

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE VIKRAM NATH
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ATUL S. CHANDURKAR

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

SPL.REF. No. 1/2025 XVII-A

IN RE: ASSENT, WITHHOLDING OR RESERVATION OF BILLS BY THE
GOVERNOR AND THE PRESIDENT OF INDIA

TRANSCRIPT OF HEARING

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10:30 AM IST

K.K. VENUGOPAL: May I please Your Lordships?

R. VENKATARAMANI, ATTORNEY GENERAL: Lordships, I just wanted to say that since, in terms of the Supreme Court rules, notice issued to the Attorney General... In terms of the Supreme Court rules, Your Lordships have issued a notice to the Attorney General and I thought, with Your Lordship's permission, I'll make some introductory remarks. Unless Your Lordships say that we'll hear them other...

CHIEF JUSTICE B. R. GAVAI: They are raising a preliminary objection regarding the maintainability. So, first, I think...

R. VENKATARAMANI, ATTORNEY GENERAL: Very well.

CHIEF JUSTICE B. R. GAVAI: We have said that we'll hear them for half an hour on maintainability.

K.K. VENUGOPAL: Your Lordship will hear me on maintainability, My Lords.

CHIEF JUSTICE B. R. GAVAI: And then half an hour, and then we'll start with the proceedings, and then it will begin with your openings.

R. VENKATARAMANI, ATTORNEY GENERAL: As Your Lordship pleases.

K.K. VENUGOPAL: My Lordship will hear me on the...

P. WILSON: After Mr. Venugopal argues, Tamil Nadu may be given a chance My Lords because we have filed a maintainability, reference stems out of...

CHIEF JUSTICE B. R. GAVAI: Half an hour you have to conclude the area of the preliminary objections.

P. WILSON: Yes. Half an hour after Mr. Venugopal.

K.K. VENUGOPAL: I will take only My Lords, a very short time.

ABHISHEK MANU SINGHVI: Fortunately My Lords, Your Lordships...

K.K. VENUGOPAL: May I start on maintainability, My Lords?

- 1 **CHIEF JUSTICE B. R. GAVAI:** Yes, yes. Mr. Venugopal, yes.
- 2 **K.K. VENUGOPAL:** The issue My Lords, is really covered by a series of judgements of Your
3 Lordships, and if Your Lordships will be pleased to take the reference itself, which is My Lords
4 at Volume 3, Page 5. Document file.
- 5 **CHIEF JUSTICE B. R. GAVAI:** Volume 3, page 5?
- 6 **K.K. VENUGOPAL:** Page 5, My Lords. May I read that My Lords?
- 7 **CHIEF JUSTICE B. R. GAVAI:** Volume 3 of the PDF or...?
- 8 **K.K. VENUGOPAL:** Volume 3 of the Index of documents.
- 9 **CHIEF JUSTICE B. R. GAVAI:** Index of documents?
- 10 **K.K. VENUGOPAL:** Yes, My Lords.
- 11 **JUSTICE SURYA KANT:** This is a common compilation of documents. Mr. Venugopal, is
12 it captioned as "Common compilation of documents"?
- 13 **CHIEF JUSTICE B. R. GAVAI:** Yes, Mr. Venugopal, we have got that.
- 14 **K.K. VENUGOPAL:** May I just briefly take Your Lordships through the relevant passage
15 paragraphs starting with -"Whereas Article 200 of the Constitution of India prescribes the
16 powers of the Governor and the procedure to be followed while assenting to bills, withholding
17 assent to bills and reserving a bill for the consideration of the President. Whereas, Article 200
18 of the Constitution of India does not stipulate any time frame upon the Governor for the
19 exercise of Constitutional options under Article 200." My Lords, this may not be quite correct,
20 because Your Lordships may remember that both in the Telangana case and the Punjab case,
21 as well as in the Tamil Nadu case, the question of as soon as possible in Article 200 has been
22 interpreted by Your Lordships. And in the Tamil Nadu case, a time limit itself has been fixed.
23 Then Your Lordship may thereafter go to the...
- 24 **CHIEF JUSTICE B. R. GAVAI:** Tamil Nadu case, is the judgement by the learned two
25 judges?
- 26 **K.K. VENUGOPAL:** Judgement of?
- 27 **CHIEF JUSTICE B. R. GAVAI:** Learned two judges.

- 1 **K.K. VENUGOPAL:** My Lords, one is not reported. But I can give Your Lordships the writ
2 petition number. Writ petition number 333 of 2023 which is a two judges bench, which is at
3 page 150.
- 4 **CHIEF JUSTICE B. R. GAVAI:** Writ petition number 333 of?
- 5 **K.K. VENUGOPAL:** 150 of ... I will give Your Lordship the page number presently. The
6 second one My Lord is the Punjab Case, three judges, 2024 Volume 1 SCC (384).
- 7 **CHIEF JUSTICE B. R. GAVAI:** 2024 Volume 1?
- 8 **K.K. VENUGOPAL:** SCC (384), three judges and that My Lord, is annexed at 11681 of
9 Volume 29.
- 10 **CHIEF JUSTICE B. R. GAVAI:** SCC (384) at page?
- 11 **K.K. VENUGOPAL:** Three judges. At page 11681 of Volume 29...
- 12 **CHIEF JUSTICE B. R. GAVAI:** Of the Volume of the PDF. Compilation of judgements?
- 13 **K.K. VENUGOPAL:** 29, My Lords, of the compilations which Your Lordship will find on the
14 left hand side.
- 15 **CHIEF JUSTICE B. R. GAVAI:** 32 sub-volumes. So this is in sub-volume number?
- 16 **K.K. VENUGOPAL:** Sub-volume 29 at page 11681. The index, My Lords, would show that
17 page at 11681. There are 18,000 pages, My Lords, altogether and hence the difficulty.
- 18 **CHIEF JUSTICE B. R. GAVAI:** At page 11...?
- 19 **K.K. VENUGOPAL:** 681.
- 20 **CHIEF JUSTICE B. R. GAVAI:** Yes.
- 21 **K.K. VENUGOPAL:** Now, if Your Lordships would skip three of the clauses.
- 22 **CHIEF JUSTICE B. R. GAVAI:** So, total how many pages in 38 volumes?
- 23 **K.K. VENUGOPAL:** 18,000, My Lords. Total.
- 24 **CHIEF JUSTICE B. R. GAVAI:** Only judgements?

1 **K.K. VENUGOPAL:** judgements and the written submissions and various other documents.

2 **CHIEF JUSTICE B. R. GAVAI:** Yes.

3 **K.K. VENUGOPAL:** It's an enormous task to trace out each one of the documents. And
4 taking My Lords the reference, which I was referring to. Skip the next three clauses and come
5 to the fifth clause. 1, 2, 3, 4, 5. "Whereas the exercise of Constitutional discretion by the
6 Governor and the President under Article 200 and Article 201 of the Constitution of India,
7 respectively are essentially governed by polycentric considerations *inter alia* being
8 Federalism, Uniformity of laws, Integrity and Security of the nation, Doctrine of separation of
9 powers." And then, overleaf, if Your Lordships would come to the next clause. "Whereas there
10 are conflicting judgements at the Supreme Court as to whether the assent of the President of
11 India under Article 201 of the Constitution of India is justiciable or not...." My Lords, there are
12 three judgements as I mentioned. The Punjab judgement, Telangana judgement and the most
13 recent delivered about one month and a few days before this reference which have decided this
14 issue that it is justiciable. Then My Lords...

15 **CHIEF JUSTICE B. R. GAVAI:** Then what about 145(3)?

16 **K.K. VENUGOPAL:** 145(3) My Lords, if My Lord, a demand is made by anyone...

17 **CHIEF JUSTICE B. R. GAVAI:** No. The requirement under 153... Article 153, Clause 3 of
18 the Constitution.

19 **K.K. VENUGOPAL:** Most of the reference judgements, all of them are by five judges,
20 because that is mandatory and therefore, it's all five judges.

21 **CHIEF JUSTICE B. R. GAVAI:** No, whether the judgements on which you are relying...

22 **K.K. VENUGOPAL:** No. These My Lords...

23 **CHIEF JUSTICE B. R. GAVAI:** Are the judgements by five judges?

24 **K.K. VENUGOPAL:** Yes. No. None among them is five judges. Two judges and three judges.
25 But my submission is...

26 **CHIEF JUSTICE B. R. GAVAI:** So, Punjab is a three judges.

27 **K.K. VENUGOPAL:** Yes. Punjab there is three judges.

1 **CHIEF JUSTICE B. R. GAVAI:** Tamil Nadu is two judges.

2 **K.K. VENUGOPAL:** Tamil Nadu is two judges. And Telangana there is three judges.

3 **CHIEF JUSTICE B. R. GAVAI:** And which is the third one?

4 **K.K. VENUGOPAL:** Telangana, two judges. Then Tamil Nadu two judges. And Punjab three
5 judges.

6 **CHIEF JUSTICE B. R. GAVAI:** So what about the requirement under 145(3)?

7 **K.K. VENUGOPAL:** My Lords, there is a dispute about that, because Your Lordships are
8 deciding a large number of Constitutional cases day after day. And it is only My Lords, if a
9 party asks and points out there are substantial questions of law regulating to the interpretation
10 of the Constitution that a question of five judges would arise. If nobody asks for it and if Your
11 Lordships laid down the law, that irrespective of any party asking for the five judges under
12 145(3)...

13 **CHIEF JUSTICE B. R. GAVAI:** When the Hon'ble President itself is seeking the use of this
14 Court, then what is wrong in that?

15 **K.K. VENUGOPAL:** But if My Lords, the Court itself does not believe that it's a matter for
16 145(3), if the Attorney General who appeared in the Tamil Nadu case did not believe that it
17 was a 145(3) case.

18 **R. VENKATARAMANI, ATTORNEY GENERAL:** It was squarely raised. It's part of my
19 written submissions. It's recorded in the judgement.

20 **TUSHAR MEHTA:** judgement records that. There was a reference prayed for.

21 **CHIEF JUSTICE B. R. GAVAI:** Mr. Venugopal, are you really serious on the preliminary
22 objections? Are you really serious?

23 **K.K. VENUGOPAL:** Yes.

24 **CHIEF JUSTICE B. R. GAVAI:** Just tell us how do you overcome 145(3)?

25 **K.K. VENUGOPAL:** Very serious for a simple reason...

26 **CHIEF JUSTICE B. R. GAVAI:** No. Just point out, how do you overcome 145(3)?

1 **K.K. VENUGOPAL:** I'll tell Your Lordships why. Please turn straight away to the queries.

2 **CHIEF JUSTICE B. R. GAVAI:** Yes.

3 **K.K. VENUGOPAL:** "What are the Constitutional options before a Governor when a bill is
4 presented to him under Article 200 of the Constitution of India?" Now, if Your Lordships
5 would be pleased to take my written submissions. At the end of the written submissions, which
6 is only eight pages, I had given a tabulated statement putting the query and the place where in
7 the Tamil Nadu judgement this query is squarely answered.

8 **CHIEF JUSTICE B. R. GAVAI:** Mr. Venugopal, we are sorry. You are not again answering
9 our question as to how do you meet the requirement under 145(3)?

10 **K.K. VENUGOPAL:** My Lord, let me answer Your Lordships.

11 **CHIEF JUSTICE B. R. GAVAI:** Learned Attorney General specifically states it was his
12 contention that in view of 145(3), the matter should go to the five judges bench and that
13 submission is also recorded in the order.

14 **K.K. VENUGOPAL:** Yes.

15 **CHIEF JUSTICE B. R. GAVAI:** Then do you not think that your objection is hyper-
16 technical?

17 **K.K. VENUGOPAL:** My Lords, I would have expected him to have argued the matter and
18 place it, because one has to decide.

19 **CHIEF JUSTICE B. R. GAVAI:** Now, please don't interrupt. If somebody from one corner
20 goes and somebody from the other corner rises, we will not be in a position to complete it.
21 Have some decorum. You are in the Court, not somewhere else. You might be used to that
22 atmosphere.

23 **K.K. VENUGOPAL:** In which case, My Lords, one of the expected, an argument had to be
24 raised by the Learned Attorney General and pointing out to put to the decision of the Court
25 that a substantial question of law relating to the interpretation of the Constitution has been
26 raised. Nowhere in the entire judgement would one can find anything to that effect.

27 **CHIEF JUSTICE B. R. GAVAI:** No. But, the judgement specifically records that he has
28 taken this objection and if that is not considered, then is it his mistake?

- 1 **K.K. VENUGOPAL:** Nowhere does the judgement says so, My Lords, with great respect.
- 2 **CHIEF JUSTICE B. R. GAVAI:** Mr. Attorney, where is your submission? The objection you
3 raised has been recorded?
- 4 **R. VENKATARAMANI, ATTORNEY GENERAL:** It is shown both in my written
5 submissions and also where the Court has recorded it.
- 6 **ABHISHEK MANU SINGHVI:** It's there in 34(l). Para 34(l) has this submission, has the
7 Attorney's submission.
- 8 **CHIEF JUSTICE B. R. GAVAI:** Then it doesn't decide...
- 9 **ABHISHEK MANU SINGHVI:** I will deal with it after Mr. Venugopal. I don't want to
10 interrupt him. I will deal with...
- 11 **R. VENKATARAMANI, ATTORNEY GENERAL:** I'll answer that question. It is sufficient
12 for this to say, it has been raised.
- 13 **ABHISHEK MANU SINGHVI:** It's been recorded. He is right.
- 14 **K.K. VENUGOPAL:** (34(l)).
- 15 **CHIEF JUSTICE B. R. GAVAI:** Mr. Venugopal, can you formulate the objection? So that
16 we can consider it.
- 17 **TUSHAR MEHTA:** Para 34(l), record for submission, which I'll just read, the learned
18 Attorney's submission. "He submitted that exposition of Article 200 as done in ***State of***
19 ***Punjab*** is *sub silentio* as the Court while making the safe decision, did not take into account
20 the observations made by the Constitution Bench. In last he submitted, that the matter may
21 be referred to a larger bench of this Court so as to harmonize the observation," etc. etc.
- 22 **K.K. VENUGOPAL:** Therefore, that's what he has said. "I" which he has referred to, is at
23 page... May I read that, My Lords? What he has said at Clause I. What he has raised My Lord,
24 in Clause I...
- 25 **CHIEF JUSTICE B. R. GAVAI:** He has raised that he requires consideration by a bench of
26 five judges. If a Court doesn't consider it, can it be brought before that?
- 27 **K.K. VENUGOPAL:** May I just read what he has raised. He has never raised this for 145(3).

1 **CHIEF JUSTICE B. R. GAVAI:** Mr. Solicitor, he might not have referred to 145(3), but he
2 has specifically referred that it requires to be considered by five judges.

3 **K.K. VENUGOPAL:** No, what he has said is...

4 **ABHISHEK MANU SINGHVI:** I will not respond, I'll wait for my turn.

5 **K.K. VENUGOPAL:** May I just read his Clause I? In the last he submitted "that the matter
6 may be referred to a larger bench of this Court..." - larger bench should be three judges - "so
7 as to harmonise the observations in **BK Pavitra**,"- which is two judges- "and **Valluri**
8 **Basavaiah**"- which is five judges- "and **State of Punjab**..."

9 **CHIEF JUSTICE B. R. GAVAI:** Mr. Venugopal, can you just formulate your submission so
10 that we can consider what is your preliminary objection.

11 **K.K. VENUGOPAL:** My submissions are these. Please see his queries 1 to 11. Each one of
12 these is covered by the judgement in the Tamil Nadu case directly. Now, once My Lords, a
13 judgement covers these issues 1 to 11, these issues are no more *res integra*. And a series of
14 judgements, starting with the nine judges in the **St. Xavier, Ahmedabad, St. Xavier** case,
15 plus the judgements in Natural Resources, **Cauvery**, Gujarat Assembly, have all said that if
16 an issue is already decided by the Court, no reference can be asked in regard to these issues,
17 because they are no more *res integra* unequivocally, because if Your Lordships were to decide
18 these issues in a 143, the result would be that so far as Your Lordships are concerned, Your
19 Lordships are equally bound... along with all under 141, by judgements delivered by Your
20 Lordships.

21 **CHIEF JUSTICE B. R. GAVAI:** So your five judges' bench is bound by the judgement given
22 by the two judges.

23 **K.K. VENUGOPAL:** Unless Your Lordships overrules it, in a case under 32 or 136, or 131
24 unless Your Lordships overrules it.

25 **CHIEF JUSTICE B. R. GAVAI:** Okay, we will consider...

26 **K.K. VENUGOPAL:** Now, what he is asking for is, for Your Lordships, by reason...

27 **CHIEF JUSTICE B. R. GAVAI:** Okay, Mr. Venugopal. We have understood your
28 submissions. Now, let Mr...

1 **K.K. VENUGOPAL:** All right. Therefore, by reason of the reference, Your Lordship as a
 2 bench of the Supreme Court, is being asked to sit in judgement on another bench of the
 3 Supreme Court, which has already decided, and therefore, 143 is sought to empower Your
 4 Lordships to decide these questions. This, I say, is wholly outside 143 because Your Lordships
 5 can't touch a judgement in 143, which has finally decided these seven issues. Now the real
 6 reason My Lords, Your Lordships will find this, nowhere My Lords in this reference is the
 7 Tamil Nadu case referred to. And this reference is sought within one month and a few days
 8 after the judgement in Tamil Nadu, without seeking review, which My Lord, according to me
 9 the Government of India was bound to seek review. Your Lordship may kindly note, that so far
 10 as the President of India is concerned, under Article 74, the President is bound by the aid and
 11 advice of the Council of Ministers. No area of discretion is...

12 **CHIEF JUSTICE B. R. GAVAI:** Yes?

13 **K.K. VENUGOPAL:** No area of discretion is given to the President under Article 74. The
 14 President has to carry out whatever is the advice given by the Council of Ministers. Therefore,
 15 in substance and in effect, this reference is by the Government of India. But by, My Lord,
 16 mentioning the President as a referring authority, that's what Article 143 requires.

17 So please remember that each one of this is an attempt by the Government of India, without
 18 filing review, to overturn, if it is permissible under 143, to the judgements of the Supreme
 19 Court, which under 141 binds off. Therefore, I come to the proposition that a judgement of the
 20 Supreme Court is law under Article 141.

21 **CHIEF JUSTICE B. R. GAVAI:** Yes, yes Mr. Venugopal, we have understood that. Now, let
 22 Mr...

23 **K.K. VENUGOPAL:** No, only one more, My Lords. Only one more. That is under 141, they
 24 are bound by all the law laid down by the Supreme Court.

25 **CHIEF JUSTICE B. R. GAVAI:** That you have already said.

26 **K.K. VENUGOPAL:** Yes, but 143 is only an opinion, and even if Your Lordship gives all these
 27 opinions... and to complete, My Lords...

28 **CHIEF JUSTICE B. R. GAVAI:** Yes, we have recorded that.

29 **K.K. VENUGOPAL:** Therefore, this judgement will still stand notwithstanding the opinion...

30 **CHIEF JUSTICE B. R. GAVAI:** Yes, we have understood that submission. Yes.

- 1 **K.K. VENUGOPAL:** Very well, My Lords. Very well.
- 2 **CHIEF JUSTICE B. R. GAVAI:** Yes, yes, Dr. Singhvi. Only five minutes left. We are bound
3 by the time limit.
- 4 **ABHISHEK MANU SINGHVI:** I will take only ten minutes.
- 5 **CHIEF JUSTICE B. R. GAVAI:** We have told you that half an hour for you and half an
6 hour...
- 7 **ABHISHEK MANU SINGHVI:** I will not exceed, but give me ten minutes. I'm not going to
8 exceed. Now, My Lords, please keep 5.31 open. Allow me to do some speed talking and speed
9 reading.
- 10 **CHIEF JUSTICE B. R. GAVAI:** 5.31 of?
- 11 **ABHISHEK MANU SINGHVI:** 5, Volume 5.31 of the written submissions. First, My Lords,
12 is the point wise answer to My Lord the Hon'ble Chief Justice's question. Then give me five
13 minutes to elaborate.
- 14 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Which volume you want us to see.
- 15 **ABHISHEK MANU SINGHVI:** 5.31.
- 16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's your written submissions?
- 17 **ABHISHEK MANU SINGHVI:** Yes.
- 18 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes, yes, we got it.
- 19 **ABHISHEK MANU SINGHVI:** No. no. I'm sorry My Lords, mine is in Volume 2. My
20 written submissions. That 5.31...
- 21 **CHIEF JUSTICE B. R. GAVAI:** But, 5.31 is the judgement of the learned two judges.
- 22 **ABHISHEK MANU SINGHVI:** Yes. With that my written submission, Volume 2.
- 23 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It came last night.
- 24 **ABHISHEK MANU SINGHVI:** Volume 2. That is the judgement. Please keep Volume 2.
25 Simple Volume 2, which is my written submission at page 4. These two Your Lordships will

keep open. I appear for the State of Tamil Nadu, the only State which went to the Hon'ble Division Bench. And My Lords, we succeeded in the order on which now the advisory opinion is sought. If My Lord will keep my written submissions open in Volume 2 at page 4. Now My Lords, the point wise answer to My Lord's queries before I elaborate, because there are two important judgements the nuance of which Your Lordships will profit reading. One, there is... These are all said by Your Lordships in the context of various judgements. No intra court appeal is allowed. Point 1. Point 2, advisory cannot be a substitute for review. Point 3, advisory...

CHIEF JUSTICE B. R. GAVAI: So one minute. No intra court appeal...

ABHISHEK MANU SINGHVI: Directly or indirectly, disguised or not.

CHIEF JUSTICE B. R. GAVAI: Yes.

ABHISHEK MANU SINGHVI: Number two, 143 not a substitute for review.

CHIEF JUSTICE B. R. GAVAI: That already Mr. Venugopal has submitted.

ABHISHEK MANU SINGHVI: And review admittedly not filed in this case. Not filed. Number three, 143 not a substitute for *Hurra* in curative, and no curative obviously filed in this case. Number four, if My Lord will turn to page 5 to save time of my written submissions, 5 and 6 have an issue wise delineation of each issue raised in the reference, which para of the division bench decides this. This is extremely important. Your Lordship will pardon me for saving time, My Lords. I'm not taking... Your Lordships may test it by going to any one para. For example, Issue No. 1, para 434(1), 434(2), 434(7) directly deal with it in the conclusions. The reasoning is in the earlier paras 180, 185, 187, 189, 194 etc. Just because I don't have time to read them, please assume in my favour that they deal with it exactly. Every issue, barring Issues 11, 12 and 14. Barring 11, 12 and 14, everything is directly covered. Now, a word on these three issues when I come to the nuance there. 11, 12 and 14 do not really arise because 11, if Your Lordship will see the issues, is not a standalone issue and the others are peripheral issues. 12 and 14, in fact, not decided because it didn't really arise. They applied the Punjab judgement in the division bench. So substantially every issue para-wise is covered. Now My Lords, the nuance. *Cauvery* is clearly on point in my favour but a nuance is added by **2G**. Naturally these two judgements Your Lordships should spend five minutes otherwise Your Lordships will not get a complete picture.

Now, my learned friends will rely on parts of **2G**. So let me give you the point, which is also My Lordship's query and then read those parts. What happens is, if a bench is hearing a matter,

1 if it decides to refer by taking a view on 145(3), it can refer, no problem. If this bench decides
 2 the matter and chooses not to refer, despite a submission in para 34(l) by him, then My Lords,
 3 in an appropriate subsequent case, unrelated to this case, unrelated to the list between parties
 4 A and B in this case, in a matter between C and D in a subsequent case, Your Lordship may or
 5 may not refer the issue, not the list. However, the A and B decision where it is not referred
 6 cannot be touched by a so-called advisory or review of 143, because that would be subversive
 7 of every principle Your Lordship follows. Now, another nuance, that is what this **2G** made,
 8 very fine nuance. **2G** says that you can have a different view on the law, which is what My Lord
 9 the Chief Justice is asking. So in a C versus D case, the law may change because Your Lordships
 10 takes it differently. But same **2G** mentions that you will not change the list of the decision
 11 between A and B in the first case even by changing the law subsequently. Now, another nuance,
 12 very important. In the present case, if Your Lordships allows the advisory to proceed, Your
 13 Lordship would be... Your Lordships cannot give, even if Your Lordship wants, Your Lordships
 14 cannot give a judgement, assume Your Lordship allows the advisory, that the A and B, which
 15 is Tamil Nadu, A and B, in this case is Tamil Nadu, stands as it is, and the law for the rest of
 16 the country will be C and D. Here, the nuance that is one of the two words used in **2G** is. view
 17 of law and the decision in the case. So decision of the case **2G, Cauvery**, five judges say,
 18 cannot be changed. The view of the law can be changed in the subsequent order. Unfortunately
 19 or fortunately in my Tamil Nadu case, if Your Lordship is persuaded to take a different view at
 20 143, both the decision and Tamil Nadu changes and the view of the law changes, which is not
 21 permissible.

