

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

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TUSHAR MEHTA: Please Your Lordship. My Lord, I have taken instructions. My Lord, out of all the questions, My Lord, two questions, My Lord, I was to take instructions: (a) whether a writ petition would lie at the behest of the State Government under Article 32 read with 226. And second, the scope and ambit of Article 361 in the context in which Your Lordships are My Lord, are examining the issue. My Lord, the Hon'ble President would like Your Lordships opinion on that, My Lords. And there are reasons. Your Lordships are aware the opinion will be requested when a question has arisen, or, when a question is likely to arise. My Lord, these are the two contingencies under which My Lord, *inter alia*, the Hon'ble President can My Lord, seek Your Lordship's opinion on that. Please have a look at My Lord, how this question has arisen, but will definitely arise. And I'm showing the view in **Tamil Nadu**, My Lord. I am conscious, it's not an intra court appeal, but it's a view decided and legal view, Your Lordships can, as held in the **2G** case interfere with. My Lord, please have a look at My Lord first, page 12509, Volume 5.31. We, My Lord, examined this. We went to this...

CHIEF JUSTICE B. R. GAVAI: So, the question is whether a petition under Article 32?

TUSHAR MEHTA: 32 or 226 would be maintainable in the context of the power or function, My Lord. Power is a little harsher word. Function exercised respectively by the Hon'ble President of India and Hon'ble Governor under Article 111, Article 200, and Article 201 of the Constitution of India.

CHIEF JUSTICE B. R. GAVAI: An exercise by President or Governor?

TUSHAR MEHTA: Governor respectively, under Article 111 and 201 and by the Governor under Article 200, This My Lord, was not... My Lord, none of us assisted Your Lordships on this, and I'm the only one My Lord, who is going to make submissions on this. Others My Lord would not trouble Your Lordships on this.

JUSTICE VIKRAM NATH: What is the page that you have referred to just now?

TUSHAR MEHTA: 12509, Para 367. My Lord, PDF would be 336 in that Volume, My Lord.

JUSTICE VIKRAM NATH: Paragraph 367?

TUSHAR MEHTA: 367. The hon'ble bench is pleased to summarize the conclusions. Kindly come to (a). Because this will have to be examined, My Lord. Otherwise, My Lord, questions

will keep on arising, which question is already put for Your Lordships kind opinion. Your Lordships, may I read, My Lord? (a). "Where the Governor reserves a Bill for the consideration of the President in his own discretion and contrary to the aid and advice tendered by him by the State Council of Ministers. It shall be open to the State Government to assail such an action before the appropriate High Court or this court. Such a challenge can broadly be made on the following grounds." So first, it can be a 32, it can be a 226 petition, and these are the grounds. Please read. "Where the reservation is on the ground that the Bill is of a description falling under the second proviso to Article 200, it may be assailed on the ground that the Bill or any provision thereof, does not so derogate from the powers of the High Court, so as to endanger the position which the court is designed by the Constitution to fill. The Governor while reserving a Bill on this count shall be expected to provide clear reasons and also point to the specific provisions of the Bill, which, in his opinion, attract the Second Proviso." This is My Lord, a difficult part. This question, being purely of a legal nature, would be completely justiciable. My Lord, meaning thereby the view, the legal view is whichever is legal question is justiciable question. I'll come to that, My Lords.

"And the competent court would be, after a proper adjudication, fully authorized to approve or disapprove such reservation by the Governor. If such a challenge finds favour with the competent court, then, subject to other considerations, it would be a fit case for the issuance of a writ, in the nature of mandamus to the Governor for appropriate action." I'll come to that, whether a writ would lie against the Governor under the scheme of the Constitution. When Your Lordship examines Governor's function or exercise of power under 356, Presidential Rule, failure of law and order. Article 356 provides for a contingency that if there is a failure of law and order.

CHIEF JUSTICE B. R. GAVAI: Conditions on which the power can be exercised?

