary Authority***: It protects the discretionary power of the Governors and the President to assess bills, which is essential for them to act as a constitutional check on "hasty legislation" by state assemblies.
- ***Can it allow Limited Judicial Scrutiny***: While rejecting fixed timelines, the judgment clarifies that "prolonged, unexplained, and indefinite inaction" can still invite "limited judicial scrutiny," allowing courts to direct the concerned authority to act within a reasonable time without dictating the outcome.

The Serious Demerits of the Judgment

1. ***Potential for Indefinite Delays***: The absence of a strict, enforceable timeline may allow Governors to sit on bills for extended, potentially unreasonable, periods, thereby stalling governance and thwarting the will of elected state legislatures.
2. ***Weakens Federalism***: Critics argue that the decision empowers the central government-appointed Governors to undermine the rights and legislative agenda of non-BJP-ruled states, which can strain Centre-state relations.
3. ***Lack of Clarity on "Reasonable Period"*:** The judgment does not provide a clear framework for what constitutes "prolonged inaction" or a "reasonable period," which could lead to future litigation and a lack of predictability.
4. ***Challenges in Enforcing Action*:** While courts can issue a "limited direction" to act, the lack of power to impose a deadline or a "deemed assent" mechanism means that enforcing compliance from a recalcitrant Governor could remain challenging.

Hon. President, please reject this advice

Hence, Madam Honorable President, please reject this unconstitutional advice by the Constitutional Bench of the Supreme Court. The nation should understand how a bench of the SC was constitutional, and the Constitutional Bench of five judges paralyzing the governance in non-BJP states was not correct. Two SC Judges bench rightly held Governor

R.N. Ravi's delay in granting assent to 10 bills as erroneous and illegal, and it exercised its inherent powers under Article 142 to grant assent to the pending bills

The most controversial effecting the federal governance was given by a five-judge Constitution Bench led by Chief Justice B.R. Gavai J, Surya Kant J, Vikram Nath J, P.S. Narasimha J, A.S. Chandurkar J, delivered its advisory opinion on the Presidential Reference concerning the powers of Governors and the President when Bills are presented for assent. President DroupadiMurmu had issued the reference under Article 143 a month after the Court's decision in State of Tamil Nadu v Governor of Tamil Nadu (2025). The SC in Tamil Nadu Governor had set timelines on the President and the Governor for granting assent and had deemed assent on pending bills through Article 142. Basically, it approves the point of 'limiting' the power of the President of India, the apex authority under the Constitution, by imposing timelines on his functioning. Though the SC raised valid constitutional concepts, the 'letter' is more dominant than the 'spirit' of the Constitution.

The Supreme Court (On 20.11.2025) unanimously ruled **against imposing timelines on the President and Governors.** The bench declined to answer Question 14 of the reference, which asked whether disputes between the Union and the States can be resolved outside Article 131. It held that the question was irrelevant to the nature of an Article 143 reference.

The Governor has **discretion to assent**, withhold assent with a reason to be communicated, or refer the Bill to the President for consideration. There will be no timelines that can be imposed by the Supreme Court, which held that the Governor has only three options under Article 200, and that prolonged, unexplained, indefinite inaction by a Governor may attract limited judicial scrutiny.

The SC, referring to *Shamsher Singh v State of Punjab* (1974) and *NabamRebia v Deputy Speaker* (2016), reiterated that the Constitution contemplates circumstances in which the Governor exercises discretion under Article 200. The second proviso relates to the reservation of a Bill for the President's consideration. The Court rejected the argument that discretion is confined to only one part of Article 200, but also observed that discretion does not justify inaction.

The President's decision under Article 201 is not justiciable and is not subject to judicially imposed timelines. The President is not required to seek an advisory opinion under Article 143 whenever a Bill is reserved; such a reference may be made only if the President independently considers it necessary.

Unfortunate Advice of SC

While settling the scope of the Governor's powers, the SC, exercising advisory power, held that 'prolonged, unexplained, indefinite inaction will invite limited judicial scrutiny', affecting the administration. The judgment is against the constitutional scheme. For example, how the Tamil Nadu government is paralysed by the inaction, or anti-constitutional 'action'. The two-Judge Bench of SC in the Tamil Nadu case rightly held that under Article 200, the Governor, after presentation of the Bill, must return it "as soon as possible" along with a message requesting the House to reconsider specific provisions within, or the entirety of the Bill. If the Bill were to be passed again and resent to the Governor, the Governor is obligated not to withhold it. The 12 Bills sent to the Governor between 13 January 2020 and 28 April 2023 amend legislation that established state universities in Tamil Nadu. Eight of

the 12 Bills seek to empower the state government to appoint the Vice Chancellor of the universities instead of the Governor, one Bill seeks inclusion of a government nominee on a selection panel for the appointment of the Vice Chancellor, two Bills seek to grant the government the power of inspection and enquiry instead of the Chancellor of the university, three Bills seek inclusion of the Finance Secretary in the Syndicate of all Universities (except three government universities), and one Bill seeks to establish a government Ayurveda university. One Bill also seeks complete control of the state government over the appointment of Vice Chancellors of all state universities (barring the University of Madras) instead of the Governor.