22 Now, come to one of those two judgements. Come to **Cauvery** first. This is the fastest I can
 23 do it but I'll be very fast. 5.14 is the Volume, 5417 is the case. Please keep these eight principles
 24 in mind, My Lords, because this is important when Your Lordship reads these two judgements.
 25 Otherwise, see the repercussions, Your Lordships is being asked and let's be very clear about
 26 it, without any camouflage or disguise. To change the decision, the merits of the decision, the
 27 content of the decision between A and B and not in a subsequent decision, because there is no
 28 way Your Lordships can change the decision in a subsequent decision without affecting this
 29 decision of Tamil Nadu. So, it's purely appellate, howsoever nicely you may couch it to a 143,
 30 court. And that's a very serious subversion of Supreme Court discipline, Supreme Court
 31 integrity, Supreme Court's institutional integrity. These are not rules made just like that. Your
 32 Lordship has so many of... Suppose this is wrong, in an appropriate case, Your Lordship will
 33 refer it. A Constituent Bench may sit. But the law will not change for the parties you took it to
 34 the other division bench. Because that is concluded, it is inter-parties, it is final, it is
 35 unchangeable unless in review or curative. The entire concept of *stare decisis* will be
 36 completely subverted, My Lords.

1 **JUSTICE SURYA KANT:** Where is the question formulated that we should set aside a
2 particular judgement?

3 **ABHISHEK MANU SINGHVI:** Yes.

4 **JUSTICE SURYA KANT:** You are proceeding on the premise as we are also sitting in a
5 appellate court. We know the scope of 143(1).

6 **ABHISHEK MANU SINGHVI:** Yes.

7 **JUSTICE SURYA KANT:** We know the scope of 143(2).

8 **ABHISHEK MANU SINGHVI:** Yes.

9 **JUSTICE SURYA KANT:** We know *Cauvery* and **2G** scam, the distinction and all. We are
10 not here on 131. We are within the parameters of 143(1) and the only issue is that whether the
11 questions have been answered or not?

12 **ABHISHEK MANU SINGHVI:** Sir, may I answer My Lord's query"

13 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We except for the **2G** decision, the
14 primary distinction between an adjudicatory decision by virtue of judgements stands on a
15 completely different footing from that of an advisory, and consistently...

16 **ABHISHEK MANU SINGHVI:** That's my submission. That's my submission.

17 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Therefore, only nuance that has been
18 brought about in the **2G** judgement.

19 **ABHISHEK MANU SINGHVI:** Which is what I'm coming to straight away, but let me just
20 take 30 seconds to answer Justice Surya Kant's query.

21 **JUSTICE SURYA KANT:** That's the judgement.

22 **ABHISHEK MANU SINGHVI:** Let me answer, My Lords, Justice Surya Kant. This is the
23 important nuance. The nuance of **2G** is that, the phrase... These are not my words, it's the
24 Supreme Court words. The decision cannot be changed, the view of the law may be changed.
25 Right My Lords? Just give me, now let me answer Justice Surya Kant's query. No, let me
26 answer this. My Lord Justice Surya Kant says to me that we will not be touching that decision.
27 Unfortunately, My Lords, this is one rare case where both the decision of the case and the view

1 of the law fuse. Let me explain that. There is a complete intersection. Your Lordships can't do
 2 one without doing the other. And if one is prohibited, the other stands prohibited. Your
 3 Lordship, all the questions except the peripheral ones, 11, 12, 14, if answered, other than the
 4 way in which the division bench answer it, will constitute a change of law but a change of law
 5 also in the decided case of Tamil Nadu. Because for the simple reason, Your Lordship's
 6 advisory law, which is binding. All admit that Your Lordship's advisory...

7 **CHIEF JUSTICE B. R. GAVAI:** If your argument is to accept it, once there are judgements
 8 by Court, then everything should stop at that.

9 **ABHISHEK MANU SINGHVI:** No. No, My Lords. Your Lordships may find... For example,
 10 I mean, this may sound technical...

11 **JUSTICE SURYA KANT:** 143 is definitely not binding. It is purely advisory, let's be very
 12 clear about it.

13 **ABHISHEK MANU SINGHVI:** No, My Lords. Your Lordship's law says that once Your
 14 Lordship delivers judgement then it is of the law binding.

15 **JUSTICE SURYA KANT:** By a larger bench. It will be done by larger bench.

16 **ABHISHEK MANU SINGHVI:** Once Your Lordship delivers 143. So question directly
 17 arising. I'll give the judgement. Your Lordship's views... because Your Lordship is the Supreme
 18 Court. I can't seek a Lordships advice and disregard it. I can't seek Your Lordships advice and
 19 disregard it.

20 **JUSTICE SURYA KANT:** The pre and post Constitution principles are well settled. One, for
 21 a principle which was earlier to that effect, it is advisory in nature, purely advisory in nature,
 22 may or may not be accepted by...

23 **ABHISHEK MANU SINGHVI:** No, My Lords, that's not the law. Unfortunately, that's not
 24 the law. Unfortunately, I would say that's not the law, because Your Lordship doesn't give
 25 advisory jurisdiction in ...

26 **CHIEF JUSTICE B. R. GAVAI:** It is more than 40 minutes now.

27 **ABHISHEK MANU SINGHVI:** No, My Lords, but I...

28 **CHIEF JUSTICE B. R. GAVAI:** The timelines have to be followed. You should have decided
 29 between you and Mr. Venugopal.

1 **ABHISHEK MANU SINGHVI:** My Lords, therefore, let me just now turn to... So let me say
 2 this, Your Lordship's view, whatever Your Lordship view takes in 143, is binding. Let's be very
 3 clear on that. Second, Your Lordship, is not... to answer the Hon'ble Chief Justice. This is not
 4 perennial. A matter is referred, the law will change for the future. If a matter... To give a small
 5 example, Hon'ble Chief Justice, remember yesterday a matter came. Suppose in an
 6 appropriate matter Your Lordships refers it. A Constitution Bench, constituted by My Lord's
 7 reference in that case, may decide the law ultimately. It can't be in 143. We are discussing
 8 maintainability of 143. 143 is not maintainability. Now turn to **Cauvery** very quickly.
 9 **Cauvery...** Just turn to para 37 at page 8. I'm sorry My Lords, I'm sorry. My Lords, turn to
 10 19. Para 19, at page 5429.

11 **CHIEF JUSTICE B. R. GAVAI:** Of the **Cauvery** judgement?

12 **ABHISHEK MANU SINGHVI:** Yes, that is Volume 5.14. 5.14. Otherwise, kindly consider
 13 the institutional implications for having advisory jurisdiction on a matter which will change
 14 the decision between parties. It becomes a pure intra court appeal. It becomes a pure review.
 15 It becomes a pure curative.

16 **JUSTICE VIKRAM NATH:** Singhvi, you are proceeding on assumptions.

17 **ABHISHEK MANU SINGHVI:** No. I am saying in the...

18 **JUSTICE VIKRAM NATH:** Why are you talking on assumption? How do you think it's
 19 going to change the decision already rendered by the division bench? Because you are
 20 proceeding as if that judgement will automatically be annulled. That's not right. Why are you
 21 proceeding on that?

22 **ABHISHEK MANU SINGHVI:** No, My Lord, I'm not presuming. Kindly give me...

23 **JUSTICE VIKRAM NATH:** That's how you are proceeding. You are arguing only on that
 24 presumption.

25 **ABHISHEK MANU SINGHVI:** No, I am saying, we are testing maintainability. We are
 26 testing maintainability right? For maintainability...

27 **CHIEF JUSTICE B. R. GAVAI:** You are relying on which judgement...? Come to the point,
 28 please. Come to the point. Show us one judgement which says that once there is a judgement
 29 of a division bench, the reference under 143 is not tenable.

1 **ABHISHEK MANU SINGHVI:** Kindly first see the judgement, because we are talking
2 about advisory. Come to para 19 at page 5429. 5429. Changes can be made only in another
3 matter for the future not in an existing case.

4 **CHIEF JUSTICE B. R. GAVAI:** No, that issue we are not deciding, as to whether the Tamil
5 Nadu judgement is correct or not. We are not deciding that issue. We are only answering the
6 reference... [UNCLEAR]

7 **ABHISHEK MANU SINGHVI:** But in the event, Your Lordship, the answers are not
8 consistent with the Tamil Nadu, then it becomes a different matter.

9 **CHIEF JUSTICE B. R. GAVAI:** You are not concerned with that. We are not concerned
10 with it. It is an adversary jurisdiction.

11 **ABHISHEK MANU SINGHVI:** Very well. Let me just read first *Cauvery*.

12 **CHIEF JUSTICE B. R. GAVAI:** Show us that judgement which says that a reference is not
13 tenable, once there is a judgement by two judges or three judges.

14 **ABHISHEK MANU SINGHVI:** Yes. Let me show whatever is there. Very quickly. Two
15 judgements only My Lords. Come to 19. Where, My Lord, the Tribunal held against Tamil
16 Nadu. The Supreme Court allowed the appeal in 19. Ignore all that and come to My Lords
17 straight away para 25 where Karnataka Institute of the Suit. Let me come to the relevant part.
18 Straight away 83, My Lords.

19 **CHIEF JUSTICE B. R. GAVAI:** Para 83?

20 **ABHISHEK MANU SINGHVI:** 83. "This Court by its decision of April..." Justice Nath has got
21 it? Justice Surya Kant has got it? "This Court by decision of April 26." This April 26 is para 19,
22 My Lord, right of the side. Para 19, "...has held is pointed out that the Central Government had
23 made a reference to the Tribunal for the consideration of the claim for interim relief prayed
24 for by the State of Tamil Nadu, and hence the Tribunal had jurisdiction to consider the said
25 request being a part of the reference itself. Implicit in the said decision is the finding that the
26 subject of interim relief is a matter connected with the relevant water dispute." Now see from
27 here, My Lords. "Hence the Central Government could refer the matter of granting relief for
28 adjudication. Although this Court, by the said decision, has opened the question whether
29 Tribunal has incidental, ancillary, inherent or implied power to grant interim relief when no
30 reference for grant of relief is made, it has in terms concluded the second part of the question."
31 This was the earlier judgement of the Supreme Court. "It has in terms concluded the second

part of the question. We, therefore, cannot countenance a situation where Question 3, and for that matter, Question 1 and 2 may be so construed so as to invite our opinion on the said decision of the Court. That would amount to our sitting in appeal on the said decision, which is impermissible for us to do, even in adjudicatory jurisdiction, nor is it competent for the President to invest us with an appellate jurisdiction over the said decision through a reference under 143. Mr. Nariman contended, however, that the President can refer any question of law under 143 and therefore, also asked this Court to reconsider any of its decision." That is a direct argument. 143 is quoted.

85, "In support of his contention he referred to daily laws." Next line. "For the reasons which follow, we are unable to accept this contention. In the first instance, the language of 143(1), far from supporting Shri. Nariman's contention, is opposed to it. The said clause empowers the President to refer for this Court's opinion a question of law or fact which is risen or is likely to arise. When this Court, in its adjudicatory jurisdiction pronounces its authoritative opinion on a question of law, it cannot be said that there is any doubt about the question of law, or the same is *res integra*, so as to require the President to know what the true position of the law on the question is directly on point with it. The decision of this Court on a question of law is binding on all courts of authorities. Hence, under the said clause, the President can refer a question of law only when this Court has not decided it." The query asked from me, My Lords.

"Secondly, a decision given by this Court can be reviewed only under 137, when further this Court overrules the view of law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decisions." Five judges are saying this. "It does so in exercise of its inherent power only and only in exceptional circumstances, such as when the earlier decision is a *per incuriam* or is delivered in the absence of relevant or material facts or, if it is manifestly wrong and productive, a public mischief. Under the Constitution, such appellate jurisdiction does not vest in this Court nor it can be vested in it by the President under 143. To accept Shri Nariman's contention would mean that the advisory jurisdiction of 143 is also an appellate jurisdiction of this Court over its own decision between the same parties and the executive has the power to ask. If such power is read, it would be a serious inroad into the independence of the judiciary." Because the judiciary includes that division bench, this Court, everybody.

Next My Lords, **2G** nuance because that is the main thing which is alleged to have diluted it. Turn to **2G**, My Lords, which is at page 8123 of Volume 5.21. Volume 5.21. So this is crystal clear. Some nuancing was done in a subsequent judgement, so let me place that. 5.21, page 8123. Justice D. K. Jain wrote the main judgement My Lords. There's a concurrence, but I'll only read Justice Jain.

1 **CHIEF JUSTICE B. R. GAVAI:** Para 64, 65?

2 **ABHISHEK MANU SINGHVI:** No, My Lords. That's correct. That's correct. There are one
3 or two more paras My Lords. 8157 it starts. Would My Lords come to 8176?

4 **CHIEF JUSTICE B. R. GAVAI:** Yes.

5 **ABHISHEK MANU SINGHVI:** May I invite My Lords to 8176?

6 **CHIEF JUSTICE B. R. GAVAI:** Yes.

7 **ABHISHEK MANU SINGHVI:** "The principal objection to the maintainability of the
8 references, it's an indirect endeavour to unsettle and overturn the verdict in **2G**, which is
9 absolutely impermissible. The stand of the objective is that **2G** case is an authoritative
10 precedent in respect to the principle of proposition of law that all natural resources are to be
11 disposed of by public auction." Now, remember My Lords, in this case, in the Constitution
12 Bench, the only issue was whether only way of disposal is auction. Because "only" word is
13 important. Otherwise, it's okay. They were considering an issue not really considered by the
14 earlier bench. "At the outset, we may note that the Attorney General has more than once stated
15 that the Government of India is not questioning the correctness of the directions in **2G** case."
16 Kindly mark this.

17 Learned AG is certainly not doing it here. But, I mean, this is the law. This is why Your
18 Lordship doesn't open a decided case. This is what Justice Surya Kant is saying, we are not
19 going into the case, but indirectly Your Lordship is invited to go into the case. That's the whole
20 contention. So here in that case, the Learned AG is not questioning the correctness in the **2G**
21 case insofar as the allocation of spectrum is concerned, and in fact, the government is in the
22 process of implementing the same. That's not the case here. That's why **2G** nuance is not
23 against me. **2G** held because another question was raised. Only way of disposal is auction,
24 which was decided anew, it was not a decision on the old matter, at all. "Therefore, in the light
25 of the said statement, we feel it would be unnecessary to comment on the submission that the
26 reference is an attempt to get an opinion to unsettle the decision and direction of **2G**.
27 Nevertheless, since in support the opinion of **Cauvery** is cited, therefore, we will deal with
28 it." Now come to My Lords, para 42...

29 **JUSTICE SURYA KANT:** You can come straightway to para 65. That probably answers what
30 you are...

1 **ABHISHEK MANU SINGHVI:** My Lords, just five minutes extra I will take. I'll just because
 2 otherwise... Just five minutes extra I'll take. 42. 42. Now, **Cauvery** is cited over four paras. I
 3 only want... I'll not read it. My Lord is right, to say that there is no intent in **2G** to overrule or
 4 dilute **Cauvery**. Don't read five judges in **2G** to intending to overrule or dilute **Cauvery** .
 5 Nobody, nobody, nowhere is there an intention. Now, come to My Lords, the findings of
 6 **Cauvery** are reproduced in 42 and 43 fully. 42 and 43. Then comes the heart of the
 7 distinction, which is between view of the law versus decision of the case. Come to 43. Sorry.
 8 45. 45. That's the heart of the nuance. Please apply the nuance in another case. Not in this
 9 case, My Lords, is what I'm submitting. "The main emphasis of Mr. Soli Sorabjee..." Do My
 10 Lords have 45? May I read? "... was on the second part of para 85, which, according to him,
 11 prohibits this Court from overruling a view expressed by previously. We are not proceeded to
 12 agree with the learned Senior Counsel. The paragraph has to be read carefully. Justice Sawant
 13 first considers the case of a decision of this Court. Whereas in a subsequent sentence, he
 14 considers a view of law expressed by the Court, and attempts to explain the difference between
 15 the approaches of these two questions." These words are sometimes used interchangeably, but
 16 not hereinabove. "We believe that Justice Savant consciously draws a difference between the
 17 two when further this Court overrules the view of law after discussing the case of a decision."
 18 Then come to 47 to save time. Although 46 is important also, Blacks explains the difference.
 19 47.

20 "Therefore, references in para 85 of **Cauvery** to decision and view of law must be severed
 21 from each other. The learned judge observed that in a case of a decision..."

22 **CHIEF JUSTICE B. R. GAVAI:** Therefore, what we'll be doing is expressing a view of law.

23 **ABHISHEK MANU SINGHVI:** Correct.

24 **CHIEF JUSTICE B. R. GAVAI:** Not a decision in the Tamil Nadu case.

25 **ABHISHEK MANU SINGHVI:** Correct. But unlike this case... Let me... This very important
 26 query from the Chief Justice. Unlike in this case of **2G**, where the issue by the earlier bench
 27 was auction and they issued separately, newly raised...

28 **CHIEF JUSTICE B. R. GAVAI:** This is specifically answered in para 65.

29 **ABHISHEK MANU SINGHVI:** Let me read first. Now, 47 My Lord has noted? Now come
 30 to 48, for a second. Let me first read, then I'll make my comment. "The first limitation is that
 31 the decision of this Court can be reviewed only under 137 and curative in no other way." I'll
 32 leave that, I'm doing speed reading. Please note, the principle of **Cauvery** is reiterated. Now

My Lords, if you say *per incuriam* or completely different, the burden obviously, lies with the State. Now come to 49... 49 is the conclusion on **Cauvery**, which is decision versus view. The conclusion is 56, My Lords. The problem is that Your Lordship strives, you might....

CHIEF JUSTICE B. R. GAVAI: Why don't you come to 65? It directly answers. Basically, around those paragraphs [UNCLEAR] your junior have to be read.

ABHISHEK MANU SINGHVI: No, I'm not even reading half of them, I can assure your Lordships. 63 and then 65. "From the aforesaid analysis, it is quite vivid that this Court would respectfully decline to answer a reference if it is improper, inadvisable and undesirable, or the questions formulated are purely socio-economic or political realm, have no relations or are incapable of being answered or would not subserve anything, etc., or it has already decided the question referred." Already decided the question referred. That's an important sentence in 63. Then My Lords come to 65. "We are therefore of the view that as long as the decision with respect to the allocation of spectrum license is untouched..." That was the decision of the previous Court.

JUSTICE SURYA KANT: We understand that.

ABHISHEK MANU SINGHVI: "This Court is within its jurisdiction to evaluate and clarify the ratio of **2G** for the purpose it needs little emphasis that we have the jurisdiction to clarify the ratio of **2G**, irrespective of what we actually choose to do so or not. Therefore, the fact that this reference we're required to say something different to what has been said in **2G**, cannot strike at the root of the maintainability. Consequently, reject the premium." Right, My Lords? Let's apply this. I have no problem. The problem between this case and my case, the difference is, that in my case, if Your Lordship differs with the heart of the reasoning of the previous judgement, Your Lordship will be disturbing the decision of the case also, in my case. Unlike this case, unlike this case where the decision of the earlier court was implemented in letter and spirit. But the law for the future with only one question was changed. Is auction the only way of disposal? The word "only". It was said no, there are other models of disposal. That's about it. If Your Lordships can find a way without disturbing Tamil Nadu to reset the law, I could have no problem. I can't. But according to me, the nature of the case is such that Your Lordships would have to disturb the decision inter-parties adjudicated between the parties, without which Your Lordships can't do it. That's the whole submission.

JUSTICE PAMIDIGHANTAM SRI NARASIMHA: Whatever, if we call it the mandamus and the declaration that followed in that case has actually happened. So therefore, the question of our opinion having a bearing on a decision taken, does not apply here. It's only an opinion.

1 And we have seen in many cases. In a subsequent case, when you refer an opinion of a Court
 2 and ask the Court to take a different decision as against the previous one, many a times the
 3 argument was that this can't be relied on because it's only an opinion. That is what would
 4 happen. If somebody would, if somebody would argue on the basis of a decision rendered on
 5 our opinion...

6 **ABHISHEK MANU SINGHVI:** Two things...

7 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Then it should be only...

8 **ABHISHEK MANU SINGHVI:** Tamil Nadu, the Governor is supposed to, I'm giving a very
 9 practical example, is supposed to do ABC. He's supposed to decide in three months. Your
 10 Lordship's law tomorrow will change it for Tamil Nadu also, in the future. That's about all
 11 there is to it.

12 **CHIEF JUSTICE B. R. GAVAI:** Thank you.

13 **ABHISHEK MANU SINGHVI:** Obligated.

14 **CHIEF JUSTICE B. R. GAVAI:** Anybody else?

15 **KAPIL SIBAL:** I don't want to argue. I'll quote just one sentence. Because whether it's we in
 16 Government, make the reference to **2G**. Therefore, I just want to explain the historical context.
 17 Nothing more than that. What happened was that the principle of law decided in **2G** was that
 18 natural resources must be auctioned. So My Lords, that happened as far as spectrum is
 19 concerned, the difficulty was that there were mines and minerals. Mines and Minerals Act,
 20 LPG, land and other resources. So the question arose, should all natural resources be
 21 auctioned? And the reference was only to that extent that forget about 2G that we are following
 22 the judgement, will other resources also follow the principle of law, namely, all natural
 23 resources must be auctioned. That's how 2G was decided. Just that historical context, My
 24 Lords, nothing more than that.

25 **CHIEF JUSTICE B. R. GAVAI:** Yes, Mr. Singhvi. Sorry, sorry. Yes Mr. Attorney General.

26 **ABHISHEK MANU SINGHVI:** Just note 150 and 152 also. I'm not reading it. Don't read it
 27 for Your Lordships. 150 and 151 at the paras of this **2G**.

28 **R. VENKATARAMANI, ATTORNEY GENERAL:** First of all, to set the record straight
 29 Your Lords, a couple of submissions I would like to make. I'll place before Your Lordships, the
 30 written submissions placed before the Tamil Nadu bench and very specifically refer to 145.

1 Because of the judgements of larger benches which are dealt with a question of 200 and 201.
 2 That's why but then the judgement does not fully record the entirety of my submission
 3 regarding 145(2), so we have specifically referred to 145(3).

4 The last paragraph, paragraphs 11 of this. Page 7, paragraph 11. Can I read it? "Having regard
 5 to the importance that a scheme of Articles 200 and 201 play in the fine and balanced
 6 Constitutional relationship between the elected Legislature and the Governor, it would be of
 7 utmost importance that the matter must be heard by a Constitution Bench as already outlined
 8 above, in terms of Article 145(3) of the Constitution. This submission is made being made with
 9 a view the divergent perspective available in the reading of so and so, or reconcile under the
 10 scheme of Articles 202 and 201 are duly delineated. In particular the Constitution Bench
 11 judgement of the Hon'ble Court ***Union of India versus Valluri Basavaiah***
 12 ***Chaudhary***, he has kept in mind as a set judgement proponents one point of view as regard
 13 the pros of exercise of duty by the Government Article 200." You don't want anything more to
 14 persuade the Court to go under Article 145.

15 Now let me try to... the **2G** judgement has brought in very important perspectives on... I
 16 understand if Article 143 is not comparable to any of the other jurisdictions conferred on the
 17 Court. It is the power and authority of the President. The authority and power of the President
 18 is not comparable to said 131, 132, 136 etc. They're all jurisdictions conferred to the... on the,
 19 on the Court. But the precedent Article 143 says, if it appear to the President that a fact or a
 20 question of law is arisen or is it likely to arise under public importance, the President is
 21 therefore the master of Article 143. And in the course of therefore requesting the Court to give
 22 an opinion on this question, the Court may dwell into the questions. The Court may also go
 23 into any previous judgements of the Hon'ble Court, and may either agree or disagree, but
 24 there's nothing like a threshold injunction against the Court to say that we'll not get into Article
 25 143 reference at all. You can't read that limitation injunction into Article 143. And none of the
 26 previous references...15 reference are coming from the Court so far. Right from ***MSM***
 27 ***Sharma*** case onwards, ***Keshav Singh*** case onwards. The Court has gone into previous
 28 judgements but they may disagree or they may agree. So that's why in the **2G** case, as the
 29 learned Solicitor General will later talk to Your Lordships, the view of law, the state of law and
 30 the decision. It is being told, Your Lordship, that in this particular case there's no demarcation.
 31 The lines are blurred. Therefore they both, both are intertwined. You can't entertain this 140
 32 reference. I think that's not correct. Even if it is so, the question as to whether, under Article
 33 143, what the Court will do? They will enter into the questions, answer the question, decline
 34 to answer a question; all that will be matter of practice or procedure of the Court. In a given
 35 case, of public importance, the Court will say, "We depart from the practice", because it's an
 36 important question of public importance and we'll probably look into the judgement. 1, 2, 3,

4, 5. Therefore, there is no inbuilt limitation Article 143, either that will bind the Court under Article 143. Look at your old precedents. They are binding on you. 143 does not admit of any of those limitations. For what you could... I'll later argue saying this question need not be answered for good reason, because some of the judgement is answering. That's a different way of putting it. But to say the Court will not even enter into all of them. I think therefore, 143 does not admit of that. I'll later place, Your Lordships, the very first important scheme of Article 143. I just thought as a...