TUSHAR MEHTA: Power can be exercised. And Your Lordships would not be issuing a mandamus to the Governor. Your Lordships would be setting aside the order whereby the President's rule was imposed. My Lord further. Then (ii), "Where the reservation is on account of the Bill attracting any provision of the Constitution where is the assent of the President is a condition precedent for the proper enactment and enforceability of such a Bill as a law. Such as under Article 364(a)(2), or the purpose of securing any immunity or overcoming any repugnancy that may exist *qua* a Central Legislation. Then the Governor is expected to make a specific and clear reference to the President properly indicating the reasons for such reservation and inviting his attention", that is, President's attention, "as described in ***Kaiser-e-Hind***. Such a reservation can be assailed by the State Government if the reference made by the Governor either fails to indicate the reasons for such reservation as discussed above, or"

1 please mark "the reasons indicated are wholly irrelevant, *mala fide*, arbitrary, unnecessary or
 2 motivated by extraneous considerations." So not only petition would lie, petition would lie on
 3 these grounds. And when petition is filed, these are the considerations even unnecessary, that
 4 it was not necessary. We feel it was not necessary. So we substitute our decision to that of the
 5 Governor and direct the Governor by a writ of mandamus. Further, "then such a reservation
 6 would be liable to be set aside. This question being purely a legal nature would be completely
 7 justiciable and the competent court would be after a proper adjudication fully authorized to
 8 approve or disapprove of such a reservation by the Governor." Meaning thereby again law is,
 9 if something is legal it is justiciable. "If such a challenge finds favour with the competent court,
 10 then subject to any other any considerations it would be a fit case for issuance of a writ in the
 11 nature of mandamus to the Governor for appropriate action." So My Lord, it is kind of an
 12 advanced ruling.

13 Now kindly see 12578. My Lord, I'm sorry. 12513, kindly see. 12513. There is a time limit
 14 prescribed. And kindly see 12513 (V). Does My Lord Justice Narasimha gets, My Lords get?
 15 "Where the Governor exhibits inaction in making a decision when a Bill is presented to him
 16 for assent under Article 200 and such inaction exceeds the time limit as has been prescribed
 17 by us in para 250 of this judgment, then it shall be open to the State Government to seek a writ
 18 of mandamus from a competent court against the Governor directing expeditious decision on
 19 the concerned Bill as is the mandate of the Constitution. However, it is clarified that Governor
 20 may successfully resist such a challenge on providing sufficient explanation for the delay
 21 caused." My Lord, Governor can't even be called upon. Here, in substance, the court doesn't
 22 use the way in which I am describing it that, Mr. President, you decide within three months.
 23 You better give your reasons. I have shown that. And the State Government, if she doesn't do
 24 it, come to us. That My Lord, with profound respect, is not the Constitutional scheme. (a), 32
 25 does not lie, (2) mandamus cannot be issued and (3) it is not justiciable. Every question which
 26 is legal is not justiciable. Now, come to page 12578.

27 And My Lord, this will have a far-reaching ramification. Therefore, My Lord, after considered
 28 debate at our end, the Hon'ble President decided that it's better that we know what is the legal
 29 position, and therefore, we must request for the opinion of Your Lordships. 12578 para A(I).
 30 These are also the penultimate... These are the final directions. "Where the reservation is on
 31 the ground that the Bill is of a description falling under..." That is My Lord, the same thing,
 32 and I'll not... Same conclusions, My Lord, are repeated, in the final chapter, My Lord. I'll just
 33 place my short note. I can assure Your Lordships, I'll not read everything. My copies are given.
 34 I have prepared this. It would be Volume 1.8. Volume 1 should have been the learned Attorney
 35 General's volume, but since mine was filed first in point of time, the numbering is accordingly
 36 given.