Some important files from the state government, between 10 April 2022 and 15 May 2023, are pending sanction for the prosecution of public servants for various crimes involving acts of moral turpitude, under the Prevention of Corruption Act, 1988. Around 54 files on premature release of prisoners, submitted to the Governor between 24 August 2023 and 28 June 2023, have remained pending, and various proposals for the appointment of members for the Tamil Nadu Public Service Commission have remained pending. Article 316 of the Constitution states that the Chairman and other members of a State Public Service Commission are to be appointed by the Governor. On 10 November 2023, the SC Bench found that the pendency of the proposals and Bills was “a matter of serious concern.”

Significant points can be culled out of the judgment as follows:

- **No deemed assent**: There is no concept of granting deemed assent to State Bills under Article 142, as the SC cannot take over the functions of the President and Governors under Article 201 and 200, respectively.
- **President's functions not justifiable**: The President’s functions under Article 201 are not justiciable, and the President cannot be bound by a timeline.
- **Constitutional clarity:** After hearings on the Presidential Reference, the SC clarified the Constitutional position in providing assent to Bills passed by State Assemblies, and has largely confirmed that Governors should not indefinitely withhold assent to such Bills. Addressing all 14 questions posed in the Presidential Reference, the Bench largely converged on the constitutional principles elucidated in April.

Governors are not rubber stamps.

- **Not rubber stamps**: The Governors are not rubber stamps. Courts cannot supplant the wisdom of the Governors. But Governors cannot stall Bills endlessly, thwarting legislative will, says the Supreme Court.
- **The time factor**: The Court can't ask Governors to decide on Bills within a reasonable time limit.
- **Only three options**: The Constitution is clear on the options before the Governor. The Governor has three constitutional options under Article 200: assent, reserve, withhold assent, and return with reasons.
- **Not Justiciable**: The discharge of the Governor’s functions is not justiciable. In case of grave circumstances of inaction, unexplained and prolonged, the court cannot ask him to decide within a reasonable time limit.
- **Federal point**: Pronouncing the opinion advisory, CJI Gavai says: “The first provision of Article 200 initiating a conversation between the Governor and the State

legislature is essential. It brings out the federalisitic (this expression is used in the Judgement) nature of governance and in the spirit of the balance. In short, the Governor cannot return Bills without saying why."

Merits: SC can 'limit' the Governor.

- **However**, the Court can ask Governors to decide within a "reasonable time limit".
- **Great relief**: The President need not consult the Supreme Court under Article 143 (advisory opinion) every time a Governor refers a State Bill to her for consideration under Article 201.
- **Discretion:** Ordinarily, the Governor exercises his functions with the aid and advice of the State Cabinet. Those functions in which he exercises discretion are specifically provided in the Constitution, says CJI Gavai.

A clash between the 'spirit' and the 'letter' of our Constitution

- The society thinks the judicial opinion of five of the bench cannot go wrong. It is not agreed upon constitutionally to impose timelines. As far as the President is concerned, SC justified, but it is **difficult to agree with the inaction of Governors** who may need to impose timelines.
- **Problem is 'Bias'**: The President is the apex authority in India; it cannot be equated with the Governors, who are totally appointed, not independent, and as subordinate to the 'constitutional office' of the Home Minister/President. Political bias of the ruling government and bias against the opposition Chief Ministers resulting in trouble entire Government and the Assembly, that is the experience of such Governments in recent times.
- **Morality**: Shall we follow the strict 'letter' and ignore the 'spirit' of the Constitution? Will it not violate the Constitutional Morality?
- **Convention:** Why not the President follow the unwritten timelines as a Constitutional convention to use "reasonable timelines?"
- **Position of Speakers:** What if 'timelines' are imposed on the Speakers and Chairman of Rajya Sabha (or Chairmen in the legislative council)?

The SC held *"...however, they will take a decision in a "reasonable time".* It is an ambiguity that may create administrative difficulties.

How long is 'reasonable'?

- Nobody can say what is a 'reasonable time' in this political scenario. It is just advice, opinion, or an ethical point. It does not solve the problem generated by the political governments knowingly, deliberately put a clog on the administration and impair the working of governance, and harass the entire state.
- It promotes the imbalance between the Centre and States, and in turn affects the federal principles of the Indian Constitution.

Chief Justice of India B.R. Gavai made it clear that the Centre should not expect the apex court to **"sit idle"** and powerless if a constitutional authority failed to discharge its duties.

Only Advice.