Therefore, I will say that given the importance in the scheme, in the Constitutional scheme of Article 143, the Court will probably, to repeat, can even depart from its earlier precedence. And how the Court will order its practice and procedure of deciding matters under 143. There is nothing like an inflexible rule. If there is an inflexible rule, then the Presidential reference, the President being master of a representative of 143 will completely lose its essence. The Court may ultimately say we agree with the judgement. But before that, to say you cannot even go to the extent of saying we agree, disagree. I think that cannot be read into Article 143.

The **Cauvery** water dispute brought is a very important distinction. The **2G** notices that decision of law and then the view of law as against a particular decree or a judgement *inter parte*. In a 143 reference, the Court does not enter into merits *inter parte*. It's not eligible *inter partes* at all. Parties can be heard in a 143 only for the purpose of assisting the Court as to whether a particular question can be answered or not. Beyond that assistance, which parties can lend to the Court under 143, the Court will probably not say, "I'll be heard on the maintainability". I think even the idea of maintainability is wrong in the context of 143. A maintainability issue can arise only when there is jurisdiction in the Court. Article 32, 226, 131, review. Is it maintainable? Have you complied with all the preconditions of maintainability? Then maintainability comes in. 143 does not admit to the concept of maintainability at all. Therefore, I urge Your Lordships, will, given all those 15 long precedents.

JUSTICE SURYA KANT: One of the foundational principle of 143(1), Mr. Attorney, that when the talks of a question of law has arisen, these are the preconditions. Law or fact has arisen. That means a question of has not been answered in the past. Therefore, the question of law that would arise for 143(1) will be, the one which has not been answered by this Court first, and therefore that question is coming first time to be answered. So, 143(1) jurisdiction will always be at least guided by this principle.

R. VENKATARAMANI, ATTORNEY GENERAL: That's true, but therefore, 143 conditions if you are satisfied, Your Lordships will go into entering into the question of answering those questions. So even if there is a field occupied by a particular judgement. But

1 if the... in public importance, the President feel, I have a Constitution Bench judgement, I have
 2 a seven judge judgement, I have a three judge judgement, I have two judge judgement, which
 3 is the one which governs me? Therefore, on a question of law, if there is no authoritative
 4 pronouncement or a conclusive authority, the conclusive authority proposition laid in the
 5 **Balasaheb** judgement. Give that reference. Therefore, there's no conclusive authority in that
 6 question, and there is a difference of views. 7, 5, 3, 2.

7 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** To get into the question as to whether
 8 the conclusive authority exists or not, then there is a problem. Even if you are asking, it's an
 9 opinion, it's all right. Not every question also need not be answered.

10 **R. VENKATARAMANI, ATTORNEY GENERAL:** I'm only trying to point out that when
 11 you're talking about a question of law, is there a field occupied by a judgement? And therefore
 12 once it is occupied by a judgement, the Court will not enter into 143 reference at all. Therefore,
 13 in **Cauvery** followed by **2G** it says there is a decision in a state of law. I'm going to probably
 14 tell Your Lordships, the state of law is a very important concern for the President. I have so
 15 many judgements on my table. Which is a correct state of law? 5, 7, 9, 2, 3? Therefore, if a
 16 judgement, which is a bench of two judges, am I bound by it. I am not trying to say that you
 17 overrule it as a review it in an Appellate Jurisdiction. These are all limitations which the Court
 18 has ordinarily built into Article 143 where we will not ordinarily say and review them.

19 If Your Lordships will look at a later point of time in the Tamil Nadu judgement or the Punjab
 20 judgement, we'll be able, easily able to convince Your Lordship that a line can be comfortably
 21 drawn between what on a particular set of facts, the Court do some conclusion. We're not
 22 talking about those conclusions in a particular set of facts. We are talking about the state of
 23 law, the view of law. The **2G** judgement that's what opens up an important door for an Article
 24 143 consideration, and I would very humbly submit these doors probably will be kept more
 25 and more open, as and when the President comes with issues of public importance. And also
 26 to answer an objection raised, Mr. Venugopal, that we have not referred to the judgement in
 27 the recital of the reference...

28 Because the 140 reference is a *sui generis*, it's not akin to a pleading in a petition, writ petition
 29 or a suit. So what the President thinks is advisable for us to seek a reference, to seek a reference
 30 before this Hon'ble Court and seek his opinions on the questions referred to. There's no one
 31 particular form to be prescribed. You can't... probably the President's hands tied by forms and
 32 field events. So his only the ultimate test will be, will the Court enter into answering a referral
 33 because of the importance of the questions raised. And in the field is, even if the field is
 34 occupied to some extent, by some judgement, the Court will enter into the reference and

1 probably agree with anyone or the judgements to occupy the field. That will be a later point of
2 time.

3 **TUSHAR MEHTA:** I'll take only ten minutes, My Lords.

4 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Attorney, three questions. Apart from
5 the various references that you have made, you will also have to sometime answer why 145(3)?
6 Though you made a request, it was not accepted. That's a different matter. That will not give
7 rise to a need to ask for an opinion on that, my view. Second is, a larger question about 142.
8 What's the need for an opinion on the scope of 142. Third, 131 also doesn't arise at all. It should
9 be answer 131. These three questions...

10 **R. VENKATARAMANI, ATTORNEY GENERAL:** We'll answer that.

11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Keep it in mind, whether we should
12 get into those three questions, you will have to answer.

13 **R. VENKATARAMANI, ATTORNEY GENERAL:** We will address Your Lordships on the
14 importance of this question. We want to raise the importance...

15 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Not now.

16 **R. VENKATARAMANI, ATTORNEY GENERAL:** Yes. Because the reference has been
17 shaped after considerable application. So the importance of the question were arising, because
18 what a particular judgement has done, is a correct view of law. Therefore, we're wrong on the
19 correct view of law on particularly the scheme of Articles 200 and 201. Everything hinges along
20 with 200 and 201 scheme. So probably Your Lordships, when we take into the question, Your
21 Lordships probably will persuade that, as far as that's concerned.

22 **TUSHAR MEHTA:** My Lords, I'll just take ten minutes. First of all, Article 143, needs two
23 contingencies for the Hon'ble President to exist. (a) The question of law has arisen, and, (b) a
24 question of law is likely to arise. That is number one. And My Lords, I'll read only few
25 paragraphs from **2G** judgement, My Lords. The real issue is kindly see the importance and
26 significance of this reference. There are in all 15 references made by the Hon'ble President to
27 this Court.

28 All were, with regard to a particular issue, whether the Tribunal has the power, whether a
29 particular bill is repugnant to the central legislation, et cetera, et cetera. This is for the first
30 time where the Hon'ble President has felt that there is a functional disharmony which has

1 arisen, and which will arise because there has been no authoritative judicial pronouncement
 2 except, My Lord, the judgement in question in case of Tamil Nadu, where one organ of the
 3 State fixes time schedule for the another organ of the State and also provides for the
 4 consequences of deemed assent. My Lord that is the reason why My Lord, this judgement this
 5 reference itself is a *sui generis* reference where the Hon'ble President is pleased to request
 6 Your Lordships to advise her that there is a Constitutional problem, a Constitutional
 7 functional problem. How the President would act? How the Governor of the State would act?
 8 What are the contours of Article 200, 201, and My Lord, President's power of assent under
 9 Article 111?

10 Now, please see My Lord, in case of **2G**, My Lord, there are two distinct factors, and still the
 11 Court has laid down the law that reference is maintainable. A, My Lord, if Your Lordship can
 12 see, My Lord, the question. Your Lordship did not read the question. The questions which were
 13 referred for Your Lordships advisory jurisdiction, one of the question was, whether judgement
 14 of two hon'ble judges reported in so and so lays down the correct law. It was a direct, My Lord,
 15 as if it was an appeal. So the principal argument against the maintainability was with regard
 16 to whether this Court would exercise one advisory jurisdiction virtually sitting in appeal?
 17 Because one of the questions was so framed.

18 My Lord, now, in this context, My Lord, please come to para 48.2 of the judgement in **2G**. That
 19 is page 8181. Volume 5.21, page 8181. 48.2, My Lords. My Lords, Your Lordships would kindly
 20 bear in mind... Your Lordships do not generally go into a judgement already decided, not as a
 21 jurisdictional issue, that 143 does not permit you to do that. It is a self-imposed restriction that
 22 while exercising advisory jurisdiction, we will not go into the question of whether one
 23 particular judgement is rightly decided or wrongly decided. But in **2G**, Your Lordships have
 24 said that even that is permissible.

25 Now, please come to page 48.1 and 48.2. 48.2, My Lord. "The second limitation is self-imposed
 26 rule of judicial discipline." Your Lordships have that?

27 **CHIEF JUSTICE B. R. GAVAI:** Yes.

28 **TUSHAR MEHTA:** My Lord, It would be page 8181, My Lord. Para 48.2. "The second
 29 limitation is a self-imposed rule of judicial discipline was that overruling the opinion of the
 30 Court on a legal issue does not constitute sitting in appeal, but is done only in exceptional
 31 circumstances, such as when the earlier decision is *per incuriam* or delivered in absence of
 32 relevant or material facts, or if it is manifestly wrong and capable of causing public mischief,
 33 for this proposition, the Court relied on the judgement in ***Bengal Immunity case*** . Where

1 is it was held that when Article 141 lays down that the law declared by this Court shall be
 2 binding on all courts within the territory of India." Please note this My Lords. "It quite
 3 obviously refers to courts other than this Court and that the Court would normally follow past
 4 precedents laid down in that judgement. In fact, overruling of a principle of law is not an
 5 outcome of appellate jurisdiction, but a consequence of its inherent power." Your Lordships
 6 can say, if persuaded, that Tamil Nadu judgement is not laying down the correct law. It's not
 7 Your Lordship's appellate power, is Your Lordship's inherent jurisdiction, inherent power.
 8 "This inherent power can be exercised as long as previous degree *vis-à-vis* in a list inter-parties
 9 is not affected. It is the attempt to overrun the decision of a previous case that is problematic,
 10 which is why the Court observed, as under..."

11 Please now come to 45, para 45, My Lords. Where the Court distinguishes. Decision and the
 12 point of law decided in that decision. 8179, My Lord. And two paras My Lords, I'm done. "The
 13 main emphasis of Mr. Sorabji was on the second part of Para 85 of Cauvery..."

14 **CHIEF JUSTICE B. R. GAVAI:** Paragraph?

15 **TUSHAR MEHTA:** Para 45. 8179. And two very interesting paras My Lords, which generally
 16 go unnoticed. But I must place for Your Lordships consideration. Para 45. Their argument was
 17 that one of the question referred by the Hon'ble President is whether this judgement is right
 18 or wrong. Can you do that? In answer to that, My Lord, this Court speaking in this reference
 19 judgement says this. 45. "The main emphasis of Mr. Sorabji was on the second part of para 85
 20 of **Cauvery** to which, according to him, prohibits this Court from overruling a view expressed
 21 by its previous, previously under Article 143(1). We are not persuaded to agree with the learned
 22 Senior Counsel. The paragraph has to be read carefully." Now, please see, "Justice Sawant first
 23 considers the case of a decision of this Court, whereas in the subsequent sentence he considers
 24 a view of law expressed by the Court and attempts to explain the difference between the
 25 approaches to these two situations. These words are sometimes used interchangeably, but not
 26 hereinabove. We believe that Justice Sawant consciously draw a difference between the two
 27 by using the word when further this Court overrules the view of law after discussing the
 28 decision." Then 47. "Therefore, the reference in para 85 of **Cauvery** to decision and view of
 29 law must be severed from each other. The Learned Judge observes that in case of a decision,
 30 the appellate structure is exhausted after the pronouncement of the Supreme Court. Therefore,
 31 the only option left to the parties is to review.", et cetera." Now, please see Placitum B.
 32 "However..." This is important, and I place respectful emphasis. "However, what is not eternal
 33 and still malleable in the eyes of law is the opinion or view of law pronounced in the course of
 34 reaching the decision. Justice Sawant clarifies that unlike this Court's appellate power, its
 35 power to overrule a previous precedent is an outcome of its inherent power when he says..."

1 That is again in a reference. Justice Sawant is deciding whether 143 would cover overruling a
 2 judgement and says, which is affirmed in **2G** that, "Yes, we can overrule the question of law
 3 decided in the judgement." My Lord now, kindly see two paragraphs and they are very
 4 interesting paragraphs. Para 61 and 62. Because this... it appears that has been a consistent
 5 tendency of opposing reference of the Hon'ble President and so far in our history of this
 6 Constitutional democracy there are only 15 references made by the Hon'ble President on
 7 individual bill or individual facts, et cetera. Please see 61. "From the aforesaid..." My Lordships
 8 have that?

9 8187. "From the aforesaid, it is demonstrable that, while entertaining the reference under
 10 Article 143(1), this Court had analysed the principles enunciated in the earlier judgement and
 11 also made certain modifications. The said modifications may be stated as one of the modes or
 12 methods of inclusion by way of modification without changing the *ratio decidendi*. For the
 13 purpose of validity of a reference suffice it to say, dwelling upon an earlier judgement is
 14 permissible. That apart, one cannot be oblivious of the fact.", et cetera. But see, 62, "It is of
 15 some interest to note that almost every reference filed under Article 143(1) has witnessed
 16 challenge as to its maintainability on one ground or the other, but all the same references have
 17 been answered except in **Mahmud Ismail Faruqi**," That Babri Masjid case. "...which was
 18 written unanswered mainly on the ground that the reference did not serve a Constitutional
 19 purpose." Basically, the Court said, we are not experts on the subject of adjudication, which
 20 the President has referred. My Lord, kindly and Your Lordships are aware of the fact that the
 21 highest head of the executive is seeking Your Lordship's guidance that there are judgements
 22 of five judges, two judges, three judges, seven judges, and it has created a Constitutional
 23 functional problem for us. How would the President govern?

24 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You can't expect the Supreme... The
 25 conflict of judgements...

26 **TUSHAR MEHTA:** I am not. Functionality, what would be...

27 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It will be in the other bench.

28 **TUSHAR MEHTA:** What would be the contours of Article 200? Am I bound by the three
 29 months deadline? Am I bound to record reasons when the Constitution doesn't provide? Am I
 30 bound to intimate everybody? And is it permissible for the Court to say that every State will
 31 come to the Court. We are not, My Lord... we will be addressing this on the merits of the case.
 32 But My Lord, there has to be a difference and deference when My Lord the Court is dealing
 33 with Constitutional functionaries, which is a part of separation of powers, My Lords. And

1 therefore, one of the question raised is, could the bench of the strength which decided the
 2 question without setting aside that judgement, Your Lordships is requested to opine, have
 3 decided this question in light of the Constitutional mandate under Article 145(3) and despite
 4 a request being made that please refer to the larger bench. This is one of the questions being
 5 answered. This question is a *sui generis* question in itself, as compared to other questions.
 6 Therefore, we'll address Your Lordships on merits and we will satisfy Your Lordships about
 7 the... We will assist the Court. This is not a list to be decided.

8 **JUSTICE SURYA KANT:** Both sides probably are very clear that we are in advisory
 9 jurisdiction.

10 **TUSHAR MEHTA:** Yes.

11 **JUSTICE SURYA KANT:** We are not sitting here as an Appellate Court.

12 **TUSHAR MEHTA:** My Lords have...

13 **JUSTICE SURYA KANT:** They are also saying, you are also comprehending that. So, it's
 14 very clear. You are absolutely right, 143(1), question of law has arisen or may arise in future.
 15 We will answer that.

16 **TUSHAR MEHTA:** Correct.

17 **JUSTICE SURYA KANT:** Either a question of law first has arisen and if arisen, how it is to
 18 answer, right?

19 **TUSHAR MEHTA:** What are the contours, etc.

20 **JUSTICE SURYA KANT:** In that process, the Court can render an opinion that a judgement
 21 does not lay down the correct statement of law. It does not laid down the correct statement of
 22 law, but that will also not technically amount to overruling these judgements. It will give you
 23 a different opinion. For overruling, you might be required to refer.

24 **TUSHAR MEHTA:** The **2G** judgement, My Lord, if I can take Your Lordships.

25 **JUSTICE SURYA KANT:** Maybe, 143...

26 **TUSHAR MEHTA:** **2G** judgement and in *Kerala Bill*, I think seven judge bench of this
 27 Court, My Lord, has said that in a reference, answering the reference on a question of law, on
 28 a proposition of law, Your Lordships can even overrule the judgement.

- 1 **JUSTICE SURYA KANT:** Okay. That point can be checked. Otherwise, we can always
2 declare that...
- 3 **TUSHAR MEHTA:** Para 56 of **2G**. Immediate para 56 of **2G**. Para 50 and 56. Just to answer
4 Your Lordship's question, kindly come to para 50 and 56.
- 5 **JUSTICE SURYA KANT:** Yes.
- 6 **TUSHAR MEHTA:** 8182, para 50, 8182, Your Lordships have? Which is, which relies upon
7 Special Courts Bill. That's seven judge bench judgement.
- 8 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Which volume is that?
- 9 **TUSHAR MEHTA:** Para 5. It starts with, "Finally..." I'm sorry. It is Volume...
- 10 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Para 50?
- 11 **TUSHAR MEHTA:** 5.21, page 8182, directly answering what My Lord were pleased to put to
12 me. Does Your Lordships get?
- 13 **CHIEF JUSTICE B. R. GAVAI:** Yes.
- 14 **TUSHAR MEHTA:** My Lords, Justice Vikram Nath gets?
- 15 **JUSTICE VIKRAM NATH:** Yes, yes.
- 16 **TUSHAR MEHTA:** 50. But this is **2G**.
- 17 **JUSTICE VIKRAM NATH:** I got it first.
- 18 **TUSHAR MEHTA:** Your Lordships are always more techno-savvy than the rest of us.
19 "Finally, a seven judge bench of this Court has clearly held that this Court, under Article 131,
20 143(1) does have the power to overrule a previous view delivered by it. Chief Justice
21 Chandrachud in Special Courts Bill..."
- 22 **CHIEF JUSTICE B. R. GAVAI:** View, view can be overruled, but not a decision.
- 23 **TUSHAR MEHTA:** Correct.
- 24 **CHIEF JUSTICE B. R. GAVAI:** That's what...

1 **TUSHAR MEHTA:** Please read My Lord, what learned seven judges say. "We are inclined to
 2 the view that, though it is always open to the Court to re-examine the question already decided
 3 by it, and to overrule if necessary, the view earlier taken by it, insofar as all other courts in the
 4 territory of India are concerned, they ought to be bound by the view expressed by this Court,
 5 even in the exercise of its advisory jurisdiction under Article 143(1)." Then, My Lord, para 56,
 6 kindly have a look at 8185, para 56.

7 **CHIEF JUSTICE B. R. GAVAI:** One minute.

8 **TUSHAR MEHTA:** My Lord, I'm not reading it, My Lord, *Keshav Singh* judgement, Your
 9 Lordships are aware My Lord, that Uttar Pradesh dispute between My Lord, the Assembly and
 10 there was some privilege issue where the reference was made and in that the Hon'ble Court
 11 overruled the view taken that this judgement does not lay down correct law. Otherwise My
 12 Lord...

13 **JUSTICE SURYA KANT:** Performing or overruling a view definitely is permissible
 14 otherwise how we will exercise 143? Can't exercise that. That is understandable.

15 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It's a legislative process also. An act
 16 cannot take away the mandamus, that Chief was saying. Independence of judiciary...

17 **TUSHAR MEHTA:** Pardon me, that's a separate. Yes, yes, we will be. My Lords have taken
 18 the view. My Lord's, in that extension of... Certainly, My Lord. We're not, fortunately, faced
 19 with that situation. We are possibly, My Lord, if I may say so faced with a converse situation.

20 **NEERAJ KISHAN KAUL:** My Lords, just one submission for Your Lordships' kind
 21 consideration.

22 **HARISH SALVE:** May I...?

23 **TUSHAR MEHTA:** Mr. Salve, My Lords, wanted 5-10 minutes.

24 **HARISH SALVE:** My Lord, I want five minutes by the clock.

25 **JUSTICE SURYA KANT:** Let Mr. Kaul finish after that.

26 **NEERAJ KISHAN KAUL:** My Lord, *2G* as fell from My Lords emphasises the distinction
 27 between decision and a view of law and a review and a reference, and goes on to say that a
 28 review or a decision deals with the least inter-parties. A view of law is what is not eternal,
 29 malleable and is subject to overruling clarification and modification, and that is why, My Lord,

1 in para 101 of the seven judges judgement, which is relied on in paragraph 50 of the **2G**
 2 judgement. They say we can overrule, and overrule, as fell from My Lords, is not in exercise of
 3 either appellate jurisdiction or appellate jurisdiction being vested by a Presidential reference,
 4 which can never be done. It is an exercise of the inherent power conferred on the Supreme
 5 Court to look into it and overrule it and that is the reason why it was done. And **2G** referred to
 6 it, refers to **Cauvery**.

7 In fact, My Lord **Cauvery** is subject to correction, does not deal with the seven judges
 8 decision in the manner it ought to have, which is para 101, which talked about that 143(1), you
 9 can exercise the jurisdiction to overrule. And that ratio can be clarified. So the fundamental
 10 error is to say that you're vesting an appellate jurisdiction in this Court while exercising his
 11 jurisdiction, while answering an opinion asked by the President. It is not an appellate
 12 jurisdiction that Your Lordships are exercising in the matter. And My Lord, as far as a
 13 reference is concerned, under 143, the President's opinion and satisfaction has not only been
 14 held to be non-justiciable, has been the final arbiter as far as the issue is concerned of whether
 15 a question arises, is that question of such public importance that the opinion of the Supreme
 16 Court is needed on it. That is where that is the decision, then whether Your Lordships...

17 **JUSTICE SURYA KANT:** That cannot be correct, Mr. Kaul.

18 **NEERAJ KISHAN KAUL:** Yes.

19 **JUSTICE SURYA KANT:** 143(1) talks of may, and rest of 143 to talk of self.

20 **NEERAJ KISHAN KAUL:** Yes.

21 **JUSTICE SURYA KANT:** If self we are bound, we have to answer it because that will
 22 be referable in 131. In 143(1), first we will determine that is there a Constitutional question of
 23 law has arisen or is likely to arise which requires our opinion.

24 **NEERAJ KISHAN KAUL:** My Lord, Your Lordships are absolutely...

25 **JUSTICE SURYA KANT:** It's not something... 143(1), that a reference comes and we are...

26 **NEERAJ KISHAN KAUL:** No, My Lords, I didn't say that. I did not say that at all. Your
 27 Lordships are absolutely right. All that I said for 143(1) was the satisfaction of the President
 28 whether Your Lordship's answers it or not. Because Your Lordship, has laid down guidelines
 29 to say that it could be a case where a Your Lordships feels it's purely political in nature ought
 30 not to be answered or such questions of fact or expertise are involved we can't answer that.

1 But all that I am saying is that satisfaction of the President sending it. Whether Your Lordship
2 answers that or not is a separate issue.

3 **JUSTICE SURYA KANT:** The Court is satisfied or not.

4 **NEERAJ KISHAN KAUL:** Yes, absolutely. That's all that I'm saying, My Lords. There is no
5 difference on that at all. But all that I am saying is it cannot be treated today as if Your
6 Lordships are deciding *lis inter se*. Your Lordships will only be deciding pure questions and
7 views of law, which Your Lordship can exercise of Your Lordships jurisdiction under 143 are
8 fully entitled. I'm very grateful.

9 **CHIEF JUSTICE B. R. GAVAI:** You are appearing for whom?

10 **NEERAJ KISHAN KAUL:** The State of Madhya Pradesh. Very grateful.

11 **CHIEF JUSTICE B. R. GAVAI:** Yes, Mr. Salve?