I'll just broadly indicate and read only those paras which would assist Your Lordships directly. Everything is there for Your Lordships to consider, and everything will assist Your Lordships. But considering that I am raising this issue with Your Lordship's permission at the end, and nobody else is going to raise this issue. This is our collective work, My Lord, which I'm presenting before Your Lordships. First, whether a writ petition under Article 32 would lie at the behest of the State Government? There are two objections and based upon which, My Lord, we request Your Lordship's opinion whether Your Lordships would entrust or empower the State Government to file a writ petition because you have to seek source of your right. This is the court given right that 'you, all right, you come to us'. There are two objections. (a). 32 lies when there is a violation of fundamental rights, and the State Government, as a constitutionally formed body *per se*, cannot have fundamental rights. It may represent fundamental rights of others, but otherwise, the scheme of the Constitution is, State Government is repository of functions, which is to protect the fundamental rights of everyone. Similar question arose, even by an individual. What happened was, the House was provoked by the Speaker which was illegal, and one member of Parliament approached Your Lordships under Article 32 of the Constitution, and the question squarely arose whether a 32 petition would lie? Please come to page 3 of my note, the bottom is the pagination. Your Lordships may bear one factor in mind, My Lord. Kindly, this was highlighted, but I feel it could not be highlighted as much as we wanted to highlight it. My Lord, there are chapters under the Constitution. Your Lordships would find Article 200 in the chapter which starts with "Legislative Procedure". Please come to 196, Article 196. 196, just above that heading My Lords. 196, "Provisions as to introduction and passing of the Bills". I'm not reading it. "The legislative process starts with introduction of the Bill". Obviously, it's a part of the legislative process. Then it goes up to Article 200. "The legislative process culminates, ends when the Government... Governor discharges one of his choices out of the four, or the Hon'ble President on being reserved, exercised the choices under Article 201." So, Article 196 to 201 is a part of the legislative process. It has as much sanctity as proceedings in the House.

And thereafter, the new chapter starts. Procedure in financial matters. When a Bill is involving issues with regard to financial Bill, etc., etc. So, My Lord, my first respectful submission for Your Lordships assistance is, that it is a part of a legislative process, and the question would be 'can any part of it be subjected to writ jurisdiction on the ground that fundamental rights are violated?' Please have a look at page 721. The bottom pagination internal is three. **Ramdas Athawale vs Union of India**. It was held that the validity of the speaker's decision adjourning the House *sine die* and later directing to reserve...

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

1 **TUSHAR MEHTA:** My Lord, I'm sorry. Page 721. My note. Top pagination is 721.

2 **CHIEF JUSTICE B. R. GAVAI:** *Ramdas Athawale*?

3 **TUSHAR MEHTA:** *Ramdas Athawale*. Yes, My Lords. "It was held that the validity of
4 the Speaker's decision adjourning the House, *sine die* and later directing to resume its sittings,
5 cannot be inquired into on the ground of irregularity of procedure." The relevant paragraphs
6 reads as under, "it is equally well settled that Article 32 of the Constitution guarantees the right
7 to a constitutional remedy and relates only to the enforcement of the right conferred by part
8 three of the Constitution. And unless a question of enforcement of a fundamental right arises,
9 Article 32 does not apply. It is well settled that no petition under Article 32 is maintainable
10 unless it is shown that the Petitioner has some fundamental right. In so and so versus so and
11 so, this court has made a pertinent observation that when a person complains and claims that
12 there is violation of law, it does not automatically involve breach of fundamental right." My
13 Lord, similar judgment is My Lord, I'm not My Lord, reading it, but where they say even
14 private party cannot come directly to the court under 32, that there is a violation of law because
15 you will have to show...

16 **CHIEF JUSTICE B. R. GAVAI:** Unless there is a violation?

17 **TUSHAR MEHTA:** Violation of fundamental rights. My Lords, kindly see, one provision of
18 a Constitution can bar jurisdiction the High Court or the Supreme Court in another provision
19 of the same Constitution. My Lord, that question arose when State of Karnataka came here in
20 a 32 petition with regard to water dispute. And this Hon'ble Court was pleased to say that we
21 have a separate Article, Article 262, who are dealing with intra-state water disputes. And
22 therefore, you cannot come under 32. My Lord, please come to 722. My Lord, I am also saying,
23 131 would also not apply, but I would My Lord, I would come at the end.