- It's again, an ethical principle or piece of advice by the apex court; it depends on the willingness of the Government of the day. When the Government deliberately rejects the advice and ignores the ‘constitutional morality’.
- May not solve the ‘Constitutional Crisis’. It may be valid that the discharge of the Governor’s functions is not justiciable. Can anybody do in case of grave circumstances of inaction, unexplained and prolonged, the court cannot ask him to decide within a reasonable time limit?

In case any state assembly way lapse or be dissolved specifically due to "inaction and delay" in its day-to-day legislative functioning in late2024 or 2025, the dissolution of a state assembly typically happens in specific constitutional circumstances, such as: a) ahead of scheduled elections when recommended by the state Cabinet and Chief Minister to the Governor, as seen in Haryana in September 2024, b) when no stable government can be formed, or there is "horse-trading," allowing the Governor to dissolve the assembly and pave the way for fresh elections, as occurred in Jammu and Kashmir in November 2018, c) by the Governor on the aid and advice of the cabinet at the end of the government's tenure, as in Odisha in June 2024.

While there have been political debates and walkouts in state assemblies like Maharashtra and Rajasthan over various issues and alleged government insensitivity, these have not led to the assembly lapsing or being dissolved due to "inaction and delay" in such manner as above.

Recent Supreme Court judgments have addressed issues of gubernatorial inaction, stating that a Governor cannot indefinitely delay acting on bills passed by the assembly, but this does not automatically lead to the entire assembly lapsing. The court has clarified that while it can intervene in cases of "prolonged, unexplained and indefinite" inaction, it cannot impose rigid timelines or "deemed assent" for bills, so the legislative process itself is not automatically voided by delay.

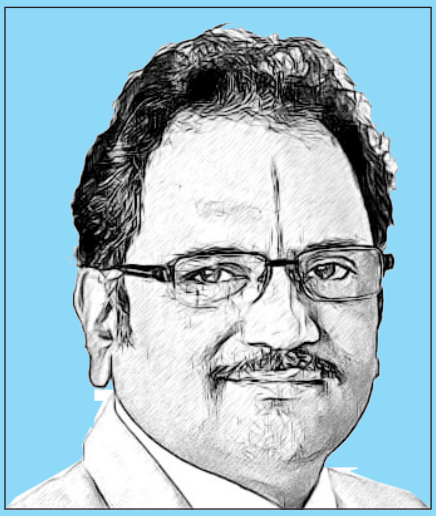
Against the ‘doctrine of separation.’

The Supreme Court Bench says drawing timelines for Governors or the President is antithetical to the doctrine of separation, as well as antithetical to the Constitution. Antithetical means: directly opposed or contrasted; mutually incompatible or using the rhetorical device of antithesis. It is the Constitutional Immorality, and Governors cannot resort to such inaction or actions.

We need to protect the Constitution of India, Basic Structure, PILs, and the soul of India reflected in the preamble.

https://countercurrents.org/2025/11/hon-president-please-reject-this-advice/

About Author



Madabhushi Sridhar Acharyulu, author of 63 books (in Telugu and English), Formerly Central Information Commissioner, Professor of NALSAR University, Bennett University (near Delhi), presently Professor and Advisor, Mahindra University, Hyderabad. Studied in Masoom Ali High School, AVV Junior College, CKM College, and Kakatiya University in Warangal. Madabhushi did LL.M., MCJ., and the highest law degree, LL.D. He won 4 Gold Medals at Kakatiya University and Osmania University.



భారత రాజ్యాంగ ప్రవేశిక

భారత ప్రజలమైన మేము,
భారతదేశాన్ని సర్వసత్తాక సామ్యవాద
లౌకిక ప్రజాస్వామ్య గణతంత్ర రాజ్యంగా
నిర్మించుకోవడానికి, పౌరులందరికీ
సాంఘిక, ఆర్థిక, రాజకీయ న్యాయాన్ని;
ఆలోచన, భావ ప్రకటన, విశ్వాసం,
ఆరాధనల స్వాతంత్ర్యాన్ని;
అంతస్తుల్లోనూ, అవకాశాల్లోనూ,
సమానత్వాన్ని చేకూర్చడానికి;
వారందరిలో వ్యక్తిత్వ గౌరవాన్ని,
జాతీయ సమైక్యతను సంరక్షిస్తూ
సౌభ్రాతృత్వాన్ని పెంపొందించడానికి;
మన ఈ రాజ్యాంగ పరిషత్‌లో 1949
నవంబర్ 26వ తేదీన ఎంపిక చేసుకొని,
శాసనంగా రూపొందించుకున్న ఈ
రాజ్యాంగాన్ని మాకు మేము
సమర్పించుకుంటున్నాము.

PREAMBLE OF INDIAN CONSTITUTION

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all.
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Dr. B.R. AMBEDKAR OPEN UNIVERSITY