12 **HARISH SALVE:** Yes, My Lord, just three quick points. Your Lordships have seen all the
13 judgements. I don't propose to read any of them .Your Lordships would have noticed this is
14 not a jurisdictional bar. It is a self-imposed discipline. First of all, My Lord, it's not a
15 jurisdictional bar. The way... because he used the word maintainability rather loosely.
16 Maintainability normally is a jurisdictional bar. My Lord, that very Doctrine of Precedent is a
17 self-imposed limitation. Let's keep certain first principles clearly in mind. Under Article 141,
18 Your Lordship's judgement bind every court in India. They don't bind the Supreme Court.
19 That's why Your Lordships have a right to overrule past precedents. These are all self-imposed
20 limitations and for very good reason. So it's not a jurisdictional bar. And Dr. Singhvi, threw in
21 three different expressions. First, he said, *stare decisis*. *Stare decisis* has never stood in the
22 way of a Court considering and turning around erroneous view. *Res Judicata* is quite another
23 matter. In the facts of a case, a decree will continue to bind until that decree is set aside in a
24 manner known to law, and that principle is not being affected. So all these notions... And the
25 third is not at what is really happening today, with great respect, is you're putting the cart, this
26 challenge in this manner puts the cart before the horse. Your Lordships are not even engaged
27 with the questions. When Your Lordships engage with each of the questions, Your Lordships
28 will then say, this is covered. This is not covered. For example, if we are right that on some of
29 the issues this Hon'ble Court has, and it happens many times in Constitutional issues. In some
30 of the issues this Hon'ble Court has spoken with different voices. In one context, the Court has
31 said something in another context the Court has said something else. The judgements need to
32 be read, they need to be reconciled, and at the end of the day, Your Lordship may answer this
33 question, saying this is covered by the judgement and nothing more for us to say. But that's

1 not maintainability. That is answering the question, saying this is answered in the light of the
2 following judgement, I think Your Lordship should without any more waste of time engage
3 with the questions and consider. Which of them Your Lordships want to answer and how Your
4 Lordships want to answer.

5 **CHIEF JUSTICE B. R. GAVAI:** You also contributing in that waste of time to some extent.

6 **HARISH SALVE:** I'm sorry, My Lord?

7 **CHIEF JUSTICE B. R. GAVAI:** You're also contributing that waste of time.

8 **HARISH SALVE:** Absolutely. All of us have generously contributed to this.

9 **CHIEF JUSTICE B. R. GAVAI:** Not generously, not as generously as Dr. Singhvi and...

10 **HARISH SALVE:** Yes, I've been the most miserly in that. Nothing more to add.

11 **CHIEF JUSTICE B. R. GAVAI:** Yes. Normally you don't require mic, but you can have it.

12 **MANINDER SINGH:** It is only an issue of overruling an earlier view, Number 1. Number 2,
13 all regional [UNCLEAR] being authoritative, without any doubt. Two more than
14 Constitutionally and legitimately provided. 1. A reference by a Bench of this Hon'ble Court who
15 are larger than to provide consistency and authority without any ambiguity much less been
16 conflict. Number three, appears that there is no consistency in the conflicting views requiring
17 reconciliation, clarification, or modification it is entirely permissible for a second method for
18 the Hon'ble President to resort to 143 and more so, if it raises a ambiguity on the application
19 of Constitutional provision, therefore, they're entirely maintained. Grateful.

20 **CHIEF JUSTICE B. R. GAVAI:** Thank you. You are beginning.

21 **R. VENKATARAMANI, ATTORNEY GENERAL:** Yes. I'm supposed to make some broad
22 submissions, if Your Lordships will...

23 **CHIEF JUSTICE B. R. GAVAI:** Attorney, your timelines appear to be far exceeding what
24 is ...

25 **R. VENKATARAMANI, ATTORNEY GENERAL:** No, I don't think I will exceed the time.
26 Maybe within the timeline.

27 **CHIEF JUSTICE B. R. GAVAI:** You'll have to revisit this otherwise...

1 **TUSHAR MEHTA:** We'll conclude ours internally within four days allotted.

2 **R. VENKATARAMANI, ATTORNEY GENERAL:** Very comfortably. Very comfortable.

3 **CHIEF JUSTICE B. R. GAVAI:** You have to revisit the timeline given to us are... I think the
4 days spread out are two or three...

5 **R. VENKATARAMANI, ATTORNEY GENERAL:** I will not breach that timeline.

6 **TUSHAR MEHTA:** We can always overrule this time schedule, on lighter note.

7 **R. VENKATARAMANI, ATTORNEY GENERAL:** Your Lordships have my written
8 submissions paper book, it's Volume 1.2 in the soft copies, but I also handed over a hard copy
9 to Your Lordships.

10 I set out about broadly five propositions in the written submission. One, of course, relates to
11 the maintainability. I don't propose to deal with that question.

12 **CHIEF JUSTICE B. R. GAVAI:** That we already agreed with.

13 **R. VENKATARAMANI, ATTORNEY GENERAL:** That's right. But before I do that, these
14 series of questions that have been framed and placed before Your Lordship's consideration,
15 have a certain internal intrinsic connection. And we are looking at two important provisions
16 of the Constitution, Articles 200 and 201. And which, in the company of other provisions to
17 the Constitution, occupies a special scheme in the distribution of powers between the
18 Governor, the President and the legislature. So, it's like a fulcrum where the Governor and the
19 President plays an important role as guardians of the legislative integrity and Constitutional
20 integrity. And the legislative role assigned to the President and the Governor has now been
21 noticed, endorsed and acknowledged by several decisions of the Court. Of course, this
22 legislative role is not equivalent to a plenary powers of a legislature but decidedly the
23 Constitution makers could have thought why we need Article 200 and 201 at all, even
24 democracy only the legislature has a final say. And why do you have any roadblocks? Why do
25 you have somebody to be a supervisor, a night watchman? So if 200 and 201 continue part of
26 the Constitutional scheme, there has to be some importance assigned to 200 and 201. If in the
27 course for any political other experience, reasons an argument is scanned by before the Court
28 that, please look at 200 and 201 in this particular way, because that's going to be democratic.
29 So, I suppose court will look at the concept of democracy keeping in mind the institutional
30 relevance of Article 200 and 201. So as we go further, we'll say that what the Tamil Nadu

1 judgement has been and in the context of any other judgements, the number of judgements
2 will look at Articles 200 and 201.

3 How the scheme will work and what will the Governor do? What will the President do? How
4 do we read an interpret Article 200 and 201, so on and so forth. We will in due course of time
5 take Your Lordships to the judgements, but the debates and the discharge of functions between
6 the Governor, the President and the Governor and the legislative wings of the State this
7 functional assignment, I think, is something very important. For that, sir, that's a running the
8 blood which infuses the life into Article 200 and 201.

9 So whatever issue that may arise, whatever issue that may arise in the discharge of functions
10 in the Articles of 200 and 201. In the course of exchange of views between the Governor, the
11 President on the legislative assemblies, and there are some issues, whatever issues that may
12 be there. And if they need to be resolved. How will you resolve them? So I find in the, we find
13 in the Tamil Nadu judgement that a Court says, we will resolve those issues. We will provide
14 answers to all those issues. So, in the end what has really happened is... I'll also place Your
15 Lordships' kind consideration. Read the text of Articles 200 and 201 as they existed in the
16 Constitutional text, and read them now, as has been done by the pen and paper in the Tamil
17 Nadu judgement, you will find the Court has entered into a legislative exercise and nothing
18 but a simple legislative exercise. Therefore, whatever issue that arise between, if there is issues
19 arise, but the Governor, the President and the legislature, then the Parliament will certainly
20 look into it. You have to enter the Parliament to say look at the importance of the issues. The
21 Governor or the President cannot properly abdicate their highest responsibilities in ensuring
22 that legislative complaint, the Constitutional complaint of a law, is insured. That's how I think
23 the Court would have probably looked at.

24 As I said, the series of judgements where 200, 201, have been dealt with by the Court. Seven
25 judges, five judges, two, three judges, et cetera. They all kept it in mind. That issue has all been
26 kept in mind. Therefore, the Court will probably, in my understanding, will read several
27 principles in delineating the scheme of Articles 200, 201, keeping in mind the basic structure
28 of the Constitution to say the basic structure is only informed by a democratic principle which
29 is confined to the legislature, I don't think that will be the more advisable way of looking at the
30 basic structure doctrine. Therefore, 200, 201, on what I say is also part of the basic structure
31 where the President and the Governor occupied important functional role in ensuring that
32 there is a non-Constitutional, non-Constitutional complaint with a bill the President and the
33 Governor will say "stop". To do that stopping, I think if you call it... give some other name and
34 then say, let me dilute the level of responsibilities with the Governor and the President. That's

1 where the Tamil Nadu judgement has ended. We'll place more submissions when you come to
2 the question.

3 So the question that have been framed have been kept into mind. The series of judgements
4 that have dealt with Article 200 and 201. And that's why Your Lordships asking a question.
5 Why are you talking about 145(3)? Why are you talking about this particular question, et
6 cetera? I'll presently come to that. So it tune with the range of opinions in the Article 143, I say
7 it open to the Supreme Court while answering a reference, to look into and consider any of his
8 previous judgements and the find out answer we were trying to canvass that what is the correct
9 state of law in Articles 200 and 201, which the President is concerned.

10 With Tamil Nadu judgement in deviation, a departure from many other judgements, says if
11 there is a dispute regarding... I'll presently place the paragraph of judgement. But if the dispute
12 regarding whether the Governor could reserve a bill to the concentration of the President and
13 the President has any issues on that it should be as a matter of prudence. The President should
14 come to the Supreme Court and seek his opinion. So, it becomes a mandate for the President
15 to always seek an opinion from under 143 whenever there's a doubt about whether the
16 Governor has actually given a consent, assent could be given or not, materials are available or
17 not. So we enter in the wide conundrum of issues in this way. So that is why it was found
18 expedient to have this reference made before Your Lordships.

19 Now in the written submissions... Let me invite Your Lordships to Volume 1.2, page 410.
20 Proposition number 1, relates to what we have already advanced. You get to Proposition
21 number 2, also, in a way, deals with that question, but I would like to read that, page 411. So it
22 is related to maintainability, et cetera. Then Proposition number 3. Then Proposition number
23 3, at page 411. "The Doctrine of Separation of Powers injuncts the Courts from doing what the
24 legislature alone can do." It's well known, it's part of our Jurisprudence. "The principle that
25 the Court declares the law by interpretation cannot be extended to essential lawmaking As we
26 submitted below that Tamil Nadu Judgement substantially rewritten Articles 200 and 201 of
27 the Constitution. Whether affecting... whether affecting such textual amendments of the
28 Constitution will not be in opposition to the Separation of Powers principle is a matter of great
29 public importance and for Constitutional integrity."

30 **JUSTICE SURYA KANT:** You have submitted your written note, submitted today?

31 **R. VENKATARAMANI, ATTORNEY GENERAL:** It's Volume 1. I'm so sorry.

32 **CHIEF JUSTICE B. R. GAVAI:** Yes, you can just formulate your point, because this, in any
33 case we will be reading through.

1 **R. VENKATARAMANI, ATTORNEY GENERAL:** Yeah, these are five propositions to
2 begin with... to open the debate.

3 **CHIEF JUSTICE B. R. GAVAI:** So one of the main proposition appears to be this Court has
4 encroached upon the legislative powers of the Parliament or has sought to rewrite the
5 Constitution or amended the Constitution.

6 **R. VENKATARAMANI, ATTORNEY GENERAL:** Yes.

7 **CHIEF JUSTICE B. R. GAVAI:** Which is not permissible for this Court. That appears to be
8 your main submission.

9 **R. VENKATARAMANI, ATTORNEY GENERAL:** That's one important submission. So
10 how the judgement now... As I said, Article 200 before and after the judgement. So if you look
11 at it, it will be very, it's so plainly visible that it is a matter of factual amendment of the
12 Constitution. So we'll presently come to Article 145 to our three argument. So even in the guise
13 of interpretation, laying down guidelines, *Vishaka*, etc., etc. So can the Court go to the extent
14 of saying that I will myself take a pen and paper and rewrite the Constitution. And at page 414,
15 Proposition... I'm skipping Proposition number 4. There was in the Kerala... written
16 submission that an objection Mr. Venugopal did not press. There was an objection that the
17 Presidential reference does not advert to the Tamil Nadu judgement. And there's something
18 like you're suppressing a judgement for the Court. And since that has not been addressed,
19 wisely so. I don't propose to go into Proposition number 4, where I understand that the Article
20 143, as I said earlier does not admit of questions such as pleading, et cetera.

21 Now, Proposition number 5 at page 414. And that's also been addressed earlier when what we
22 are actually seeking this Court to do on the Article 143 that the state of law or the view of law,
23 et cetera. If Your Lordships permit me to take straight away, these written submissions is in
24 four parts. At page 415... Page 415, Part 1, deals with the special features of Article 143. I'll keep
25 coming back to it as in, when necessary. I don't propose to read it. Because you understood
26 that there is a significant difference between 143 and the other jurisdictions of the Court and
27 what will be ordinarily attributable to jurisdiction, the exercise of jurisdiction, etc. does not
28 relate to Article 143. Then this Part 2 deals with the Presidential reference maintainable. We've
29 asked you this question. Then Part 3, the text of the Constitutional post at Tamil Nadu
30 judgement. If Your Lordships permit me to reach that, before that, may I address Your
31 Lordship on the question posed to me about 145(3).

32 My Lords, kindly turn to page 61 of this volume. 461.

1 **CHIEF JUSTICE B. R. GAVAI:** From 4162. We go to 461. That's Part 4?

2 **R. VENKATARAMANI, ATTORNEY GENERAL:** That's right. Part 4. So what we have
3 done is with reference to each one of the questions, we'll be having a division of labour and
4 few questions will be certainly answered by me and others will be dealt by Solicitor. So, since
5 Part 4 is about question number... I begin with Question number 12.

6 **CHIEF JUSTICE B. R. GAVAI:** Yes.

7 **R. VENKATARAMANI, ATTORNEY GENERAL:** This is how the question reads, "In view
8 of the proviso to Article 145(3), is it mandatory for any bench of the Supreme Court to first
9 decide whether the matter involves a substantial question of Constitutional interpretation and
10 refer it to a bench of at least five judges?" Referred to the text of Article 145(3). 145(1) reads...

11 **CHIEF JUSTICE B. R. GAVAI:** It's your contention that in every matter, the Court should
12 first go into the question as to whether is it mandatory to refer to them in a way... like when a
13 matter comes, they will first decide as to whether it has to be referred to...?

14 **R. VENKATARAMANI, ATTORNEY GENERAL:** No. That's not going to be our
15 submission. It's Constitutionally interpreted...

16 **CHIEF JUSTICE B. R. GAVAI:** It should have been... involved in the interpretation
17 between any of the articles of the Constitution.

18 **R. VENKATARAMANI, ATTORNEY GENERAL:** Your Lords, kindly read 143 for a
19 minute.

20 **CHIEF JUSTICE B. R. GAVAI:** No, the question is, "In view of the proviso to Article
21 145(3)..."

22 **R. VENKATARAMANI, ATTORNEY GENERAL:** The minimum...

23 **CHIEF JUSTICE B. R. GAVAI:** "...is it mandatory mandatory for any bench of the Supreme
24 Court to first decide whether the matter involves a substantial question of Constitutional
25 interpretation and refer it to a bench of at least five judges?" ,If you go through this exercise
26 on Mondays and Fridays, we'll have to sit till 12:00 in the night.

27 **R. VENKATARAMANI, ATTORNEY GENERAL:** Your Lordship to have answered, dealt
28 with this in various judgements. So, whether it will be reduced to that minimum, whether it'll
29 be reduced that minimum or it stands at a higher level. Therefore at one level, all I want to say,

1 every question that comes to Hon'ble Court will may involve an interpretation of a provision
2 of a Constitution.... Application of provision of a Constitution. We're not saying that.

3 145(3) is very clear in its prescription. There's minimum number of judges who are to sit for
4 the purpose of deciding...

5 **CHIEF JUSTICE B. R. GAVAI:** Whenever... Any question involving an interpretation of
6 the provisions of the Constitution.

7 **R. VENKATARAMANI, ATTORNEY GENERAL:** A substantial question of law as to the
8 interpretation of the Constitution. Your Lordships have, over many occasions, dealt with this
9 provision and have laid even certain opinions on how do we deal with them. I mean, look at
10 that.

11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It's a broad contour. It is not a
12 mandatory or anything. It shall be by five. That doesn't mean that mandatory every time the
13 Court... The moment a Constitutional issue is raised, we will have to refer it. But in any event,
14 why should we answer this question at all?

15 **R. VENKATARAMANI, ATTORNEY GENERAL:** Let's read why you're asking this
16 question. Before the Tamil Nadu bench and even before the Punjab, it was sought to be... First
17 we have for the Court that here you have a bench of five or seven judges who looked at Article
18 200 and 201, and if you have to disagree with them, then ordinarily the practice of the Court
19 is that you refer it to a larger bench, goes to a bench of five or seven judges a case may be. So
20 we have those cases even *Inamdar* and *Islamia*. So a larger bench sought to be explained
21 by a bench of five or seven judges. Even an explanation takes place, you have a bench or the
22 bench of two judges.

23 **CHIEF JUSTICE B. R. GAVAI:** The judgement of nine judges, explained by seven...

24 **R. VENKATARAMANI, ATTORNEY GENERAL:** Let me try to open whatever... So we
25 are trying to point out that if there is an interpretation of such Constitutional importance,
26 which is not a mere daily appearance of matters in the Court where 14 and 21 are in. We're not
27 talking about those categories of cases. So, in those categories of cases where matters are of
28 Constitutional importance, of importance for the working of the Constitution, working or the
29 institutions of the Constitution, under the Constitution, they integrate to the Constitution, so
30 on and so forth, certainly 145(3), imposes a mandate. This mandate can certainly excise after
31 the Court goes to a particular judgement. And whether there is a need for referring it or not,
32 that will be an exercise at a different level. But if the Court were to say that notwithstanding

1 issues of Constitutional interpretation, which are of such public importance and
 2 notwithstanding the fact there are larger bench views on this question, then a lesser number
 3 of two judges can decide it and answer it. I think it is directly in conflict with 145(3).

4 The Court exercises both original and appellate jurisdiction cases come from various High
 5 Courts on the interpretation or the application of state legislation, central legislations,
 6 regulations, rules, orders, so on and so forth. And therefore, in that context, when the Court
 7 find that important question, the substantial question of the interpretation of the Constitution
 8 involved. If the matter can be disposed of on a lesser level on a facts, et cetera. There certainly
 9 145(3) may not arise. But if I have to interpret the provision of a Constitution which will have
 10 implications for the functioning under the Constitution of the institutions of the Constitution.
 11 Therefore, the daily stuff where the score deals with application of 14 and 21 will be a different
 12 canvas altogether. We are talking those very special class of cases. And Articles 200, 201 fall
 13 in those very special class of cases.

14 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** What's your proposition that the
 15 moment a question of law relating to interpretation of the Constitution is raised in a ground
 16 in an SLP or submitted, every such matter has to be referred to a series?

17 **R. VENKATARAMANI, ATTORNEY GENERAL:** The Court will address is the field
 18 already occupied by any conclusive authority. I'll presently place what decisions, why this has
 19 come up for consideration. The Court will address that question. If there is a conclusive
 20 authority or authoritative opinion. **2G** talks about authoritative opinion. So it is not any
 21 opinion that's for a conclusive authority or authoritative opinion. Is there such a conclusive
 22 authority? The Court will address that question first. If there is no conclusive authority but
 23 even looking to the conclusion of the authority, the Court finds there are conflict of views. Two,
 24 three, five etc. Therefore, then the Courts will certainly say, if this is a matter of fact, public
 25 importance, Constitutional interpretation, I think I am duty bound to refer to a Constitution
 26 Bench. It's a high responsibility. The Court interprets the Constitution substantial questions.
 27 So it's a high responsibility. Therefore, when the Court enters... the moment, the Court enters
 28 into a disagreement on a field which is either occupied by a number of judgements. 5, 7, 2, etc.
 29 Should the Court say no, I will probably take the mandate on myself and let me bear the mantle
 30 to answer a question? The Court will be very slow. In my submission the Court will very slow
 31 before it finally takes a view that I need not refer the matter to a larger bench.

32 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** And even you should not ask that in
 33 an advisory jurisdiction. You should aim for a determination in a regular bench. That will be

1 binding on other bench, saying that we have to do it. But then you're asking us a question, as
2 an opinion, opinions also could be polyvocal.

3 **R. VENKATARAMANI, ATTORNEY GENERAL:** Let me proceed further and Your
4 Lordship probably... why this question is being asked. Firstly, the question we asked because
5 we have the instance of a Tamil Nadu judgement, where in Breach of 145(3), the Court has
6 proceeded to answer some of the questions. So, it becomes important for the President to
7 understand and for the Government also to know in what circumstances, 145(3) can be can be
8 kept aside or maybe ignored, disregarded, and departed from. Therefore, this question has
9 been asked. It is important for every functionary Government Legislatures to know whether
10 145(3), is important or not. Is it mandatory or not?

11 **CHIEF JUSTICE B. R. GAVAI:** Yes, Mr. Attorney.

12 **R. VENKATARAMANI, ATTORNEY GENERAL:** I was reading at 461, paragraph 43.
13 Your Lordships may referred to *Balasaheb Patil* and what this Courts had said...

14 **CHIEF JUSTICE B. R. GAVAI:** Karnataka.

15 **R. VENKATARAMANI, ATTORNEY GENERAL:** "In any case we feel there is a
16 requirement to provide a preliminary analysis with respect to the interpretation of this
17 provision. In this context, we need to keep in mind two important phrases occurring in Article
18 145(3) of the Constitution, which are substantial questions of law and interpretation of the
19 Constitution. By reading of the aforesaid provisions, two conditions can be culled out before a
20 reference is made. The court is satisfied. The case involves substantial question of law to the
21 interpretation of the Constitution. The determination of which is necessary for the disposal of
22 this case." So that's a second stage. If you don't pass a second stage, then there is a breach of
23 145(3).

24 Next paragraph. "Any question of law of general importance and I think, incidentally or any
25 ancillary question of law having no significance to the final outcome cannot be considered as
26 a substantial question of law. The existence of substantial question of law does not vary on the
27 stakes involved in the case. Rather it depends on the impact of the question of law will have
28 on the final determination. If the questions having a determining effect on the final outcome
29 have already been decided by a conclusive authority." Mark these words "conclusive
30 authority". "Then such questions cannot be called as substantial questions of law." I am here
31 stopping it for a minute. If such a question has been decided by several conclusive authorities,
32 Bench of 5, 3 or 2. Then would it not be, I think, prudent for the Court hearing a matter
33 involving the same question to say if there are the larger benches, and if there is, that's a

conclusive authority or if a doubt even about that conclusive authority, then I need a conclusive Authority. The Court needs to present a conclusive authority in order that the questions are not repeatedly brought before the Court. So you need to answer them by way of a conclusion so that the jurisprudence is settled and the authorities and Article 141, precedent et cetera, all that will take the effect. Therefore, let me read further. "In any case, no substantial question of law exists in the present matter which needs to reference the larger bench, the cordial need to achieve a judiciary balance." Et cetera. Then next paragraph. "Furthermore, this Court in **K. S. Puttaswamy** has noted that when a substantial question after the interpretation of the Constitution arises, it is this Court, and this Court alone, under Article 145(3), that is to decide what is the interpretation of the Constitution shall be? And for this purpose, the Constitution enters the charge the minimum of five judges of the Court. Reference can be usefully weighed in the following judgements and so and so." On the question of the interpretation of Article 200 and 201, I just give a [UNCLEAR] for those judgements so that why we are talking about it. The following judgements are stated the law as follows. When in **Shamsher Singh**, this Court has recognised that the Governor is required to exercise his discretion while discharging certain Constitutional functions, including *inter alia*, those envisaged under Article 356 and 200 of the Constitution." Then next page "In **Valluri Basavaiah Chaudhary**, the Court held that same in the case of a money bill, the Governor retained the discretion to withhold assent to a bill presented before him. Then in **Rameshwar Prasad**, this Court absurd that the Governor discharged the dual responsibility, being accountable to both the Union and to the State in the exercise of his Constitutional functions. In **Nabam Rebia**, this Court recognised that the Governor is vested with judiciary excise of powers under Article 200 of the Constitution. In **BK Pavitra**, this Court held that the Constitution confers a discretion upon the Governor with respect to the reservation of bills by the consideration of the President. It is observed that discretion is vested in the Governor to adopt one of the course of action set out in the substantive part of Article 200. The Court further affirmed that the Governor has entered the authority to reserve a bill presented for his assent for the consideration of the President and such reservation may violently be exercised, even contrary to the aid and advice rendered by the Council of Ministers." The Tamil Nadu judgement proceeds to say the Governor in all his functions under 200, is to go by the aid and advice of the Council of Ministers. He's bound by the aid and advice of the Council of Ministers. I asked him a question. If a bill presented to the Governor, is not constitutionally compliant or what he think is not constitutionally compliant. Am I required to go seek aid and advice of the Council? He said, we have a consultation. These are all informal things, but to say that I am bound by an advice. If the law is already unconstitutional, not constitutionally complaint. So where is the question of saying if I am giving my assent, withholding my assent, I should seek the aid and advice of the Council of Ministers. Therefore, that's how in **Pavitra**, the Court aids a balance. It was

brought on record in paragraph 46 later, that "In the light of the views explained by the ventures of the Hon'ble Court are very instinct, on the scheme of Articles 200 and 201, it was requested before the bench hearing the case in Tamil Nadu, *Supra*. The proposal of the matter may be referred to a larger bench, as mandated by Article 145(3). This submission is recorded in so and so... As to harmonise a little later, the submissions also advance in the course of making oral submission. However, the Hon'ble Court proceeded to render a judgement, adopting the course of explaining and distinguishing the judgements in question. It is submitted that in such matters of Constitutional interpretation, even the excise of explaining or distinguishing should be undertaken by a larger bench." I think that will be the real essence of 145(3). For the matters of Government coming before the Court, he won't explain, but the larger benches will be explained. Put it on the proposal, then follow a 145(3) route having regard to the significance of what the Court proposes to do and the impact on aforesaid Constitutional function.