24 My Lord, please see. This is *Atmaling Reddy vs Union of India*. Where, he was a man
25 My Lord, according to, it appears sponsored by, not sponsored, but put up by the state. "Article
26 131 of the Constitution, which enables the Central Government or a State Government to
27 institute a suit in this court on its original side in certain cases also cannot be invoked in
28 interstate water disputes in view of Section 11 of the act. In other words, the provisions of
29 Article 131 of the Constitution have to be construed harmoniously subject to provisions of
30 Article 262 of the Constitution. A petition under Article 32, hence, cannot be entertained by
31 this Court." My Lord, this is only for the limited purpose that one constitutional provision can
32 also bar jurisdiction under Article 32.

Now, My Lords may kindly come to para 7. My Lord, the possible argument that we are coming here in a representative capacity because we represent the people. It's a quite possible argument and a permissible argument. They do represent the wish of the people. But question is, would that entitle them to invoke Your Lordships jurisdiction under Article 32 of the Constitution? Because, as I have already said, the solution lies elsewhere. 32 would not be maintainable. I am only on maintainability. Please have a look at My Lord Para 7. "It is submitted that Article 32 is a remedial provision meant for enforcement of fundamental rights under Part 3. A state is itself the state within the meaning of Article 12 and is the bearer of constitutional duties, not the holder of Part 3 rights. Therefore, a state cannot maintain a petition under 32. For the same reason a state cannot use 32 to litigate fundamental rights in a representative capacity. Article 32 requires the petitioner's own Part 3 right to be in issue." That's how article is worded. That Petitioners fundamental right. Your Lordships have exempted this only when the concerned Petitioner is unable to approach, My Lord, workers.

CHIEF JUSTICE B. R. GAVAI: On account of social and economic feasibility?

TUSHAR MEHTA: Economic and not to the Government. Government cannot come. It's the duty of the Government to protect them. Some non-governmental organization comes, some individual in a representative capacity comes. Now, please come to My Lord directly page 725. I have cited judgments, My Lord. I'm not reading them, relevant part is highlighted.

Yes. 725. My Lord, I have said, that kindly... I'll read para 13. "In view of the above State, which does not have any fundamental rights cannot file a petition under Article 32 for any purpose whatsoever. Permitting States to file Article 32 would amount to turning the scheme of Part 3, on its head. The Centre-State relationship is governed by Part 9, 10, 11, 12, and 13 of the Constitution. The disputes between the Governments are dealt with in Article 131 of the Constitution. A State Government or even the Central Government cannot invoke Article 32." This would be very, very relevant, kindly imagine a converse situation. There is a law and order situation in one particular state, and such instances have arisen. I'm not giving a hypothetical example, but without naming the state, where there is eruption of violence. The local police is unable to contain violence, either because of inefficiency or because of inadequacy of the force or for various other reasons. And if the Central Government says, and which it can say under the Constitution, that you deploy paramilitary forces for protecting the fundamental rights of the citizens and the state refuses to do that. I am putting a question to myself, can the Central Government file a petition under Article 32 seeking a direction of Your Lordships directing the State Government to deploy paramilitary forces? My answer would be in the negative. It cannot be done.

1 **CHIEF JUSTICE B. R. GAVAI:** But nobody's told...

2 **TUSHAR MEHTA:** No, he is rejecting my submission. So I'm saying please don't do that.
3 You will oppose every submission, but not now. That's simultaneous.

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

5 **TUSHAR MEHTA:** He can never disturb me without my consent. I refuse to be disturbed.
6 Page 175. Bottom, My Lord...

7 **CHIEF JUSTICE B. R. GAVAI:** Why are you getting disturbed? You can't be disturbed.

8 **TUSHAR MEHTA:** No, I'm just telling him that please don't do this. 725, My Lord. This is
9 American Law, which I generally do not cite, but please have a look at this and therefore, I
10 have not quoted *in extenso*.

11 **CHIEF JUSTICE B. R. GAVAI:** Para?

12 **TUSHAR MEHTA:** At the footnote, footnote of page 725. "In American Constitution Law, it
13 is settled law that the States cannot assert the rights of their citizens as *parens patriae* and
14 approach the Hon'ble Supreme Court of the United States under its original jurisdiction, when
15 the Defendant is the Federal Government." My Lord, States, there are quite independent. It's
16 not a part of a federal whole. They have their Constitution. They have their separate flags. They
17 have their separate Supreme Court. They say that these are federal issues between the State
18 and the Centre, and we would not, kind of work as a Headmaster between two fighting
19 students. My Lord, in Main Submissions, I ignored that, but we have cited American cases also
20 that where the federalism is of a different nature. There were questions of deployment of forces
21 in American Courts, but they say that you cannot come to the Supreme Court for this. These
22 are federal issues decided politically. We would steer away from such issues being examined
23 at the judicial level. Now, My Lord, para 17, I have said. I'll orally paraphrase, My Lord. I'll not
24 read it. I am coming now to Article 226. What would Article 226 entitle or empower the High
25 Court to do? And let us examine each. Writ of habeas corpus, no question in the facts of the
26 case. Writ of certiorari, it applies to Tribunals, *quasi-judicial* bodies et cetera. Writ of
27 prohibition, when some statutory authority is discharging some function or constitutional
28 authority is discharging some statutory function, non-constitutional function, in a manner
29 which it should not, then he will be prohibited. The question cannot arise in the context of
30 Article 111, 200 and 201. *Quo warranto* is not a situation, then only remedy left is mandamus.
31 Now, kindly examine a situation, and take each of the options available to the Governor. If he
32 grants assent, can someone who is aggrieved by grant of assent, State would not be aggrieved.

1 But someone aggrieved by grant of assent, can he challenge before Your Lordships? And can
2 High Court issue a mandamus that assent is bad because then, you are examining a law...

3 **CHIEF JUSTICE B. R. GAVAI:** No, that is a totally different situation...

4 **TUSHAR MEHTA:** Then you will...

5 **CHIEF JUSTICE B. R. GAVAI:** Because after the assent is granted, the law stands enacted.

6 **TUSHAR MEHTA:** So, the law will be challenged, not the assent.

7 **CHIEF JUSTICE B. R. GAVAI:** So, the validity of the law can be challenged on the ground
8 parameter available to you?

9 **TUSHAR MEHTA:** Correct.

10 **CHIEF JUSTICE B. R. GAVAI:** But that's a different situation. But the question is when
11 the Governor, when the unknown Governor sits for a Bill passed by Legislature, and maybe on
12 the second occasion also, can we just sit on, for time immemorable?

13 **TUSHAR MEHTA:** I have already argued that My Lord, because justification will not confer
14 jurisdiction. If it is not justiciable, it is not justiciable. And therefore, please, My Lord at the
15 cost of repetition, I'm urging. Few facts which are, My Lord, only few facts are before Your
16 Lordships. They chose not to undertake any political process. Otherwise, every State does.

17 **CHIEF JUSTICE B. R. GAVAI:** Because the Constitution, they would show that earlier
18 before as soon as possible. The word used was, 'within six weeks'.

19 **TUSHAR MEHTA:** Correct, in the proviso.

20 **CHIEF JUSTICE B. R. GAVAI:** And thereafter, one of the Hon'ble Members suggested...
21 You don't look at that side. You are addressing us, not them.

22 **KAPIL SIBAL:** [UNCLEAR] Kamath.

23 **TUSHAR MEHTA:** No, no. He is so much agitated that he replies to every contention, sitting
24 there, in my hearing...

25 **KAPIL SIBAL:** He has no idea as to how this Court will function.

26 **TUSHAR MEHTA:** I know, My Lord. I know, I know My Lord, because I would not prepare...

1 **CHIEF JUSTICE B. R. GAVAI:** Anyways, we are not supposed to resolve that dispute here.

2 **TUSHAR MEHTA:** No, no, My Lord.

3 **CHIEF JUSTICE B. R. GAVAI:** We are sitting in a Presidential reproach. At 01:00 both of
4 you go for a cup of coffee and resolve it.