Next paragraph. "It is further submitted that the breach of this mandate is akin to the Act of Court principle, namely, that an Act of Court will do no wrong. In other words, the Act of Court principle will include violation of principles of natural justice, not acting in conformity with mandatory statutory provision, as in the case of **A.R. Antulay**, and in all those situations and more importantly, in the context of a Constitutional mandate, such as Article 145(3), the judgement so rendered, cannot be straight away express the correct state of law and shall be open to correction." That's why we talk about conclusive authority. The correct state of law will follow if there's a conclusive authority.

Next. "It is submitted that in the breach of Article 145(3), in the manner it has occurred in the Tamil Nadu judgement is a matter of Constitutional concern, given various issues in the reopening of such a judgement through the process of review, etc. It has become important to raise this concern and such a concern deserves utmost consideration with the Hon'ble Court. There could be no two views on that question that in the absence of an authoritative pronouncement, paragraph 63 of the Natural Resource allocation judgement or a conclusive authority on the subject in question, **Shrimanth Balasaheb Patil**. It will not only be prudent, but also proper for the Court to go through the mandate of Article 145(3).

CHIEF JUSTICE B. R. GAVAI: What is next now?

R. VENKATARAMANI, ATTORNEY GENERAL: 451. Pages in 451 to 456, there are certain submission before I read them. Kindly turn to page 456.

CHIEF JUSTICE B. R. GAVAI: Article 201 and 201.

- 1 **R. VENKATARAMANI, ATTORNEY GENERAL:** 456 within that sub.
- 2 **CHIEF JUSTICE B. R. GAVAI:** So, you want to...?
- 3 **R. VENKATARAMANI, ATTORNEY GENERAL:** Article 200 within the box you'll find
4 article...
- 5 **JUSTICE VIKRAM NATH:** As it should before and as it should be read now.
- 6 **R. VENKATARAMANI, ATTORNEY GENERAL:** As it should before, is what I'm going
7 to read now, later....
- 8 **CHIEF JUSTICE B. R. GAVAI:** How it has been read by the Court...
- 9 **R. VENKATARAMANI, ATTORNEY GENERAL:** We have picked up whatever the Court
10 has said, about 200, and then added the most part, the way you read 200 now, after the
11 judgement. If there is any error in that, of course we're open to objection. Now let's read Article
12 200 as it should before, "When a bill has been passed by the legislative..."
- 13 **CHIEF JUSTICE B. R. GAVAI:** Which number?
- 14 **R. VENKATARAMANI, ATTORNEY GENERAL:** 456. Your Lordship, please.
- 15 **CHIEF JUSTICE B. R. GAVAI:** This is a part of your written submission or written
16 submission *qua* particular question. You have divided your questions amongst yourself.
- 17 **R. VENKATARAMANI, ATTORNEY GENERAL:** I know, I have dealt with 145. I'm now
18 dealing with 202 and 201 how... how under the guise of interpretation,
- 19 **JUSTICE VIKRAM NATH:** This is independent of the question.
- 20 **TUSHAR MEHTA:** Attorney General, My Lords, is addressing Your Lordship asked of the
21 learned Attorney General. I'll be assisting a Lordship for...
- 22 **CHIEF JUSTICE B. R. GAVAI:** On the concept for the Union of India.
- 23 **TUSHAR MEHTA:** For the Union of India. We have different nuances...
- 24 **CHIEF JUSTICE B. R. GAVAI:** In the beginning, learned Attorney stated that we have
25 divided some questions...

R. VENKATARAMANI, ATTORNEY GENERAL: Yes, there'll be no overlapping. But, of course, there bound to be some submissions, which may have some element of overlapping that cannot be avoided in a matter like this. So it's important for us to read Article 200, text of the Constitution. So "When a bill has been passed by the Legislative Assembly of a State or in the case of a State having a Legislative Council, has been passed by both the House of the Legislature of the State. It shall be presented to the Governor, and the Governor shall declare either that he assents to the bill..." Lordship Narasimha has got that page?

JUSTICE PAMIDIGHANTAM SRI NARASIMHA: 456.

R. VENKATARAMANI, ATTORNEY GENERAL: I thought Justice Narasimha.... "Either that he assents to the bill or that he withholds assent therefrom or that he reserves the bill for the consideration of the President provided that the Governor may as soon as possible after the presentation, picking over 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, we'll consider the decidability of introducing any such amendment as he may recommend in his message and when a bill is so returned, the House or Houses shall reconsider the bill accordingly. And the bill is far again by the House or Houses, whether with our amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom." I'll make my little comment on this little later. "provided further that the Governor shall not assent to, but shall reserve the consideration of the President, any bill which, in the opinion of the Governor would have become law. So, derogate from the power that the High Court as to endanger the position which the Court is with Constitution design to fill."

Now, next page, we turn to how it now looks after the judgement. The portions marked red are introductions by the Court. "When a bill has been passed by the Legislative Assembly of a State, or in the case of so and so, et cetera. The Governor shall forthwith, and in any event, not or later than a month from when is presented, either on the aid and advice of the Council of Ministers or otherwise on ground that a bill is of a description as provided in the second proviso here in below. Or that the bill is of a nature covered by Article, so and so and so, et cetera, where they assent to the President is a condition precedent before the bill can take effect as law or on the ground that a bill is of a nature that, if allowed to take effect, undermine the Constitution by placing the fundamental principle of representative democracy in peril within three months from the presentation of the bill declare either that the assent of the bill or that, if it is not a money bill, regardless of whether it is introduced in terms of Article 207, he withholds assent therefrom or that he reserves the bill for the consideration of the President." Substantial insertion in the text of the Constitution. Proviso -"Provided that the

Governor may as soon as possible after the presentation to him or the bill for assent, if he withheld assent contrary to the aid and advice of the Council of Ministers on grounds that the bill is of a nature that if allowed to take effect, it would undermine the Constitution by placing the fundamental principles of a representative democracy in peril, then return the bill if it's not amendable, et cetera." And little later it says, "The House or Houses shall have the option to reconsider the bill accordingly, and if it is so reconsidered, the bill is passed again by the House or Houses without that amendment presented the Governor, for assent. The Governor shall not withhold assent therefrom." So you see a scene entirely different from what the Constitution makers envisage to ensure that there is a fine balance between what a Governor will do or the President will do and when a bill which is a nonconstitutional compliance, is brought to his notice. I will certainly look into that other questions about whether the aid and advice of the Council of Ministers will bind when the bill is so unconstitutional, and then with the Governor to go and seek his advisor and say I should abide by your wisdom. The Court says yes, you are bound by the aid and advice of the Council of Ministers and because you have no discretion. So all that flows by reason of the textual amendment of Article 200.

Now, kindly turned further at page 458. "Provided further that in the first instance itself, and not in a situation where a bill is presented to the Governor. Again under the above proviso, the Governor shall not assent to et cetera." That's how it goes. We introduce this that's a third thing now. "Provided further, that the Governor proposes a decree of the bill reserved for the consideration of the President. And whereas a declaration is contrary to the aid and advice, receipts from the Council of Ministers on any other ground set out in the first proviso above, such declaration ought to be made not later than three months from when the bill is presented except when such presentation is in accordance with the first proviso above." Now, how do I understand way the Court has construed Article 200 and say, I read all of them in [UNCLEAR]. Now the Governor will have to now follow this mandate. The Governor will receive the advice from within the scope of all these insertions, the textual amendment, the judgement is affected. See further again, Article 201. 201 has a very simple provision. Will reserve for consideration.

CHIEF JUSTICE B. R. GAVAI: What is the last proviso?

R. VENKATARAMANI, ATTORNEY GENERAL: No, it's all part I picked up from the judgement and added them here.

CHIEF JUSTICE B. R. GAVAI: According to you the last proviso also added in the judgement.

1 **R. VENKATARAMANI, ATTORNEY GENERAL:** Added, yes. And when I say it's added.
 2 This is how the Governor will be bound by it.

3 **CHIEF JUSTICE B. R. GAVAI:** So the third proviso.

4 **R. VENKATARAMANI, ATTORNEY GENERAL:** The Governor look at it, the President
 5 will look at it, I might follow this procedure. Therefore, it gets impregnated into Article 200.
 6 Can the Governor say, so I will not look at all because only a judgement? He cannot say so.
 7 201. "When the bill is reserved by the Governor for the consideration of the President, the
 8 President shall declare either that the assent of the bill or that he withhold the assent of
 9 therefrom. Provided that bill is not a money bill, the President may direct the Governor to
 10 return the bill to the House, or, as the case may be, the Houses of the Legislature of the State,
 11 together with such a message as is mentioned in the first proviso to Article 200, which message
 12 shall include the reason specified in the Article, and when a bill is so returned, the House or
 13 Houses shall reconsider it accordingly within a period of six months from the date of receipt
 14 of such message. And is again part of the House or Houses with another amendment, it shall
 15 be presented again to the President for his consideration." The elegance and simplicity of the
 16 Article 201. Now see after the judgement.

17 "When the bill is reserved by the Governor for the consideration of the President, the President
 18 shall forth way and in any event not late than three months from when the reference is received
 19 which time may be exceeded for reasons recorded in writing, declare either that he assented
 20 the bill or he withholding the assent therefrom recording reasons therefrom and
 21 communicating the reasons to the House or Houses of the State in terms of the proviso below
 22 provided that the assent is withheld where the bill is not the money bill, the President shall
 23 direct the Governor to return the bill to the House or the case maybe the House of the
 24 Legislature of the State with such may message as is mentioned in the first proviso of Article
 25 200, which message shall include the reasons specified in this article and when the bill is so
 26 returned, the House or Houses shall reconsider accordingly within a period of six months from
 27 the date of the receipt of those message and is again passed with the House or Houses with or
 28 without amendment, it shall be presented to the President for his consideration who shall
 29 ordinarily not refuse assent that to."

30 You bind the hands of the President here. The Article 201 does not talk about binding the
 31 President, giving and not withholding an assent. With all ex... The President will exercise the
 32 highest level of consideration of a bill if assented, withheld, she or he will withhold the assent.
 33 Provided, all this further. "Provided further the President shall not use the above mechanism
 34 of withholding assent and sending a message to the State Legislature more than once in the

1 ordinary course of action." I thought the Court has probably entered into a regulation making
 2 power here. "Provided further that when a bill is presented again to the President for his
 3 consideration, the President shall withhold assent again, record clear and sufficiently detailed
 4 reason therefore." We are looking at a President as an ordinary statutory authority. The
 5 recording of reasons, I'll come to a little later, while maybe important for the Legislature and
 6 the transaction of understanding between the Governor, the President and the Parliament, the
 7 Legislature is important. I'm not downsizing it's importunate, but to say that he will do this.
 8 Then further under the proviso, "Provided further, that where the bill is reserved and grounds
 9 in Article 254(2), the decision shall be made on the understanding that mere non-conformity
 10 of the State Bill with a Union's policy ought not to be a ground for withholding assent." Where
 11 do we get a question of Union's policy here? If a Parliament has to enact a law, and it is
 12 executive policy, an executive policy Your Lordship knows [UNCLEAR] executive decision can
 13 be taken even the absence of a parliamentary legislation. So if there's an important executive
 14 policy on health, any number of issues, health, education. We govern our country by many
 15 executive policies. So, if they have important consideration for the entire nation, will the
 16 President will be told, don't look into executive policies, whether they are in the state of a law
 17 or not, regulation or not. So, "provided so and so, that we are non-conformity ought not to be
 18 a ground for withholding assent. Provided further that where the bill is reserved on grounds
 19 of patent unconstitutionality, the President may refer the bill to the Supreme Court for his
 20 opinion in Article 143." That is a aforesaid mandate that the President, whenever there is a
 21 bill, where the Governor reserves for consideration with the President, and the President finds
 22 it unconstitutional, the President is now asked to come to the Supreme Court invariably, if
 23 there is... Look at the number of legislation where the situation will arise. So we have an
 24 opposition to 140 reference here today. I suppose everybody says 140 will be opposed.
 25 Therefore to our say, it will be sent to the Supreme Court for his opinion under Article 143. So
 26 the President is virtually, the Governors is virtually, robbed of their highest levels of
 27 application of mind. When they commit a wrong, you can always find fault with that. But to
 28 say I'll take away your discretion, your authority or power, and therefore, you come to the
 29 Supreme Court, every time there is a bill which the President thinks is unconstitutional, I think
 30 this Court will have more business than probably what it will otherwise have.

31 Next, "Provided further that where the bill not be reserved and grounds of patent
 32 unconstitutionality and the terms of reference from the Governor involves purely legal issues.
 33 The President shall refer the bill to the Supreme Court's opinion in Article 143." Then,
 34 "Provided further that as and when the Supreme Court enter decision, the President shall be
 35 bound thereby and shall not withhold assent when the bill constitutes the opinion of the
 36 Supreme Court except that bill has been reserved for considering legal as well as political

1 issues and such reasons for differing from the opinion of the Supreme Court recorded in
 2 writing. Provided further that where no reasons are recorded that in this stage, the reason that
 3 is required to be recorded. The Court may presume the lack of bona fide in the action of the
 4 Union and the President." where I come under 143. Under 143, the Court will say whether the
 5 lack of bona fides. I think it's again rewriting 143 itself. "Provided further, as a matter of
 6 prudence, States ought to enter upon pre legislation consultation with the Union when
 7 proposing to introduce a legislation on any matter which may or ought to be reserved for
 8 consideration by the President." That's a matter of political institutional arrangement. We
 9 have the council of...

10 **CHIEF JUSTICE B. R. GAVAI:** Mr. Sibal and Mr. Mehta have not been in a position to
 11 agree for a piece of land in Bangalore in spite of so many suggestions given by the Court.

12 **TUSHAR MEHRA:** He will lend to us, we will immediately agree. Our plans are [UNCLEAR]

13 **R. VENKATARAMANI, ATTORNEY GENERAL:** "Provided further that a challenge to
 14 the decision of the President in withholding assent shall be challenged only by the respective
 15 State Governments and only before the Supreme Court." I've not left out anything. I mean,
 16 carefully try to see that whatever the Court has said.

17 **CHIEF JUSTICE B. R. GAVAI:** Whether learned Attorney would be concluding today?

18 **R. VENKATARAMANI, ATTORNEY GENERAL:** Yeah, most probably. I think I've only
 19 two or more issues, the rest will be handled by the learned Solicitor.

20 **CHIEF JUSTICE B. R. GAVAI:** Mr. Venkataramani.

21 **R. VENKATARAMANI, ATTORNEY GENERAL:** As Your Lordship pleases. So, I was at
 22 page 460. Just for Your Lordships' convenience, we have these relevant paragraphs of the
 23 judgement from where we have tried to say how...

24 **CHIEF JUSTICE B. R. GAVAI:** Where according to you the Constitution is amended?

25 **R. VENKATARAMANI, ATTORNEY GENERAL:** Your Lordships... this for Your
 26 Lordships' convenience, so that you know where we... those... the red marked portion we say
 27 are the insertions in 200 and 201. We have picked it up from various paragraphs of the Tamil
 28 Nadu judgement. The reference to the respective paragraphs are given in the footnote.

29 **CHIEF JUSTICE B. R. GAVAI:** All discussion, but what is in the conclusion?

1 **R. VENKATARAMANI, ATTORNEY GENERAL:** Your Lordship said?

2 **CHIEF JUSTICE B. R. GAVAI:** This, you have culled out from various paragraphs of the
3 judgement, like...

4 **R. VENKATARAMANI, ATTORNEY GENERAL:** That's how it is engrafted into Articles
5 200 and 201.

6 **CHIEF JUSTICE B. R. GAVAI:** But then what does file... listen, there will be some final
7 conclusions in the judgement?

8 **R. VENKATARAMANI, ATTORNEY GENERAL:** No, I'll read that. I'll come to it. But
9 before I read the final conclusion, there are a few more paragraphs I just wanted to read. I'll
10 read that. I thought this is for Your Lordships' convenience, so you know where we have picked
11 up this, where we have picked up from. My Lords, now kindly turn to page 465 of my
12 submission. I'll quickly run through about three or four issues. I wish to confine to these three
13 or four issues because they are connected to the way 200 and 201 have now undergone a
14 change. Page 465 is Issue No. 1. And Your Lords will see Issue No. 1 at page 465. And Issue
15 No. 2 at page 469 have an intrinsic connection. I'll just quickly take Your Lordships to what I
16 think should be the proper way of looking at 200, and then connect it to Issue No... Question
17 No. 2. May I request Your Lordships to keep the Constitution by... right, the Article 200 and
18 201?

19 We have to address one broad question tracing the history of Article 200 from Government of
20 India Act, 1935. And thereafter, during the Constituent Assembly debates, etc., the Court
21 comes to a conclusion that the word 'discretion' has been dropped in the Article 200 as it now
22 stands. Therefore, the Governor does not have the discretion to deal with a bill. He must act
23 as an Agent with the Council of Ministers. So, I just want to say, what are the options available
24 to the Governor, and how the discretion part of it, if it has taken away, is not discretionary. It's
25 saying that somebody exercised among various course of action, like a statutory authority,
26 we're talking about. So the word 'discretion', even though it does not find a place in Article
27 200, it will have an implication as to how you read Article 200, even if it is there, if it's not
28 there. And so, kindly turn to page 466.

29 **CHIEF JUSTICE B. R. GAVAI:** 460...?

30 **R. VENKATARAMANI, ATTORNEY GENERAL:** 466. Article 200 entrusts the Governor
31 with discretion when he receives a bill. The Governor is Constitutionally mandated to adopt
32 from a quartet of options or a synthesis of options, contained therein. The Governor shall

1 declare either that he assents to the Bill or that he withholds assent therefrom or that he
 2 reserves the Bill for the consideration of the President, or he may return the Bill. It's important
 3 to note here that in the return submissions filed by some states, including States of Kerala,
 4 Himachal Pradesh, and Meghalaya, or in concurrence with the above stated four options
 5 available to the Governor under Article 200 as said above, this stand is at variance for the
 6 Tamil Nadu judgement, which only talks about three options submitted as such, and reinforces
 7 the need for asking Question No. 1 of the reference. There is a difference of views even on this
 8 question.

9 Now, Article 200 cannot be read to bind the Governor to the aid and advice of the Council of
 10 Ministers. If so, the independent authority, who is the Governor, may become otiose. The
 11 Constitution provides a discretion to the Governor, and we ought to use these words for some
 12 reason or the other. So, provides a discretion to the Governor to follow one of the more courses
 13 of action initiated in part of Article 200. And as enumerated in **B.K. Pavitra**, it is immaterial
 14 that avert 'discretion' does not figure in the Article or it has been dropped. The judgement...
 15 there's a lot of emphasis on this question. I don't want to go in greater detail. So, the Governor
 16 can... so how I read the proviso in 200, I'll just quickly go through it, paragraph 52. "The
 17 Governor can reserve a Bill in the case of eventuality of a repugnancy with a concurrent list
 18 specified in Article 254(2). Or when it's mandated by Article 200, second proviso, relating to
 19 the Bill affecting the powers of the High Court, or when there is a legitimate doubt about the
 20 validity of the law. The ambit of power entrusts that the Governor under Article 200 to reserve
 21 a bill for the consideration, or the President is not restricted to, (1) eventuality of Article 254(2)
 22 or, (2) bills falling within the second proviso to Article 200. The first proviso, therefore, deals
 23 with the situation when the Governor is bound to give his assent. The second proviso makes
 24 reservation compulsory by the Bill, would it become law, derogates from the power of the High
 25 Court, but reservation is important note, should be made without the Governor himself giving
 26 assent to the Bill. The Article does not contemplate the Governor giving his assent. And
 27 thereafter, when the bill becomes a full-fledged law, reserving it for the consideration of the
 28 President, indeed the Governor is prohibited from giving his assent where such a reservation
 29 by him is made compulsory. The Constitution does seem to contemplate only Bills passed by
 30 the House or House of Legislature, being reserved for the consideration of the President are
 31 not laws to which the Governor has already given his assent". That's what **Kameshwar**
 32 **Singh** talks about.

33 Now in **Pavitra**, what this Court said is like this. "It would not be possible for this Court to
 34 reflect upon the situation in which the power under Article 200 can be exercised. The Court's
 35 stand as follows. "Framers carefully eschewed defining the circumstances in which the
 36 Governor may reserve a Bill for the consideration of the President. By its very nature, the

1 conferment of the power cannot be confined to specific categories. Exigencies may arise in the
 2 working of the Constitution which justify a recourse to the power of reserving a Bill for the
 3 consideration of the President. They cannot be foreseen with the vision of a soothsayer. The
 4 power having been conferred upon a Constitutional functionary, it is conditioned by the
 5 expectation that it would be exercised upon careful reflection and for resolving legitimate
 6 concerns in regard to the validity of the legislation.

7 Now, there is a slight deviation from what this Court does in... from **B.K. Pavitra** that will
 8 pointed out a little later. This Court cited and made reliance on the following paragraphs and
 9 from **Hoechst** in paragraph 86. "There may also be a Bill passed by the State Legislature
 10 where there may be a genuine doubt about the applicability of any of the provisions of the
 11 Constitution which require the assent of the President to be given to it in order that it may be
 12 effective as an Act. It is for the Governor to exercise his discretion and to decide whether he
 13 should assent to the Bill or should reserve it for consideration of the President to avoid any
 14 future complication. Even if it ultimately turns out that there was no necessity for the Governor
 15 to reserve the Bill for the consideration of the President, still he having done so and obtained
 16 the assent of the President, the Act so passed cannot be held to be unconstitutional on the
 17 ground of want of proper assent. This aspect of the matter, as the law now stands, is not open
 18 to scrutiny by the Courts", especially what has happened here.

19 "In the instant case, the Finance Bill which ultimately became the Act in question was a
 20 consolidating Act relating to different subjects and perhaps the Governor felt that it was
 21 necessary to reserve it for the assent of the President. We have no hesitation in holding that
 22 the assent of the President is not justiciable, and we cannot spell out any infirmity arising out
 23 of his decision to give such assent."

24 Now, this is my conclusion on Question No. 1, he submitted that in a proper reading of Article
 25 200, the Four-Option Theory is the correct theory. Question No. 1 is based on the need for the
 26 view on the correct theory. The report of the Sarkaria Commission on Centre-State
 27 Relationships in paragraph 5.1.02 is also an endorsement of this view. Para 4.5.01 of Justice
 28 MM Punchhi Commission Report on the evolution of Centre-State relations of India also
 29 endorses a Four-Option Theory. That closes my brief submissions on Issue No. 1.

30 My Lords, now kindly turn to page 469. Yes, the conclusion drawn here is that the Governor
 31 will be bound by the aid and advice of the Council of Ministers, how do we really look at it? So
 32 that the question is properly framed, is a Governor is bound by the aid and advice of the
 33 Council of Ministers... tendered by the Council of Ministers while exercising all the options
 34 available with him when a bill is presented before him under Article 200? So if the Four-

Option Theory is endorsed by Two Reports and the Four-Option Theory is probably the correct theory, and then in that context, am I expected to abide by the aid and advice of the Council of Ministers. To withhold Assent, apart from a consultation at the highest level, do we have to abide by the Council of Ministers' advice? If the... therefore, it will subvert my options available under the Four-Option Theory.