5 **TUSHAR MEHTA:** No, we can even have a meal. There is no difficulty. But I agree, I do not
6 have any idea as to how the Courts function, because do not make reels and make it viral that
7 how beautifully and brilliantly I argued this. But leave it at that, My Lord. It would not be
8 proper My Lord, to be personal. Now My Lord, Your Lordship...

9 **CHIEF JUSTICE B. R. GAVAI:** It's neither debate. The earlier suggestion was that it should
10 be within a period of six weeks. Then it was found that the time bond may not be appropriate,
11 and therefore it was made as soon as possible. And one of the members also in discussions
12 said that the very purpose of using the word is as soon as possible is immediately.

13 **TUSHAR MEHTA:** Earliest.

14 **CHIEF JUSTICE B. R. GAVAI:** Without any delay.

15 **TUSHAR MEHTA:** At the earliest.

16 **CHIEF JUSTICE B. R. GAVAI:** At the earliest. And therefore, the suggestion was as soon
17 as possible, but not greater than six years.

18 **TUSHAR MEHTA:** Understood My Lord. I bow down and therefore...

19 **CHIEF JUSTICE B. R. GAVAI:** Therefore, the members of the Constitution Assembly what
20 they had in their mind was that the Hon'ble Governor who....

21 **TUSAHR MEHTA:** Is expected to decide at the earliest.

22 **CHIEF JUSTICE B. R. GAVAI:** Expected exigency. And if that was the intention of the
23 Constitution makers, can we ignore that?

24 **TUSHAR MEHTA:** Again, My Lord, with respect, I'll put it a little My Lord...

25 **CHIEF JUSTICE B. R. GAVAI:** You won't disagree that while interpreting the provisions
26 of the Constitution, we can go into the Constitutional debates?

1 **TUSHAR MEHTA:** Certainly, I'm relying upon, they are relying upon, everyone is relying
 2 upon. There cannot be any argument. But, My Lord, the example which Your Lordships are
 3 giving, and very rightly giving, would mean that the Governor is expected to react immediately.
 4 But we do...

5 **CHIEF JUSTICE B. R. GAVAI:** Not immediately, but within a reasonable period.

6 **TUSHAR MEHTA:** Reasonable period, My Lord. I'm not on the time limit. But sometimes
 7 My Lord, what is that time limit My Lord, that depend upon facts of each case.

8 **CHIEF JUSTICE B. R. GAVAI:** It will depend upon facts. It will depend upon
 9 circumstances. So, whether the Court would not be justified to find out whether the
 10 circumstances were correct or not, or the Governor, I don't use the words which are used by
 11 the division bench. But was not justifiably or was not justified in setting out the Bill for six
 12 months or one year.

13 **TUSHAR MEHTA:** My Lord, again I'm going back to my earlier argument and I'm not going
 14 to repeat it My Lords, that one Constitutional co-organ not discharging its duties or not
 15 discharging in time will not confer jurisdiction on another Constitutional organ.

16 **CHIEF JUSTICE B. R. GAVAI:** Yes. We recollect your argument that if this Court doesn't
 17 decide the matter for ten years, would the President be justified in issuing an order?

18 **TUSHAR MEHTA:** It was an example given, My Lord. It was not My Lord, an argument.
 19 That justification cannot confer jurisdiction. My Lord, it is expected and if that happens, the
 20 solution lies outside the Court rather than advising the State to file petitions. That's My Lord,
 21 the respectful submission.

22 Now My Lord, what would Your Lordships do? My Lord, suppose it is withheld. If it is an
 23 assent, Your Lordships would examine the Bill. But there is a possibility that assent is granted.
 24 Forget the delay part. I'm not on delay part. Assent is granted immediately.

25 **CHIEF JUSTICE B. R. GAVAI:** Then it becomes a law.

26 **TUSHAR MEHTA:** Give me a minute, My Lord. It becomes a law. And law can be challenged
 27 on various grounds. Repugnancy, fundamental rights...

28 **CHIEF JUSTICE B. R. GAVAI:** Under limited grounds? Under limited grounds that are
 29 available?

1 **TUSHAR MEHTA:** Whatever My Lord. It's a law is settled, and I'm not going into it. But,
 2 My Lord, there can be instances where, kindly My Lord, consider this argument little minutely.
 3 My Lord suppose, the outgoing ministry at the fag-end of their tenure, passes a law hurriedly.
 4 I'm giving an example. The Governor grants assents. The new ministry comes, and new
 5 ministry challenges the assent. My Lord, I am giving a hypothetical example. What mandamus
 6 the Court can issue? Would the court be able to say...?

7 **CHIEF JUSTICE B. R. GAVAI:** New Government comes, it's always available for the
 8 Legislature to change the law.

9 **TUSHAR MEHTA:** I'll come to the second point. I'll come to the second option. My Lord,
 10 suppose the Bill is withheld, and withheld means My Lord, as we have understood, it falls
 11 through, that withholding is challenged. And if Your Lordship finds, and if Your Lordships
 12 says that Your Lordships would have the jurisdiction, that it should not have been withheld.
 13 Your Lordships will have to necessarily say that we set aside the order of withholding and
 14 issuing a mandamus for the Governor either to assent the Bill or refer it to the President. My
 15 Lord, the question for Your Lordships opinion is, can such a mandamus be issued? Suppose
 16 the division bench says, that even if it is referred to the President, a Party can come here, the
 17 State can come here, not Party. State can come here. That it is wrongly referred for the
 18 consideration of the President under the first proviso.

19 Would Your Lordships, I'm posing a question to myself in a 226 or 32, say that, 'no, it is
 20 wrongly referred, and therefore, we set aside that order of referring it to the President and we
 21 direct by way of a mandamus, to grant assent to the Bill'? Your Lordships have said time
 22 immemorial, time after time, judgment after judgment, Your Lordships will not issue a
 23 mandamus to implement a particular law or make a particular law. Mandamus directing
 24 issuance or directing grant of assent would necessarily, inevitably mean that Your Lordships
 25 are directing making of the law. In **A.K. Roy**, Your Lordships have said that even if the
 26 Constitutional Amendment is passed by the Parliament not brought into force. A petition was
 27 filed. The court said this is not our domain. We cannot ask them to implement this particular
 28 law. This position would be no different. Your Lordships, if there is an availability of
 29 mandamus will have to say either under Article 32 or 226, that I set aside the order of withhold
 30 meaning thereby you decide it, you grant assent or you refer it to the President. And that
 31 reference also is a subject matter of challenge before this Honourable Court and the States
 32 would be advised to file a petition rather than taking any other Constitutional option available.
 33 So, by very nature of the function and the position of the Governor, the nature of the power
 34 conferred under Article 200, a writ of mandamus cannot be filed, and therefore 226 will not
 35 lie. That is My Lord, my respectful submission.

1 In this context, I have cited laws that Your Lordships were My Lord, approach that direct the
2 government to make rules, direct the government to make this law. Your Lordships, refrain
3 from doing that. That's not the domain of the court.

4 **CHIEF JUSTICE B. R. GAVAI:** No. We even refrain from entering into the policy in these
5 matters.

6 **TUSHAR MEHTA:** Exactly, My Lord, even administrative, executive policy decisions. But
7 here Your Lordships will have to say that Governor who cannot be joined as a Party, who
8 cannot be called upon to explain... The Division Bench legal view is that Governor will have to
9 come and explain that what was the delay, why he referred it to the President. What is the
10 reason for withholding? Article 361, becomes nugatory, if Your Lordships accepts the State's
11 power to file a petition.

12 My Lord, now kindly see. In *SR Bommai*, I'll read only two paragraphs and I'm not doing
13 anything further, but please bear one distinction in mind.

14 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You are saying all such directions can
15 be given under 131?

16 **TUSHAR MEHTA:** No, I'll answer that immediately.

17 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Therefore, the issue of forum is
18 irrelevant.

19 **TUSHAR MEHTA:** No, I'll just answer that question.