So then kindly turn to page 469. Article 163 is an illustration of the Council of Ministers' principle in the States. It provides, "There shall be a Council of Ministers to the Chief Minister at the head to aid and advice by the Governor in the exercise of his functions, except in so far he is by or under the Constitution required to exercise his functions or any of them in his discretion". Clause (2) makes the Governor's decision final and whether the matter is discretionary. And Clause (3) bars any Court from enquiring into what advice was tendered. Thus, by the text, the Governor normally acts on the Council's aid and advice, except where the Constitution itself entrusts him with an independent judgement. And 200 is an instance of such an independent judgement.

Now Article... then kindly skip a couple of paragraphs here. We... page 470, paragraph 61, ""The Constitution itself delineates the field where a Governor may act on his own. For example, Article 239(2) provides that the Governor acting as an Administrator of a neighbouring Union Territory, shall do independently of his Council of Ministers. Special provisions under Sixth Schedule and Article 371 and likewise entrusts particular duties to the Governor..." so-and-so "...are thus exercised at his discretion. 365 exercises key powers of the Governor. If satisfied, the State Government cannot function by the Constitution. He may report to the President recommending the President's Rule even if his Ministers oppose that view. Likewise, 200 provides of the Governor's absolute discretion, the limitations stipulated by Tamil Nadu judgement or Constitutional amendments."

May we come to then, next paragraph, the next page at page 471. I am skipping two paragraphs only to address them and come back after the Respondents make their submission. So the Court may kindly turn to 471, paragraph 68, when you talk of the Four-Option Theory and how the Governor will act under his best judgement. Paragraph 68, this position of law...

JUSTICE PAMIDIGHANTAM SRI NARASIMHA: Can you read 66?

R. VENKATARAMANI, ATTORNEY GENERAL: Your Lordship, please?

JUSTICE PAMIDIGHANTAM SRI NARASIMHA: 66 also.

1 **R. VENKATARAMANI, ATTORNEY GENERAL:** 66 very well. - "The post-1970s
 2 Constitutional amendments modified the President duties but left the Governor's role largely
 3 untouched. The 42nd Amendment made Article 74(1) explicitly say that the President shall act
 4 in accordance with..." so-and-so "...advice. The 44th Amendment that added the proviso
 5 allowing the President an opportunity to return advice for reconsideration. However, Article
 6 163 was not amended to match Article 74, it still speaks in terms of aid and advice, but not a
 7 binding shell. Likewise, Article 200 was not altered by these Amendments. In effect, therefore,
 8 the Amendments reinforced that the President is formally bound by advice, with a one-time
 9 exception, whereas the Governor continues under the original text to be bound by advice
 10 except by Article 200 other provisions explicitly granting independent authority."

11 Now come to paragraph 68. "This position of law is clear, has been stated, and reiterated by
 12 the Honourable Court in **Purushothaman Nambudiri** and later explained the Governor's
 13 power in exercising these options in **Hoechst**." Let me quickly take My Lords to only one
 14 paragraph of **Purushothaman Nambudiri** which is Volume V(3), para 15.

15 **CHIEF JUSTICE B. R. GAVAI:** Volume 5 point?

16 **R. VENKATARAMANI, ATTORNEY GENERAL:** Para 15, Your Lordships. It's at page
 17 1194. I don't propose to read the other parts of the judgement. My Learned... I am sorry, Your
 18 Lordship?

19 **CHIEF JUSTICE B. R. GAVAI:** Which page number are you referring to,
 20 **Purushothaman Nambudiri** ?

21 **R. VENKATARAMANI, ATTORNEY GENERAL:** 1194, Volume 5.3, paragraph 15. Your
 22 Lords just make a note of that...

23 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** 1194?

24 **CHIEF JUSTICE B. R. GAVAI:** judgement starts from 1185.

25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** *Haan*, correct, yes.

26 **R. VENKATARAMANI, ATTORNEY GENERAL:** Yes, that's right. I'm reading only para
 27 59.... the Learned Solicitor will deal in great length at the... with a couple of judgements. I want
 28 to just read a couple of paragraphs only for the purpose of connecting the threads in the
 29 context of 200 and 201. May I read it?

30 **CHIEF JUSTICE B. R. GAVAI:** Yes.

R. VENKATARAMANI, ATTORNEY GENERAL: I'm sorry. "It is clear that if a Bill pending the assent of the Governor or the President is held to lapse on the dissolution of the Assembly, it is not unlikely that a fair number of Bills which may have been passed by the Assembly, say during the last six months of its existence, may be exposed to the risk of lapse consequent on the dissolution of the Assembly, unless assent is either withheld or granted before the date of the dissolution. If we look at the relevant provisions of Articles 200 and 201 from this point of view, it would be significant that neither Article provides for a time limit within which the Governor or the President should come to a decision on the Bill referred to him for his assent.

Where it appeared necessary and expedient to prescribe a time limit the, Constitution has made appropriate provisions in that behalf, Articles 197 (1)(b) and (2)(b). In fact, the proviso to Article 201 requires that the House to which the Bill is remitted with a message from the President shall reconsider it accordingly within a period of six months from the date of the receipt of such message. Therefore, the failure to make any provision as to the time within which the Governor or the President should reach a decision may suggest that the Constitution makers knew that a Bill which was pending the assent of the Governor or the President did not stand the risk of lapse on the dissolution of the Assembly. That is why no time limit was prescribed by Articles 200 and 201.

Therefore, in our opinion, the scheme of Articles 200 and 201 supports the conclusion that a Bill pending the assent of the Governor or the President does not lapse as a result of the dissolution so and so forth." Therefore, the Court is alive to a rite of situation when the time limit was not mandated under the Constitution. And if at all it was mandated, for what good reason. Now we have an opposite conclusion now reached in the judgement.

Now in pages 472 to 477, I have extracted several other paragraphs from *Pavitra* etc, I said, I will not trouble Your Lordships, at this point of time. Let me quickly go to read one more judgement in this context. That is Volume V (9). All this on how do you read Article 200 in the proviso, etc. Volume V (9), page 3768.

CHIEF JUSTICE B. R. GAVAI: *Valluri Chaudhary*?

R. VENKATARAMANI, ATTORNEY GENERAL: It starts at page 3768, *Valluri Basavaiah Chaudhary* versus so and so. I will just read only one... two paragraphs in the judgement. It begins at page 3776. 3776.

CHIEF JUSTICE B. R. GAVAI: Which para? Which paragraph you're on?

R. VENKATARAMANI, ATTORNEY GENERAL: Paragraph 619, Your Lordships. Paragraph 19. "The Governor is, however, made a component part of the legislature of a State under..." Your Lordship, Justice Surya Kant has that?

CHIEF JUSTICE B. R. GAVAI: 3776.

R. VENKATARAMANI, ATTORNEY GENERAL: It is Volume V(9), page 3776 para 19. "The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State Legislature has to be reserved for his assent under Article 200. Under that Article, the Governor can adopt one of the three courses, namely he may give his assent to it, in which case the Bill becomes a law; or he may except in the case of a 'Money Bill' withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated..." it is very important... "in which case the Bill falls through unless the procedure indicated in the first proviso is followed, i.e., return the Bill to the Assembly for reconsideration with a message, or he may, subject to Ministerial advice, reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201.

The first proviso to Article 200 deals with a situation where the Governor is bound to give his assent when the Bill is reconsidered and passed by the Assembly. The second proviso..." I'm just skipping it, just a few lines later. "Thus, it is clear that a Bill passed by a State Assembly may become law if the Governor gives his assent to it, or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. The Governor is, therefore, one of the three components of a State Legislature. The only other function etc..." but what is important in this paragraph is in the middle of it where I read, that in case the Bill... come to fourth line second para 1(2), sub-para (1)(2). "He may except in the case of a 'Money Bill' withhold his assent therefrom, in which case the Bill falls through... in which case the Bill falls through unless the procedure indicated in the first proviso is followed."

This is the reasoning here. I'm not entering into a discussion. So, **Valluri Basavaiah** was a bench of five judges. It says, it will fall through unless a procedure in the proviso is followed. I'll presently try to explain if the reading of the proviso is... will probably sync with what the Tamil Nadu judgement talks about. So, this is one thing I want to bring to Your Lordships' notice.

Then I'll take Your Lordships to one more judgement, **Shamsher Singh**. It is V(7). V(7), page... it begins at 2886, paragraph 54. 2903, paragraph 54. "The provisions of the Constitution". 2903, paragraph 54. "The provisions of the Constitution which expressly

require the Governor to exercise his powers in his discretion are contained in Articles to which reference has been made. To illustrate, Article 239(2) states that a Governor is appointed an Administrator of an adjoining Union Territory, he shall exercise his functions as such administrator independently of his Council of Ministers. The other Articles which speak of the discretion of the Governor and so-and-so are paragraphs 9(2), 18(3) of the Sixth Schedule, Articles so-and-so etc. The discretion conferred on the Governor means that as the Constitutional or formal head of the State, the power is vested in him.

In this connection reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Again, Article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it becomes law would so derogate from the powers of the High Court etc." Then para 56. "Similarly Article 200 indicates another instance where the Governor may act irrespective of any aid and advice from the Council of Ministers. In such matters, where the Governor is to exercise his discretion, he must discharge his duties to the best of his judgement. The Governor is required to pursue such courses which are not detrimental to the State."

This is again a larger bench. That's all. I'll just conclude my submissions with Your Lordship's attention to Questions 13 and 10 at page 513. I'll only broadly indicate that the Court has invoked Article 142 power. Page 513.

JUSTICE PAMIDIGHANTAM SRI NARASIMHA: You are done with *Shamsher Singh*?

R. VENKATARAMANI, ATTORNEY GENERAL: Yes, yes. I have clubbed Question No. 13 and 10 together at page 513 of my Written Submissions.

CHIEF JUSTICE B. R. GAVAI: All right. 10 and 13 are together.

R. VENKATARAMANI, ATTORNEY GENERAL: We have clubbed Question No. 13 and 10 together because as I said there's an intrinsic connection, Question No. 13 and 10. Question 13 reads like this, "Are the powers of the Supreme Court under Article 142 limited to matters of procedural law, or do they extend to issuing directions and orders contrary to or inconsistent with the existing substantive of procedural provisions of the Constitution or other laws in force?" And Question No. 10, "Can the exercise of the Constitutional powers and orders of the President and the Governor be substituted in any manner under Article 142?"

Now, Questions 10 and 13 are both related to the scope and powers of the Supreme Court under Article 142 of the Constitution of India. The response to Question No. 13 will be answered first and Question No. 10 will follow. I don't read Article 142. We know, all know, a bit too much, except saying, "The complete justice in a cause or matter pending before it. By the rule of inherent powers," paragraph 133. "The rule of inherent powers as its source in the maxim: When the law gives anything to anyone, it gives also all those things without which the thing itself could not exist. A power cannot exceed his own authority beyond its own creation. It is not that a person is remediless... where the person is remediless, on the contrary, the Constitutional remedy of *writs* is available. Inherent powers can be exercised only to prevent the abuse of process of the Court and to secure the ends of justice.

The scope and extent of the powers under Article 142 is a subject matter of several decisions. It would be opposite to first state the trite position that the powers of the Court under 142 are of wide amplitude. However, the power is primarily a supplementary one for the purpose of doing complete justice in a matter". Literally said, it supplements and not supplant as I stated in ***Davinder Singh***. Therefore, the qualifying features of scheme of Article 142 can be said to be the express statutory provisions will not be ignored and relief which is inconsistent or which would militate against substantive statutory provisions may not be granted".

This has been expressed... emphasised time and again with the Supreme Court illustrated to the following facts. This Honourable Court and Supreme Court Bar Association held as follows. "The plenary powers of the Court under Article 142 or inherent in the Court that are complementary to those powers which are specifically conferred on the Court by various statutes who though are not limited by those statutes. These powers also exist independent of the statute as way to do complete justice on the contrary. These powers have a wide amplitude under the nature of supplementary powers."

I'm stopping here for a minute. Complete justice between the Parties is at the level where individual adjudications which do not present an easy resolution and need to have a complete justice issues, then the Court resolves those matters. Of course, we have travelled beyond that individual adjudication, individual Parties. The Court has laid down guidelines, etc., invoking 142 powers, but I suppose there are certain limitations when you want to do that. So kindly read it further. "These powers are of very wide amplitude and are in the nature of supplementary power". This power exists as a separate and independent base of jurisdiction apart from the statutes." Then little few lines later, "...this plenary jurisdiction is, thus, the residual source of power, this Court may draw upon as necessary whenever it's just and equitable to do so, and in particular to ensure the observance of due process of law, to do complete justice between the Parties, while administering justice according to the law. There

1 is no doubt that it is an indispensable adjunct to all the powers and is free from the restraints
 2 of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent clogging
 3 or obstruction of the stream of justice.

4 It, however, needs to be remembered that the powers conferred on the Court by Article 142
 5 being curative in nature cannot be construed as powers which authorise the Court to ignore
 6 the substantive rights of a litigant while dealing with a cause pending before it. This power
 7 cannot be used to supplant substantive law applicable to the case or a cause under
 8 consideration of the Court. And Article 142, even with the width of its amplitude, cannot be
 9 used to build a new edifice where none existed earlier, by ignoring express statutory provisions
 10 dealing with a subject and thereby to achieve something indirectly which it cannot be achieved
 11 directly." These are very important words of caution.

12 "The construction of Article 142 must be functionally informed by the salutary purposes of the
 13 Article to do a complete justice between the parties". Then the next paragraph, middle of that,
 14 the underlying portion, "The very nature of the power must lead the Court to set limits for
 15 itself within which to exercise those powers and ordinarily it cannot disregard a statutory
 16 provision governing a subject, except perhaps to balance the equities between the conflicting
 17 claims of the litigating Parties..." that will always be the governing factor, "by ironing out the
 18 creases etc."

19 Now, kindly turn to page 516. Your Lordships just make a note of the judgements. They all talk
 20 on the same wavelength about how the power into 142 will be so exercised keeping in mind
 21 the balance required in invoking it as the situation may arise. To therefore enter into a 142
 22 jurisdiction to say that I will deal with Articles 200 and 201, where... the way it did not exist
 23 earlier. So that's what I read about the paragraph 47 at page 515.

24 Now kindly turn over to page 518. I have referred to a few other judgements. We go back in
 25 point of time in para 138, we go back in point of time to **Premchand**. Page 138, bottom,
 26 paragraph 12. "The powers of this Court are no doubt very wide and they are intended to be
 27 and will always be exercised in the interest of justice. But that is not to say that an order can
 28 be made by this Court which is inconsistent with the fundamental rights guaranteed by Part
 29 III of the Constitution. An order which this Court can make in order to do complete justice
 30 between the Parties, must not only be consistent with the fundamental rights guaranteed by
 31 the Constitution, but it cannot even be inconsistent with the substantive provisions of the
 32 relevant statutory laws". I only substitute the relevant Constitutional provisions,

1 Then the same vein, we have ***Davinder Singh v. State of Punjab***. And next, at pages 519
 2 and 520, we have ***State of Karnataka v. Umadevi***. In ***State of Punjab vs Davinder***
 3 ***Singh*** at page 519, bottom, paragraph 690. It's a recent judgement. It's a recent judgement to
 4 this court. "The affirmative actions of the States have to be within the Constitutional
 5 framework. And if they are not, the Courts cannot ratify the same by bending or moulding the
 6 specific mandates contained in the Constitution. Article 142, even with the width of its
 7 amplitude cannot be used to build a new edifice where none existed earlier..." that's what the
 8 judgement says, "by ignoring Constitutional provisions dealing with the subject and thereby
 9 achieving something indirectly which cannot be achieved directly".

10 Now kindly turn over to page 521... 520. Kindly see ***Karnataka vs Umadevi***. Now, even at
 11 the top of para 520, para 69, 3.9. "The action of the State though well intentioned and
 12 affirmative in nature, if it violates specific so and so cannot be validated", Supreme Court
 13 judgement on Article 142. If that is the logic, I do not know whether the 142 can be exercised
 14 to bend or mend the Constitutional provision for... to do complete justice in a cause or matter,
 15 will you do that. Precisely what has happened here. I'll only read a couple of paragraphs from
 16 the judgement and then I would have done.

17 Kindly turn to page 521, where the Court has also said because there is a failure as a part of the
 18 Governor not acting according to the scheme of Article 200, the way the Court read that, the
 19 Court says, I am going to give a deemed assent. Para 140, to answer Question 1, "It will,
 20 therefore, be stated that the Supreme Court itself being a judicial authority deriving its
 21 existence and power from the Constitution of India, cannot, in exercise of jurisdiction 142 do
 22 violence to the Constitutional scheme, which identifies specific roles of the executive, the
 23 legislature, and the judiciary. When either the Constitution or a statute occupies the field,
 24 room for invocation of Article 142 would not arise. The key words in Article 142 are 'doing
 25 complete justice in any cause or matter'." are sufficient guidelines for the exercise of powers
 26 in 142. "Even while exercising judicial review of actions of the executive or the legislature
 27 within the confines of the Constitution, the Supreme Court cannot step into the shoes of the
 28 authorities exercising legislative functions because doing so will, *ipso facto*, amount to
 29 transgressing the sacred boundaries emanating from the scheme. Exercising the wide girth of
 30 powers under Article 142, however, cannot give birth to a licence in favour of the judicial wing
 31 to violate the basic structure of the Constitution and indirectly perform legislative or executive
 32 functions either actively or passively by creating legal or deeming fictions.

33 As an example, the grant of approvals, clearances, licences or leases under any statute which
 34 would be fully executive actions may be considered. In the absence of express provision for a
 35 deemed grant of these matters..." for instance in the mineral concession rules, if an application

1 your a license or a lease is not dealt with before a particular period, that's why we have an
2 express provision providing for something to deem to take place.

3 "So, invoking Article 142, the Court will not proceed to grant approvals, clearances, licences
4 etc. In the light of the above propositions, there can only be the designated authorities, namely,
5 the Governor or the President, who are authorised to give assent. No other person, including
6 this Honourble Court in aggregate, has the power to grant assent. It cannot also be done by
7 inventing the idea of a deemed assent. All this will be outside the scope of Article 142. There is
8 a judgement in **Perarivalan**, which the Tamil Nadu judgement lays reliance upon. I'll read
9 the fifth line of this paragraph.

10 "The judgement in **A. G. Perarivalan**, which relates to life and liberty, the invocation of
11 Article 142 cannot be extended to any other situation. Any impossible extension as occurred
12 in the Tamil Nadu judgement is a matter open to consideration. But the invocation of Article
13 142 must necessarily reside within its legitimate limits". The question, therefore, deserves to
14 be answered... therefore deserves to be answered that any sanction to a bill by the Court in any
15 manner will be outside the scope of Article 142. It is these aspects discussed in the paragraphs
16 above along with the submission to the answer to questions [UNCLEAR] relating to timelines
17 imposed by Tamil Nadu judgement have necessitated Questions 10 and 13 as the view of state
18 of law in respect to the scope of Article 142.

19 I'll propose to read a couple of paragraphs of the judgement and then conclude for the day.
20 Kindly turn to... the judgement is in V(31). The Tamil Nadu judgement is in V(31).

21 **CHIEF JUSTICE B. R. GAVAI:** Paragraph and page number?

22 **R. VENKATARAMANI, ATTORNEY GENERAL:** I'll just give it to Your Lordships. Para
23 317 at page 12454.

24 **CHIEF JUSTICE B. R. GAVAI:** Yes. Tamil Nadu judgement.

25 **R. VENKATARAMANI, ATTORNEY GENERAL:** 317, "The Governor..."

26 **CHIEF JUSTICE B. R. GAVAI:** Wait.

27 **R. VENKATARAMANI, ATTORNEY GENERAL:** Your Lordship, Chief Justice has got it?
28 12454. May I read it? "The Governor under the Constitutional scheme is no longer envisaged
29 as the Governor under the Government of India Act, 1935, having the ultimate power to veto
30 any legislation and subvert the collective will of the people being expressed through the

Legislature. If the power to withhold assent..." kindly skip a few lines and come to sentence running like this, "It would have the potential of..." i.e., "decide a course of action notwithstanding the aid and advice of the Council of Ministers, it would have the potential of turning him into a super-constitutional figure, having the power to bring to a complete halt the operation of the legislative machinery in the State. The Governor cannot be vested with such a power, the exercise, in fact, would enable him to collude with the Union Cabinet." There are two strong things to state in... "and ensure the death of any and all legislation initiated by the State merely by reserving it for the consideration of the President, who is not... under Article 201 is not bound to give assent to any legislation reserved for his consideration".

Then I'll read one, para 434. Page 12561, para 432.

CHIEF JUSTICE B. R. GAVAI: Paragraph 432?

R. VENKATARAMANI, ATTORNEY GENERAL: 432, 12561. "The conduct exhibited on part of the Governor, as it clearly appears from the events that have transpired even during the course of the present litigation, has been lacking bonafides. There have been clear instances where the Governor has failed in showing due deference and respect to the judgements and directions of this Court. In such a situation, it is difficult for us to repose our trust and remand the matter to the Governor with a direction to dispose of the bills in accordance with the observations made by us in this judgement.

Article 142 empowers this Court to do complete justice and in the facts of the present case, more particularly, in light of the fact that the option of granting assent to the repassed bills was the only constitutionally permissible option available with the Governor, we deem it absolutely necessary and appropriate to grant that very relief by exercising our extraordinary powers. No meaningful purpose would be served by keeping the bills, some of which have already been pending for incredibly long periods, pending for more time. Therefore, we deem the assent to have been granted".

Para 434 has a long list of conclusions and the summary of the findings is available from page 12577... page 12577 onwards.

CHIEF JUSTICE B. R. GAVAI: 12577?

JUSTICE SURYA KANT: Certain facts in... that the facts which are noticed with 431, is it correct *per curiam*, that 2020 Bills are pending?

1 **R. VENKATARAMANI, ATTORNEY GENERAL:** Yeah, that's factually correct. Let's say,
 2 even if it's factually correct, but there are so many bills which were sent back so quickly. There
 3 are some bills which were not sent. That's the dynamics. In fact, I didn't want to go in the facts
 4 of that case because I could have... because I appeared in it.

5 **JUSTICE SURYA KANT:** 432 appears to be reaction of 431.

6 **R. VENKATARAMANI, ATTORNEY GENERAL:** There were certain explanations given
 7 about... given to that. But the Court rejects all that explanation. There are long reasons why
 8 probably the Governor kept them without giving his assent for a long time. So we are not going
 9 into those reasons. We're not talking about that particular conclusion drawn on those
 10 particular facts in the judgement. We are only talking about the state of law. And a state of law,
 11 will you say, I will invoke my 142 power and said, I'll give deemed assent. That has to be tested.

12 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** 433 talks about the reason for
 13 exercising that power, very detailed.

14 **R. VENKATARAMANI, ATTORNEY GENERAL:** Which paragraph?

15 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** 433.

16 **R. VENKATARAMANI, ATTORNEY GENERAL:** 433.

17 **TUSHAR MEHTA:** I would have a nuanced argument on that, *dehors* the fact.

18 **R. VENKATARAMANI, ATTORNEY GENERAL:** *Na, na.* We are not asking Your
 19 Lordships to get into any re-evaluation of those facts .

20 **CHIEF JUSTICE B. R. GAVAI:** You don't have to go into those facts.

21 **R. VENKATARAMANI, ATTORNEY GENERAL:** We are not asking those, that's it. The
 22 question is given a certain set of facts, even though they are so...

23 **CHIEF JUSTICE B. R. GAVAI:** So glaring.

24 **R. VENKATARAMANI, ATTORNEY GENERAL:** Correct, not palatable.

25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** There is no pudding?

26 **R. VENKATARAMANI, ATTORNEY GENERAL:** Not palatable. You say, look here, I will
 27 enter in the shoes of so and so and do what the Governor would have done. That is, we are

1 talking about a Constitutional provision. We are not talking about a diverse and varied etc. It
2 is very different, we will figure that.

3 I... only one more paragraph I would read and then leave it to Your Lordships' consideration
4 how to evaluate this. I'm only pressing to give a broad overview of how certain disputing
5 disquieting features of the judgement because now there is a precedent. The judgement says,
6 I follow the ***Punjab State or Punjab*** case, just one of the Honourable Judges party to the
7 ***Punjab*** case. Therefore, it is now the status of a precedent. And then how do you... that's why
8 I told Your Lordships in the morning. I have so many judgements of the Supreme Court on my
9 table. The Presidents read that.

10 **JUSTICE SURYA KANT:** Certainly. You also enlighten us that if these are the facts before
11 a Constitutional Court, 431 and 433. And according to you, the Court went wrong in 432. Then
12 what else should be the Constitutional permissible recourse for a Constitutional Court to
13 exercise this jurisdiction?

14 **R. VENKATARAMANI, ATTORNEY GENERAL:** No, no. Correct. I see that. No, we're
15 not asking Your Lordships to say whether... Your Lordships may answer that question. If there
16 is such set of facts where the Court probably has no other option. I asked myself a question,
17 would the Court still say, I will do what the Governor will do? The Court will again say probably
18 why the Governor must be asked to find out what is the best course of action, which should
19 you follow. It will send back to the Governor in any circumstance. Then otherwise, you're
20 taking over the functions of a Governor. It can be taken over in any circumstance in future.
21 Like no limits can be drawn. No lines can be drawn.

22 **CHIEF JUSTICE B. R. GAVAI:** In 532, there is also finding that there have been clear
23 instances where the Governor has failed to in showing due deference in the dispute...

24 **R. VENKATARAMANI, ATTORNEY GENERAL:** If Your Lordships want me to go into
25 the facts, there's some disquiet about it. I didn't want to go into the facts. I assume that there
26 is something with the Court. As I said, I'm not even disputing the assessment of facts. I assume
27 against myself. But even if it is so, if you are sitting in a judgement and a review, perhaps I'm
28 going to ask Your Lordships to go into them. I am not doing it for the time being.

29 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** And it will be seen as an egregious
30 situation which has come to existence. So, therefore, in order to get over that, the Court has
31 stepped in to ensure... and it is not in the form of any precedent because to handle a situation
32 like this.

1 **R. VENKATARAMANI, ATTORNEY GENERAL:** It is. It is. It is.

2 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** 432 and 433 is handling a situation
3 like this, in a situation where for such a long time, it's pending...

4 **R. VENKATARAMANI, ATTORNEY GENERAL:** What I'm trying to say is the precedent
5 case which will now emerge like this. So you can always extend this to any fact, situation,
6 minimal or otherwise, and say, now apply this law. Ask the Governor to give deemed assent.
7 The moment the Court enters into this arena, then you have any kind of mind-bothering fact,
8 boggling facts, where the Court may have to be confronted with. Therefore, it's... I want to take
9 it away from the fact situation and say, even if it is so, can this be done? So, kindly read only
10 one more paragraph, para 184 of the judgement. Page 12333.

11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Just tell us the para number.

12 **R. VENKATARAMANI, ATTORNEY GENERAL:** Para number, just read para number
13 183, then 184. Para 183 and 184. I refer to **Valluri Basavaiah**. And it says, "The bill will fall
14 unless the first proviso of the procedure is followed". Kindly turn to paragraph 183. "“Placing
15 reliance on the expression ‘unless the procedure indicated in the first proviso is followed,’ so
16 and so submitted, the decision as regards whether the procedure prescribed under the first
17 proviso is to be invoked or not, is the discretion of the Governor. It is only when the Governor
18 decides to return the Bill along with a message that so and so would come into play. In other
19 words, if the Governor believes that the Bill is constitutionally infirm and beyond any remedial
20 changes, then he may choose not to return the Bill along with a message and may simply
21 declare that he is withholding assent to the Bill, in which case the Bill would fall through or
22 lapse.

23 Although the argument is seemingly lucrative and appealing, and the petitioner also could not
24 provide a concrete reply to the same during the course of argument and instead took shelter
25 in the semantics of *obiter dicta* and *ratio decidendi*, yet we deem it necessary to explain that
26 the argument is short sighted, half-baked, and suffers from inherent fallacy."

27 If at all Your Lordships want me to give a narration of the facts, if at all it is desirable, but I
28 don't think that would be required.

29 **CHIEF JUSTICE B. R. GAVAI:** *Haan*, better not go there.

30 **R. VENKATARAMANI, ATTORNEY GENERAL:** That's right. Sir, I'm done for the day.
31 And I've kept certain things reserved for the Reply. And the Learned Solicitor will deal with all

1 the other issues. And that's how we share our share of submissions. I'm grateful to Your
2 Lordships.

3 **TUSHAR MEHTA:** May I please, Your Lordships? My Lords, not a very right time to begin
4 a fresh argument. But I'll just, My Lord, on the lighter side I am saying, Your Lordships are
5 not concerned with the facts of the case. There may be few errant cases of errant Governors,
6 Ministers, wrong advice, right advice, time lag, etc., etc. What is essentially, My Lord, the core
7 of the issue which is considered by Your Lordships and that is something of a very, very high
8 significance in the democracy of this country, in our Republic, such question has come for the
9 first time before Your Lordships. And I'm sure Your Lordships would not go by facts of an
10 individual case. My Lord, Your Lordships would be able to better advise the President only if
11 I can show to Your Lordships, what is the role of the Honourable President and Governors in
12 maintaining a federal balance which is envisaged by the Constitution of India.

13 Second, there may be, My Lord, cases where the Constitution has always done two things. And
14 I will show, My Lords, from the Constituent Assembly debates. Whenever we are either making
15 a Constitution or we are interpreting a Constitution, we do it on an idealistic plane, that this is
16 how each Constitutional functionary would work. This is the parameters within which they
17 would function. There may be some deviants here, sometimes in the Executive, sometimes in
18 the Legislature, sometimes in the Judiciary, and there is an in-built check and balance. But
19 while framing the Constitution, fortunately, our forefathers, My Lord, the Framers of the
20 Constitution were visionaries. They have examined a potential abuse also. They have kept what
21 they are doing in mind. And each and every provision which is made, is so designed that it
22 maintains the balance.

23 There may be some problems which may confront, but all problems may not have a solution
24 in the Court of Law. There may be several problems, My Lord. I can also give illustrations of
25 problems, but that may not be that the problem will be ultimately solved by the Judiciary. My
26 Lord, for answering this question, Your Lordships will have to have a holistic reading... I'm
27 sorry. My Lord, in a Deaf and Dumb School, there is a course of Lip Reading. My Lord, I think
28 in all Law Universities, that course would be mandatorily introduced.

29 **CHIEF JUSTICE B. R. GAVAI:** But I think the Lawyers are Experts at that.

30 **TUSHAR MEHTA:** My Lord, we can only make a wild guess without knowing the real
31 conversations. My Lord, for the purpose of advising the Honourable President, this is not a list
32 between other side and this side and that side. The Honourable President is requesting Your

1 Lordships to give an advice. My Lord, the advice will be possible if Your Lordships can take a
2 holistic reading of five Articles.

3 **CHIEF JUSTICE B. R. GAVAI:** Five?

4 **TUSHAR MEHTA:** Five Articles of the Constitution. And within these five Articles, I think,
5 My Lord, Your Lordships will be able to advise the Honourable President what is the correct
6 position in law. My Lord, we forget Tamil Nadu, we forget judgements, we forget facts. There
7 may be, My Lord, errant instances, etc. I'm not going in to that.

8 **CHIEF JUSTICE B. R. GAVAI:** Fortunately, you stopped at instances preceded by errant,
9 yes.

10 **TUSHAR MEHTA:** My Lord, one is Article 111. My Lord, i.e., "The Power of the President to
11 Grant Assent." Second is Article 74, "The Council of Ministers in the Union and their power,
12 function, role, duty, whatever, My Lord, we may call to aid and advise the President of India".
13 Third provision is Article 155, "The Appointment of the President"... "The Appointment of the
14 Governor." Fourth Article, 163, which is "Council of Ministers to aid and advise the
15 Honourable Governor in discharge of his functions, and what are the differences between the
16 power of the President, and a conscious choice of words by the Constituent Assembly while
17 defining the powers of the Governor." And last would be, My Lord, this dual Power, Article
18 200, "The Assent, giving power of the Governor." And on reference, "The Power of the
19 President of India."

20 My Lord, if these five provisions are examined by Your Lordships, Your Lordships will be able
21 to, in my respectful submission, reach a conclusion as to what advice Your Lordships would
22 like to give on several questions, most of which would be covered under this. There are certain
23 subsets of the questions, My Lord, which, of course, I will assist Your Lordships differently.
24 So, My Lord, I am treating 200 and 201 as one group. Otherwise, it would be six provisions.

25 **CHIEF JUSTICE B. R. GAVAI:** It's part of one scheme?

26 **TUSHAR MEHTA:** Yes, part of one scheme. My Lord, for this purpose, the exercise which I
27 want to undertake before Your Lordships by way of an assistance, but I am appearing for the
28 Central Government for Union of India. And we will be assisting Your Lordships, My Lord,
29 what is the purpose, what is the intent, and what is the object of the Constitution of India and
30 why a particular Constitutional Scheme is formulated. For doing that, My Lord, what I have
31 done is, all these six provisions or five provisions have their history. It is not, My Lord, coming
32 suddenly by way of a Constitutional Provision in 1947. It has been preceded by their *pari*

1 *materia* provisions, My Lord. First was Government of India Act, 1919, when we were under
 2 the British regime. Then came Government of India Act, 1935, where almost, My Lord, there
 3 was a symbolic acceptance that India will have to be given independence. And suitably, My
 4 Lord the law, though made by the British Parliament, was suitably moulded. Three, there is,
 5 My Lord, one draft prepared by one Mr. B. N. Rau. He was the Constitutional Advisor to the
 6 Constituent Assembly. He prepares draft for each and every provision. Fourth, the Drafting
 7 Committee headed by Honourable Dr. Ambedkar, they draft a particular provision and which
 8 goes before the Constituent Assembly, debated, and the result is what we have now as, My
 9 Lord, the final provision.

10 My Lord, Your Lordships have my Written Submissions. My Lord, it may look thick because
 11 my style is, I quote the relevant paras of the judgement, so that Your Lordships may not have
 12 to suffer through...

13 **CHIEF JUSTICE B. R. GAVAI:** Not required to...

14 **TUSHAR MEHTA:** To suffer through, My Lord, yes. Whatever I want to read, My Lord, is
 15 quoted here. Therefore, it is bulky. Otherwise, it's not bulky. My Lord, please come to Article...
 16 come to, My Lord, page 121.

17 **CHIEF JUSTICE B. R. GAVAI:** You don't believe in one pages of Dr. Singhvi?

18 **TUSHAR MEHTA:** No, My Lord.

19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** The loose part is not necessary. You
 20 have included it here?

21 **TUSHAR MEHTA:** No, My Lords. There is a separate volume, My Lord. It is 1.1, My Lord, if
 22 Your Lordships, yes, this. My Lord, Your Lordships have the hard copy or a soft copy, I can
 23 use the pagination accordingly.

24 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Same page number. You tell us the
 25 page number to us.

26 **TUSHAR MEHTA:** 121, My Lords. 121. My Lord, first, I'll take Your Lordships to the history
 27 of Article 111. My Lord, to my knowledge and subject to being corrected, this manner of
 28 examining what ultimately we have Article 111, that exercise is not undertaken before this
 29 Honourable court. Therefore, whichever way Your Lordships opinion goes, My Lord, it would
 30 be relevant to bring these facts to Your Lordships' notice. This is *pari materia* or a precursor

1 to the Office of the President of India, as we understand today, under section... under Article
2 111.

3 One more fact, My Lord before I read this and I found out, My Lord, during the research of
4 this. It may have no relevance, but according to me, it has tremendous relevance. My Lord,
5 there are several Constitutional functionaries under the Constitution of India. The President
6 of India, the Prime Minister, the Members of Parliament etc., etc. My Lord, there are different
7 oaths which are prescribed by the Constitutional provision itself. It is only the Honourable
8 President of India and Honourable Governor who takes the oath not to just feel... not to abide
9 by the Constitution of India, but to defend the Constitution of India, only two functionaries,
10 My Lord. Rest of the Constitutional functionaries, highest at their own sphere, but they take
11 oath, My Lord, to respect, aid, and abide by the Constitution of India. These are the only two
12 functionaries who take oath to defend the Constitution of India.

13 Now, My Lord, please see what is the Office of the President envisaged during British era.
14 Section 68 of Government of India Act, 1915 *pari materia* to Article 111 of the Constitution
15 provided for...

16 **CHIEF JUSTICE B. R. GAVAI:** Where are you reading?

17 **TUSHAR MEHTA:** I'm sorry. Page 121. My apologies. 121 at the foot. The title is My Lord,
18 "Article 111". This is Article of the present Constitution. Now comes, My Lord, the history for
19 Your Lordships' assistance. My Lord, this is section 68 of Government of India Act, 1915, that
20 is *pari materia* to Article 111. But I'll read, where an act has been passed at a meeting of the
21 Indian Legislative Council, My Lord, we can say Parliament of the day, Parliament or Indian
22 Parliament. The Governor General, My Lord, Governor General is equivalent to the President,
23 loosely, My Lord, speaking. Now, we can't compare My Lord, the colonial era with the...

24 **CHIEF JUSTICE B. R. GAVAI:** It was appointed by the Majesty.

25 **TUSHAR MEHTA:** Yes, My Lord, Sovereign Republic, because they used to exercise the
26 power conferred upon them and in the name of Her Majesty or His Majesty, as the case may
27 be. "Indian Legislative Council, the Governor General, whether he was or was not present in
28 Council at the passing thereof may declare that the assents to the Act or may declare or may
29 declare that he assents to the Act". This is the first option. "Or that he withholds assent from
30 the Act", second option or that "He reserves the Act for the signification of His Majesty's
31 pleasure". So, three options in the main provision, in the main part of 68(1). Then subsection
32 (2). "An Act of the Governor general in Legislative Council has no validity until the Governor
33 General has declared his assent thereto, or in case of an Act reserved for the signification of

1 His Majesty's pleasure until His Majesty has signified his assent to the Governor General
 2 through the Secretary of State in Council, and that assent has been notified by the Governor
 3 General."

4 There was no provision for returning the bill to the Legislative Council for reconsideration.
 5 Only three options were given. His Majesty was, My Lord, like the President of India and... I'm
 6 sorry, My Lord, His Majesty had no Indian equivalent. His Majesty was, My Lord, the Crown.
 7 Governor General was the President of India and Legislative Council was the Parliament.

8 Now, My Lord, Section 32 comes in 1935 Act, where, My Lord, we were almost in principle,
 9 My Lord, it was agreed that India will have to be made independent because of the efforts
 10 made by everyone who was in the freedom struggle. "Assent to bills and powers of Crown to
 11 disallow Acts. When a bill has been passed by the Chambers..." My Lord, now the Parliament
 12 is... the Chambers is present equivalent of Parliament. "By the Chambers, it shall be presented
 13 to the Governor general i.e., President, and the Governor General shall, in his discretion..."
 14 Please mark this, My Lord. This word, My Lord, while drafting the Constitution, is removed.
 15 My Lord, something turns on that. My Lord, I must tell, Your Lordships. "Therefore, in his
 16 discretion declare either that he assents to His Majesty's name to the Bill...", declares in His
 17 Majesty's name. He used to do all his works in name of His Majesty.

18 "Or that he withholds assent therefore... therefrom, or that he reserves the Bill for signification
 19 of His Majesty's pleasure provided that the Governor General may..." again, My Lord... "in his
 20 discretion return the Bill." Kindly mark, My Lord, two important facets, discretion in the main
 21 section. And now, My Lord, proviso comes, which is our equivalent of the 200 proviso. I'll
 22 come to that, My Lord, but just at this stage. "Provided that the Governor General may, in his
 23 discretion, return the Bill to the Chambers with a message requesting that they will reconsider
 24 the Bill or any specified provisions thereof. And in, particular, will consider the desirability of
 25 introducing any such Amendment as he may recommend in his message. And the Chambers
 26 shall reconsider the Bill accordingly." Now, if the Chamber does not do it, what is the
 27 consequence? Not provided. Whether it would go back, whether the Governor General can
 28 thereafter withhold, not provided. Number one.

29 Number two, there was a discretion in the first part. And there was a discretion in the second
 30 part. But now becomes a scenario of the Governor General having four options. He can grant
 31 assent, he can withhold, he can refer it to His Majesty, and fourth, he can return the Bill with
 32 a message. Message can even include desirability. Sometimes, My Lord, in working of the
 33 Constitution what happens is the Governor sends it back saying that this particular provision
 34 might be repugnant because there is already a Central Act. So, you might have to consider. He

1 may also say that this particular provision might violate somebody's fundamental right, and
 2 therefore, you might consider. Based upon, My Lord, the situation in the State, he might even
 3 say that it would be desirable. That either delete this provision, add this provision, dilute this
 4 provision, etc., etc., My Lord. And then thereafter, it...

5 **CHIEF JUSTICE B. R. GAVAI:** That is provided in Article 200 itself?

6 **TUSHAR MEHTA:** 200 itself. Now, My Lord, but it was there earlier also. Desirability also,
 7 the Governor can send a message. But this is how the Democracy is, My Lord, contemplated
 8 to work. And this is how the Governor-Assembly relationship has been envisaged from the
 9 beginning. Now, My Lord, two. "A Bill reserved for the signification of His Majesty's pleasure
 10 shall not become an Act of the Federal Legislature unless and until"... now, please, mark,
 11 "there was a period prescribed." Now, My Lord, we are dealing with a situation where one of
 12 the questions the Honourable President is posing for Your Lordships' guidance is whether
 13 there can be a timeline prescribed, apart from the question that by a judgement, but there can
 14 be a timeline prescribed? My Lord, my respectful endeavour will be that there was a timeline.
 15 It was done away with consciously. It's a conscious omission on part of the Constituent
 16 Assembly.

17 "Within 12 months from the day on which it was presented to the Governor General, the
 18 Governor General makes known by public notification that His Majesty has assented thereto.
 19 Any act assented to by the Governor General may be disallowed by His Majesty within 12
 20 months from the day of the Governor General's Assent and where any Act is so disallowed, the
 21 Governor General shall forthwith make the disallowance known by public notification and as
 22 from the date of notification or the Act has become... shall become void." My Lord, two things,
 23 there is a timeline stipulated for the Governor General, timeline stipulated for His Majesty,
 24 the Queen. And after that, forthwith, My Lord, which is word with inherent element of
 25 urgency, he has to notify.

26 Now, My Lord, Dr. B.N. Rau, the Advisor to the Assembly, when he prepares the Bill for the
 27 Independent India. My Lord, Bill was prepared when India was not independent. But India
 28 was going to be independent because Your Lordships are aware the Constituent Assembly
 29 started its debates before 15th of August, 1947.

30 **CHIEF JUSTICE B. R. GAVAI:** In 1946.

31 **TUSHAR MEHTA:** Yes. So they were making my Constitution for the Sovereign Democratic
 32 Republic. Now, My Lord, this is what Dr. B.N. Rau formulated, which became, ultimately,
 33 Article 111, as we see today. "When a Bill has been passed by Houses of the Federal

1 Parliament..." My Lord, it was initially envisaged as a Federal Parliament, not only *khaali*, only
 2 Parliament, "it shall be presented to the President. And the President shall declare either that
 3 he assents to the Bill or that he withholds assent therefrom." There was no His Majesty's or
 4 there was no question of President referring for assent of anyone. "Provided that the President
 5 may", please mark again, My Lord, a time limit, "not later than six weeks after the presentation
 6 to him of a Bill for assent, return the Bill, if it is not a Money Bill, to the Houses with a message
 7 requesting that they will reconsider the Bill or any specified provisions thereof, and in
 8 particular, will consider the desirability of introducing any such Amendments, as he may
 9 recommend in his message, and the House shall reconsider the Bill accordingly." My Lord, if
 10 the House does not consider his message or considers it partly or fully, what would happen?
 11 No consequence stipulated by Dr. B.N. Rau.

12 Then, My Lord, Draft Constitution is prepared by the Drafting Committee, chaired by
 13 Honourable Dr. B. R. Ambedkar, i.e., Article 91 is the Draft Bill, which came before the
 14 Constituent Assembly for debate. "When a Bill has been passed by the Houses of Parliament,
 15 it shall be presented to the President, and the President shall declare either that he assents to
 16 the Bill or that he withholds assent therefrom." Only two options because there was... the
 17 Crown goes. There was no third option, now India is the Sovereign Democratic Republic.
 18 "Provided that the President may not later than six weeks after the presentation to him of a
 19 Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting
 20 that they will consider..." My Lord, same remains as Mr. Rau has suggested. There is no
 21 change.

22 Now, My Lord, very interestingly, this is debated in the Constituent Assembly. And Your
 23 Lordships may get what was the intention, object, and intent of the Framers of the Constitution
 24 on this, My Lord, when we got 111 as we have today. On Mr. President, we shall take up the
 25 next Article. 90... 91, My Lord, precursor of 111. Article 91 from the Constitution. Now Shri
 26 Lokanath Misra, that in Article 91 for the words... My Lord, kindly see. He suggests two
 27 amendments. There is a likelihood of some misunderstanding. Therefore, I'll read it carefully.
 28 He is suggesting two amendments. That in Article 91, the words, "either that he assents to the
 29 Bill or that he withholds assent therefrom", the words, "that he assents to the Bill" be
 30 substituted. His power of withhold was suggested to be not conferred upon him. And the
 31 following words be added. Now, Second Amendment he's suggesting, that is, "and if the Bill is
 32 passed again..." My Lord, I'm sorry. Following words be added in the end of the proviso to the
 33 Article. When he returns with some message and it is presented before him, what should be
 34 done? Second Amendment suggested by Sri Lokanath Misra is, "And if the bill is passed again
 35 by the House with or without Amendment and presented to the President, the President shall
 36 not withhold assent therefrom".

1 This is what was suggested to be added. First was, they take away the power of withholding.
 2 He can either assent or return it to the House. And if the House does something or does not
 3 do anything, he will have no power of withholding. Now, sir, in moving this Amendment, I am
 4 in the best... beat is an original typo, not here. Originally, it is typo. It should be best. "In a best
 5 of the company insofar as the Drafting Committee itself has suggested the same in a
 6 subsequent amendment. I beg to submit that when I move this Amendment to take away the
 7 power from the President to dissent from any Bills passed by the Parliament, I mean nothing
 8 more than saying that since our President is analogous to the King in England, and as the King
 9 has no power of dissenting from any Bill passed by President, this Amendment is appropriate".

10 "As regards the Second Amendment...", My Lord, that is after returning by the House. "Second
 11 Amendment, without that amendment, the proviso seems to be incomplete. Supposing the
 12 President sends back a certain Bill for reconsideration and Parliament comes to a certain
 13 decision, without this Amendment, the whole action becomes incomplete and inconclusive.
 14 And since this is also the view taken by the Drafting Committee, this Amendment too should
 15 be accepted." So, Honourable Dr. Ambedkar, "That in the proviso to Article 91 for the words
 16 not later than six weeks, the words as soon as possible be substituted". My Lord, kindly mark
 17 this. The Draft contained a time limit. And Dr. Ambedkar was pleased to suggest that remove
 18 this time limit. Make it as far as possible...

19 **JUSTICE VIKRAM NATH:** As soon as possible.

20 **TUSHAR MEHTA:** I'm sorry, as soon as possible. My mistake, it was a slip of tongue, My
 21 Lord. As soon as possible, "that in Amendment number so and so of the list of Amendments..."

22 **CHIEF JUSTICE B. R. GAVAI:** According to you, no time limit was provided, though
 23 earlier time limit was provided with the Draft Constitution?

24 **TUSHAR MEHTA:** It was sought to be deleted. For good reasons, My Lord, that ultimately,
 25 the power is conferred on the highest executive. He may not be bound by the time limit that
 26 you better decide in six weeks as far as possible because we always, My Lord, follow a system
 27 that highest Constitutional functionaries will discharge their duties in accordance with law.
 28 They are not supposed to be... [NO AUDIO] lip reading also. Therefore, My Lord, even if Your
 29 Lordships do not do this, that would be fine with me.

30 **CHIEF JUSTICE B. R. GAVAI:** They might read the lips.

31 **TUSHAR MEHTA:** They might. Now, My Lord, Mr. Nazimuddin Ahmed. "Yes, sir. I beg to
 32 move that Amendment number so and so in the list of Amendment in the proviso to Article 91

1 for the proposed verb, 'possible', the word 'may be' substituted. I beg to submit that this
 2 Amendment will make some substantial changes. The proviso is to be... is to the effect that the
 3 President may as soon as possible after the presentation of the Bill return the Bill and so on. I
 4 want to make it 'as soon as maybe'." He says 'as soon as possible', instead, make it 'as soon as
 5 maybe'. It's the distinction without difference. But, My Lord, there were many members who
 6 always used to suggest something just for the sake of suggesting. If we leave it exactly as Dr.
 7 Ambedkar would have it, it leaves no margin. As soon as possible means immediately.

8 "Possibly, which means physical possibility is the only test. It may leave on breathing time to
 9 the President, the words 'may be' give him a reasonable latitude. It would mean reasonably
 10 practicable. This is the obvious implication. That is the only reason why I have suggested the
 11 Amendment." Then My Lord, I come to T.T. Krishnamachari. There is a slight difference in
 12 language. I think, Dr. Ambedkar's proposal will be the better one. But, My Lord, Mr. T.T.
 13 Krishnamachari has always been fair and there were two members.

14 **CHIEF JUSTICE B. R. GAVAI:** He was part of the Drafting Committee also.

15 **TUSHAR MEHTA:** He was part of the Drafting Committee. But one Mr. H.V. Kamath and
 16 someone else, My Lord, he always used to oppose Dr. Ambedkar. My Lord, I'll show. It
 17 appears, H.V. Kamath, I tried to research... H.V. Kamath.

18 **CHIEF JUSTICE B. R. GAVAI:** And Mr. Nazimuddin Ahmed also.

19 **TUSHAR MEHTA:** Yes. H.V. Kamath was a brilliant.... must be a brilliant man. He was an
 20 ICS officer.

21 **CHIEF JUSTICE B. R. GAVAI:** Mr. Nazimuddin Ahmed also used to oppose almost all...

22 **TUSHAR MEHTA:** Almost all Amendments or even the main provision of Dr. Ambedkar.
 23 Mr. H.V. Kamath was a former ICS officer. He, thereafter, resigned as a part of freedom
 24 struggle. Then he contested the election and lost. He challenged his election before the
 25 Supreme Court and won the matter. Again...

26 **CHIEF JUSTICE B. R. GAVAI:** Hari Vishnu Kamath?

27 **TUSHAR MEHTA:** Hari Vishnu Kamath. Yes, My Lord. Hari Vishnu Kamath. Your
 28 Lordships are right. He again won and became the member of Parliament. And he was the one,
 29 My Lord, one of them... nothing to do with this matter, but he suggested that travel to space
 30 should be included in the first list. He must be.... appears to be a maverick, intelligent, but he

1 always used to, My Lord, oppose Dr. Ambedkar. My Lord, beside the point, just as an
2 interesting information.

3 "Then, President, I shall put this to vote. It need not be moved Amendment number so and so.
4 This is also the same as Amendment number so and so of Dr. Ambedkar. We have taken it as
5 having been moved. Is it necessary to move this? You can move it. Is there in some slight
6 difference." Then Begum Aizaz Rasul. My Lord, I can skip that. My Lord, Your Lordships need
7 not... I'll not trouble Your Lordships. It is put for completeness.

8 Then Dr. P.S. Deshmukh. "Mr. President, sir, obviously the Article, it was worded in the
9 beginning was found to be defective in at least two particulars as is clear from the fact that Dr.
10 Ambedkar himself has moved one Amendment suggesting the substitution of the words "not
11 later than six weeks" by the word "as soon as possible". The second difficulty, which has been
12 visualised, and which is tried to be removed, is by making a provision in case the President
13 withholds the assent. The provision intended is that when a Bill is presented for a second time,
14 it shall be incumbent upon him, that is the President, to give his assent and he shall not have
15 the option to withhold the assent. So, far as the First Amendment of Dr. Ambedkar is
16 concerned, I do not know if it is very necessary that the Amendment should be accepted. The
17 question for consideration is whether we should merely state that the President should give
18 his assent as soon as possible, or whether we should state any period within which he should
19 do it. I think if the words "not later than six weeks" are to be left as they are, then it is the duty
20 of the President to indicate his decision as early as possible, and in no case later than six weeks.
21 So, I am not fully convinced of the propriety of changing the wording as proposal. Then
22 President, I would now put the amendment to vote. Do you want to say anything, Dr.
23 Ambedkar?"

24 **CHIEF JUSTICE B. R. GAVAI:** Mr. Mehta, Mr. P.S. Deshmukh was also the third one.

25 **TUSHAR MEHTA:** Yes, Your Lordships are right, My Lord. And I do not know about...

26 **CHIEF JUSTICE B. R. GAVAI:** He was the first Agriculture Minister of India.

27 **TUSHAR MEHTA:** That I did not know, My Lord. Dr. Ambedkar was the first Law Minister.

28 **CHIEF JUSTICE B. R. GAVAI:** Dr. P.S. Deshmukh was the first Agriculture Minister.

29 **TUSHAR MEHTA:** And the first lady was Rajkumari Amrit Kaur first, I think, Education
30 Minister.

1 **R. VENKATARAMANI, ATTORNEY GENERAL:** Kamath was called *enfant terrible*.
 2 He's called *enfant terrible*, a French word, the terrible infant.

3 **TUSHAR MEHTA:** My Lord, then the President says that, "Would Dr. Ambedkar like to say
 4 something on this?" Then, My Lord, many a times, Dr. Ambedkar appears to be frustrated *ki*
 5 now nothing more is to be required to be said. My Lord, this is one of that line. "No, sir, I do
 6 not think any reply is necessary." Then President, then he puts it to vote. Then Mr. President,
 7 My Lord, the bold part, "There is one Amendment left over that is so-and-so moved by Dr.
 8 Ambedkar. There is an amendment to it moved by Dr. Naziruddin Ahmad. I would first put
 9 Mr. Naziruddin Ahmad's Amendment to vote that in Amendment number so-and-so of the list
 10 of Amendments in the proviso to Article 91 for the proposed words 'possible', the words
 11 'maybe' be substituted. Amendment negative." The President, "Now, I put Amendment 1685
 12 that in the proviso to Article 91 for the words 'not later than six weeks', the word 'as soon as
 13 possible' be substituted. The Amendment accepted."

14 And this is now, My Lord, page 125 bottom, at page 126 is the Constitution 111. I'll read it, My
 15 Lord. This is what we have right now, My Lord. "When a Bill has been passed by the House of
 16 Parliament, it shall be presented to the President, and the President shall declare either that
 17 he assents to the Bill or that he withholds assent therefrom." So both the options and only two
 18 options are given because he has no option of referring to anybody above him. He's at the peak
 19 of the Constitutional Framework. "Provided that the President may as soon as possible after
 20 presentation to him of a Bill of assent, return the Bill, if it is not a Money Bill, to the Houses
 21 with a message requesting that they will reconsider the Bill or any specified provisions thereof,
 22 and in particular, will consider the desirability of introducing any such Amendments as he
 23 may recommend in his message. And when a Bill is so returned, the House shall reconsider
 24 the Bill accordingly. And if the Bill is passed again by the Houses with or without Amendment
 25 and presented to the President for assent, the President shall not withhold assent therefrom."
 26 So power of assent, power of withholding.

27 **CHIEF JUSTICE B. R. GAVAI:** So the discussion appears to be that it has to be done within
 28 a reasonable period?

29 **TUSHAR MEHTA:** As far as possible, yes. Correct.

30 **CHIEF JUSTICE B. R. GAVAI:** As soon as possible, so.

31 **TUSHAR MEHTA:** I may again, My Lord...

1 **CHIEF JUSTICE B. R. GAVAI:** Some of the... because they thought that even a six weeks
2 period is longer and therefore....

3 **TUSHAR MEHTA:** No, no. Don't bind him down, that is the idea.

4 **CHIEF JUSTICE B. R. GAVAI:** So therefore, one of the Honourable Members suggested
5 that as soon as possible, but not later than six weeks.

6 **TUSHAR MEHTA:** That was original. Kindly have a look.

7 **CHIEF JUSTICE B. R. GAVAI:** No original was... originally, it was within a period of six
8 weeks. Then Dr. Ambedkar recommended... Dr. Ambedkar suggested an Amendment, instead
9 of six weeks, as soon as possible. So when there was a discussion on these two words, one of
10 the Honourable Members said that the better word would be 'as soon as possible, but not
11 greater than six weeks.'

12 **TUSHAR MEHTA:** So, in either of the cases, the President was being bound by one
13 Constitutional provision in terms of time limit. And that was, My Lord, in my submission,
14 consciously given up that there cannot be any time limit which binds the President of India for
15 doing something. My Lord, again at the cost of repetition, if Your Lordships examine the
16 interpretation based upon a few instances which Your Lordships asked me...

17 **CHIEF JUSTICE B. R. GAVAI:** No, no. We are not on the instances. We are not on the
18 speeches. Because we can take into consideration the debates in the Constituent Assembly
19 while interpreting the provisions.

20 **TUSHAR MEHTA:** Certainly, certainly, My Lord. There's no doubt about it.

21 **JUSTICE VIKRAM NATH:** Not later than six weeks was set by the Drafting Committee
22 originally.

23 **CHIEF JUSTICE B. R. GAVAI:** Originally, and not come to...

24 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Or else we can lean into expression
25 'as soon as possible' by the Drafting Committee.

26 **CHIEF JUSTICE B. R. GAVAI:** Dr. B.N. Rau did not push for it. The drafting would be for
27 six weeks.

28 **TUSHAR MEHTA:** Right now, I am not on the contentions.

1 **JUSTICE VIKRAM NATH:** B.N. Rau also said 'not later than six weeks.'

2 **CHIEF JUSTICE B. R. GAVAI:** Yes. So then that was... that was done by the Drafting
3 Committee. And Dr. Ambedkar suggested an Amendment.

4 **TUSHAR MEHTA:** The point is now we have made it three months. The point is now we
5 have made it three months.

6 **JUSTICE SURYA KANT:** Now we have made it three months?

7 **TUSHAR MEHTA:** I leave it at that, My Lord. But please, again, My Lord, do not feel in Your
8 Lordships' mind that Your Lordship are deciding some extraordinary or exceptional cases.
9 That's not the purpose of this reference. The reference will have to be decided every President,
10 every Governor will do their duty in right earnest, within the right time and at an appropriate
11 stage. But he cannot be bound even by the Constitutional Framers by a particular time limit.
12 That's the point.

13 Now, My Lord, Section 74. My Lord, 74 is the Council of Ministers. My Lord, something would
14 turn on this, therefore, a history would be necessary. Council of Ministers in the...

15 **JUSTICE SURYA KANT:** So the other significant addition that ultimately came out in this
16 provision was if you go by the original 76 at page 122....

17 **TUSHAR MEHTA:** Yes, My Lords.

18 **JUSTICE SURYA KANT:** Where this 'not later than six weeks' were there?

19 **TUSHAR MEHTA:** Yes, My Lord.

20 **JUSTICE SURYA KANT:** At that time, there was no provision that the President gives an
21 opinion and desire that the House should reconsider. After that reconsideration, what will
22 happen?

23 **TUSHAR MEHTA:** The consequence was not provided.

24 **JUSTICE SURYA KANT:** So that suggestion first time comes from Lokanath Misra, page
25 number...

26 **TUSHAR MEHTA:** As a Second Amendment which is accepted.

27 **JUSTICE SURYA KANT:** And then Begum Rasul, she also pleaded.

1 **TUSHAR MEHTA:** My Lord, I'll read Begum Rasul. I thought, Begum Rasul, it may not, but
2 I must read it. I'm sorry.

3 **JUSTICE SURYA KANT:** It's worth reading that because then ultimately it is incorporated.

4 **TUSHAR MEHTA:** Yes. My apologies to Your Lordships. My Lord, kindly come to page 124.
5 My Lord, I thought it...

6 **JUSTICE SURYA KANT:** The context that after the President's opinion has been
7 considered by the House, accepted or rejected, then there is no choice, but to...

8 **TUSHAR MEHTA:** No choice. I'm, My Lord, saying that. I am not arguing against that
9 proposition. President of India... that's not a suggestion even at the end of my submissions.
10 The Honourable President has right, (a) to either straightway give his assent or withhold the
11 assent. And I'll show, My Lord, what is the meaning of the term, 'withholding the assent'. But
12 if he chooses the third option of returning it to the House, whether House accepts his message,
13 recommendation, suggestion, amendment or not and returns it back, he has no option, he
14 cannot withhold. He has to assent the Bill.

15 I'm making it very clear, and there is no, My Lord, ambiguity on that. Please see, My Lord,
16 what Begum Aizaz Rasul said. "That in Article 91, after the first proviso, the following second
17 proviso be added. Provided further that if after the President has declared that he withholds
18 assent from the Bill or has returned the Bill with a request for reconsideration of the Bill or of
19 a specified provision thereof or of any amendment by him, the Houses of Parliament should
20 after reconsideration of his recommendations pass the bill again with or without an
21 Amendment, and return it to him for his assent, he shall not withhold his assent therefrom.

22 Sir, the present provision in Article 91 provides for the action that the President has to take
23 presumably on the first presentation of a Bill. But it does not make it clear that what should
24 be procedure if a Bill is returned to the President without accepting any of the
25 recommendations. As My Lords have said, 74 is silent of that consequence. Does it mean that
26 he can again return the Bill to Parliament for reconsideration of his Amendments? This will
27 mean unnecessary delay and will mean that the Bill can be returned to Parliament more than
28 once. My object in moving this Amendment is to do away with this ambiguity and to make it
29 clear that the President can return the bill to Parliament with his suggestions once only. But if
30 the Parliament does not agree to the Amendments that are suggested by him and returns the
31 Bill to him, he should not in that case return the bill a second time for the reconsideration of
32 Parliament.

1 In the House of Commons, any bills which has been passed twice by the House of Commons
 2 automatically becomes law even if the House of Lords disagrees. In the same manner in USA,
 3 a bill becomes an Act even if the President vetoes it provided it is passed by two-third majority
 4 of the Congress. Such provision should be made here in this Article also, so that unnecessary
 5 delay may not take place. With these words, I move the Amendment." This is accepted. My
 6 Lords are right, and I should have read it, My Lord.

7 Now, My Lord, kindly come to page 126. My Lord, we are now on Article 74. That is "There
 8 shall be aid and advice of the Council of Ministers". My Lord, please have a look at what was
 9 the position in 1935. My Lord, this came for the first time. It was not there in 1990. This has
 10 come in 1935. "There shall be a Council of Ministers not exceeding ten in number to aid and
 11 advise the Governor General in the exercise of his functions, except insofar as he is, by or under
 12 this Act, required to exercise his functions, or any of them, in his discretion". This was there.
 13 Correct, My Lords? "Provided that nothing in this subsection shall be construed as preventing
 14 the Governor General from exercising his individual judgement, in any case where, by or under
 15 this Act, he is required so to do." Under this Act, My Lord. Now this has gone, My Lord. I'll
 16 come a little later.

17 "The Governor General, in his discretion, may preside at meetings of the Council of Ministers.
 18 If any question arises, whether any matter is or is not a matter, as to respects which the
 19 Governor General is, by or under this Act, required to act in his discretion, or to exercise his
 20 individual judgement, the decision of the Governor General in his discretion shall be final. And
 21 the validity of anything done by the Governor General shall not be called in question on the
 22 ground that he ought to have... ought or ought not to have acted in his discretion or ought not
 23 to have exercised his individual judgement."

24 My Lord, thereafter, the first Draft is prepared. And Article 55 of the First Draft, My Lord. My
 25 Lord, there were two... orally I'll point out. There were two committees constituted. One was
 26 Union Committee within the Constituent Assembly. Another was Provinces Committee. Union
 27 Committee was headed by Pandit Jawaharlal Nehruji. And Provincial Committee was headed
 28 by Sardar Vallabhbhai Patelji. And they both, My Lord, Nehruji decided the All India structure
 29 and Sardar Patel's Committee... not decided, My Lord. They recommended how the states...
 30 and they used to be known as provinces, how the states would function as a part of the overall
 31 federal setup which we have envisaged. It's not a federal setup, My Lord, as understood in
 32 America that every state is, as such, independent with its own Supreme Court, etc. We have a
 33 different...

34 **CHIEF JUSTICE B. R. GAVAI:** Its own Constitution also.

TUSHAR MEHTA: Its own Constitution, the Governor is the Chief, My Lord, in American states. We have, My Lord, a different collaborative kind of a Federal Constitution. Now when Mr. B.N. Rau prepared Section 55 is his, My Lord, function... is his version. "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in exercise of his functions." After a detailed scrutiny, My Lord, now draft... I'm skipping reading. 61 is what the Drafting Committee drafted. 61, My Lord, at page 127, Your Lordships have it? "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions."

Your Lordships would notice the discretion, exercise of discretion, exercise of powers in his judgement, which was there earlier with the Governor General, is now not available with the President of India. He is supposed to exercise the powers as per aid and advice of the Council of Ministers. "The question whether any, and if so, what advice was tendered by ministers to the President, shall not be enquired into in any Court." Please mark this, My Lord. This is the sanctity given to the Minister-President advice that it is immune from examination, even by the Courts. My Lord, there are provisions made under the Constitution where some of the Executive Acts and Legislative Acts or *quasi* Legislative Acts are made immune from the scrutiny of the Court. That's the balance, My Lord, of separation of powers, which I'll ultimately, My Lord, assist Your Lordships with.

CHIEF JUSTICE B. R. GAVAI: Ninth Schedule.

TUSHAR MEHTA: Yes. My Lord, other than Ninth Schedule also, there are certain issues where the Constitution bars any judicial scrutiny. That's, My Lord, the fundamental principle. Then, My Lord, how this was debated... yes. This is how, My Lord, this Article was debated in the Constituent Assembly. Mr. Mohammad Tahir, "Mr. Vice President, sir, I beg to move that at the end of Clause 1 of Article 61, the following be inserted, except insofar as he is, by or under this Constitution, required to exercise his function or any of them in his discretion". My Lord, there was a suggestion that the discretion, which is taken away from 1935 Act, should be restored. "If this Amendment is accepted, then the Article would read thus". My Lord, I'll skip that.

"Now, my second Amendment is as follows, that the following new clause be inserted after Clause 1 of Article 61". Article 61 is, My Lord, precursor to Article 74, present Article 74. "And the existing Clause 2 be renumbered as Clause 3. If any question arises whether any matter is or not a matter as respects... in respects which the President is by or under this Constitution required to act in his discretion, the decision of the President in his discretion shall be final.

1 And the validity of anything done by the President shall not be called in question on the ground
2 that he ought or ought not to have acted in his discretion."

3 Again, My Lord, restoring the position of 1935 Act. The Governor General had this discretion.
4 And that discretion will not be called in question was sought to be amended, My Lord, or
5 suggested to be amended while framing the Article. "In moving these Amendments, I want the
6 President of India, although he is a nominal President in the words of my Honourable Friend,
7 Mr. Kamath..." My Lord, kindly pause here for a minute. Mr. Kamath always says, he is a
8 nominal President. And rest of the... My Lord, including Dr. Ambedkar, they say that this is a
9 different indirect election method we have adopted. Unlike the Queen or King, he is not a
10 Successor. He doesn't get his office by succession. He is an elected person, elected by indirect
11 representation of not only the Parliament, both the Houses of Parliament, but even the State
12 Legislatures. So he represents the legislative and democratic will and mandate of the entire
13 nation by way of an indirect election. Unlike in USA, where there is a direct election of the
14 President. But Mr. Kamath has chosen to, My Lord, describe the Honourable President....

15 **CHIEF JUSTICE B. R. GAVAI:** You're comparing him with an American President?

16 **TUSHAR MEHTA:** Yes.

17 **CHIEF JUSTICE B. R. GAVAI:** Yeah because an American President, all the powers are
18 vested to the American President.

19 **TUSHAR MEHTA:** Yes.

20 **CHIEF JUSTICE B. R. GAVAI:** Here, the President has to act...

21 **TUSHAR MEHTA:** On the aid and advice.

22 **CHIEF JUSTICE B. R. GAVAI:** Only on the basis of the aid and advice of the Council of
23 Ministers. So, the difference would be in that context.

24 **TUSHAR MEHTA:** Yes, My Lord. But he says, it is a nominal President. He always, My
25 Lord... I don't wish to go into it because it's not necessary, but he always found that he is not
26 an elected person. He's not an elected person. That's how he understood it. And My Lord, it
27 would come somewhere in the debate that he is an elected person. He represents the will of
28 the nation, maybe by way of an indirect election. I elect my MP and my MP elects the President
29 of India. He represents me.

30 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's why we are a Republic.

1 **TUSHAR MEHTA:** Pardon, sir?

2 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's the reason why we call
3 ourselves a Republic.

4 **TUSHAR MEHTA:** Yes, exactly, My Lord. That's the very heart and soul of the term
5 Republic. "In moving these Amendments, I want that the President of India, although he's a
6 nominal President, in the words of my Honourable Friend, Mr. Kamath, still I want that the
7 President should not be tied down all around. At least, this House should be generous enough
8 to give him the freedom of using his discretionary powers. In introducing this exception, I
9 would submit that it is not a novel exception. If you will be pleased to look at Article 143 of the
10 Draft Constitution, you will find that the same exception has been allowed in respect of
11 Governors and the Ministers of State."

12 The Governors still continue to have this discretion. And there is a debate, why this discretion
13 is conferred on the Governor. That is the essence of the Federalism, My Lord, which has a
14 unitary tilt. But at the same time, the Governor is supposed to exercise certain other functions,
15 My Lord. And therefore, that discretion continues with the Governor. "When the Governor of
16 the States have been given power to exercise certain powers in their discretion, I do not see
17 any reason why this innocent power should not be granted to the President of India. I need to
18 make any... I need not make any long speech in this connection. I close my speech with the
19 hope that my Honourable Friend, Dr. Ambedkar will consider this question seriously and
20 decide in favour of my Amendments." Then, My Lord, amendment is negative. So discretion
21 does not remain now in Article 74.

22 So, My Lord, this Amendment suggested earlier was there in 1935, not there in the Draft
23 Article, sought to be inserted and not conferred. Now, My Lord, Final Draft as it stands today,
24 "There shall be a..." My Lord, on page 128. "There shall be a Council of Ministers with the
25 Prime Minister at the head to aid and advice the President, who shall, in exercise of his
26 functions, act in accordance with such advice, provided that the President may require the
27 Council of Ministers to reconsider such advice, either generally or otherwise, and the President
28 shall act in accordance with the advice tendered after such reconsideration." So he can send it
29 once, but if it comes back from the Council, he is bound. "The question whether any, and if so,
30 what advice was tendered by the Ministers to the President, shall not be inquired into in any
31 Court." My Lord, again, a Constitutional bar against any judicial oversight.

32 Now, My Lord, Article 155. My Lord, this is Appointment of the Governor.

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Insofar as the President is concerned,
 2 the only instance where for a long time Bill was pending is perhaps the Postal Bill during Zail
 3 Singh.

4 **TUSHAR MEHTA:** Your Lordships are right.

5 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It was delayed for a long time.

6 **TUSHAR MEHTA:** Yes, My Lord. My Lord, some of the Bills were withheld right from our
 7 entire journey from '47 onwards. 20, 30 Bills are withheld. But when we see, we find that they
 8 were rightly withheld. For example, one Bill was that in State of... I'll not name the State. My
 9 Lord, in one State, the Assembly passed an Act that before registering yourself in the
 10 Employment Exchange, you have to take permission of the State. And you have to be a
 11 Member... a man of that State, resident or...

12 **CHIEF JUSTICE B. R. GAVAI:** Domicile.

13 **TUSHAR MEHTA:** Yeah, domicile of that State. So, the President said, you can't do this. So
 14 there were several... few instances, My Lord, but where Bills were withheld. But as, My Lord,
 15 Justice Narasimha says, the longest period was the Postal Bill. And it has its own history, My
 16 Lord. I will not go into it, My Lord, but some good justification. Years back, My Lord. It's not
 17 a current...

18 **CHIEF JUSTICE B. R. GAVAI:** Lip reading.

19 **TUSHAR MEHTA:** No, I am not trying... I don't know, My Lord. Therefore, I'm not trying.

20 **KAPIL SIBAL:** You seem to have learnt that art.

21 **TUSHAR MEHTA:** Now, My Lord, comes Article 155. I'll take some time, My Lord. I'm not
 22 repeating. Your Lordships would have...

23 **CHIEF JUSTICE B. R. GAVAI:** No, we are not saying so. My Learned Brother asks because
 24 there are only seven minutes left.

25 **TUSHAR MEHTA:** My Lord, the next point is an important point. Can I start tomorrow?

26 **CHIEF JUSTICE B. R. GAVAI:** That's what...

1 **TUSHAR MEHTA:** Because 155 is Appointment of the Governor. What is the significance?
2 What is the role envisaged? What is the responsibility he is expected to play.

3 **JUSTICE VIKRAM NATH:** We understood your desire and so accordingly you can continue
4 tomorrow.

5 **CHIEF JUSTICE B. R. GAVAI:** We also have now to do some other work now for at least
6 the next three hours.

7 **TUSHAR MEHTA:** Yes, yes. Your Lordships need not read this. Otherwise, My Lord, it
8 would be very boring. I am going to read this.

9 **CHIEF JUSTICE B. R. GAVAI:** No, no. We are having... at least three of us are having some
10 other duties.

11 **TUSHAR MEHTA:** I leave it to Your Lordships, but in a Presidential reference except State
12 in, My Lord...

13 **CHIEF JUSTICE B. R. GAVAI:** We have given the deadline. You should have filed, final to
14 that. If necessarily, we will hear you.

15 **TUSHAR MEHTA:** Grateful, My Lord.

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END OF DAY'S PROCEEDINGS