20 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Is there a forum at all for that?

21 **TUSHAR MEHTA:** That's my case. It's not justiciable.

22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** No forum. The issue of whether 226,
23 31, 32 was all irrelevant.

24 **TUSHAR MEHTA:** Correct, My Lords. I'll answer Your Lordship's question on 131 why I say
25 this. I'm sorry, but my lord, the Chief Justice is reading something.

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

1 **TUSHAR MEHTA:** 131 why it would not lie. 131 is a provision where Your Lordships examine
 2 and adjudicate a dispute between Union of India and the State Government. Here, one Party
 3 is the State Government. But Governor is not Union of India. He is not a representative of
 4 Union of India. He represents the Hon'ble President of India. And therefore any dispute
 5 between the State Government...

6 **CHIEF JUSTICE B. R. GAVAI:** How do you say that he doesn't represent the Government
 7 of India?

8 **TUSHAR MEHTA:** No, he represents the President of India.

9 **CHIEF JUSTICE B. R. GAVAI:** The Government of India, the executive authority rests
 10 with the President.

11 **TUSHAR MEHTA:** Constitutionally speaking. Constitutionally he represents the State. He
 12 is head of the State Executive representing...

13 **CHIEF JUSTICE B. R. GAVAI:** As a representative of the Central Government.

14 **TUSHAR MEHTA:** President of India.

15 **CHIEF JUSTICE B. R. GAVAI:** The Constitutional debate says that he is the vital link
 16 between the Central Government and the State Government?

17 **TUSHAR MEHTA:** No. Kindly have a look at the provision. 155, kindly see...

18 **CHIEF JUSTICE B. R. GAVAI:** If you go through the Constitutional debates.

19 **TUSHAR MEHTA:** Yes.

20 **CHIEF JUSTICE B. R. GAVAI:** As to whether there should be a Governor or should not be
 21 Governor. So the framework of the Constitution found that the Governor has to be there so
 22 that a vital link is provided between the State Government and the Central Government.

23 **TUSHAR MEHTA:** Kindly look at it from a different angle. I'll show 155, but a slightly
 24 different angle. Is the President under Article 200 bound by the aid and advice of the Central
 25 Government? The answer is no. There are only two contingencies.

26 **CHIEF JUSTICE B. R. GAVAI:** Central Government of the President would be bound by
 27 the aid and...

1 **TUSHAR MEHTA:** No, I am on Governor. I'm on Governor. Right now, I'm on Governor.
 2 The Governor can either decide based upon the aid and advise of Council of Ministers of the
 3 State, or in his own discretion. He may represent the Central Government in a broad sense, as
 4 understood in the Constituent Assembly debate, but he's appointed by the President of India
 5 and he is reporting and answerable to the President of India, and there are several
 6 constitutional functionaries who are appointed by the President of India, but they do not
 7 represent the Central Government. Please have a look at Article 155. I'm putting a question
 8 little differently. Suppose the Governor's action is under challenge, can the Central
 9 Government come here and start defending the Governor? Cannot. My Lord, in most cases, it
 10 is the State Government which appears and defends the Governor, and this is a Constitutional
 11 reason behind it. My Lord, we are not on A situation or B situation. I'm just assisting on a
 12 constitutional scheme. 155 says... the Governor... 154 first. "The executive power of the State
 13 shall be vested in the Governor and shall be exercised by him either directly or through Officer,
 14 subordinate to him." Then 155. "The Governor of a State shall be appointed by the President,
 15 by warrant, under his hand and seal." What is envisaged is that there would be a person who
 16 will deal with the national policy vis-a-vis the state level policy. But he is not the same thing as
 17 Union of India, for the purpose of Article 131. Article 131 is Central Government versus State
 18 Government dispute. Dispute regarding the boundary, dispute regarding the powers, dispute
 19 regarding the allocation of funds, et cetera, et cetera. Directly Central Government. Directly
 20 State Government. Because if we extend this logic, then even CAG is appointed by the
 21 President of India, Election Commission is appointed by the President ...

22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** *Rameshwar Prasad*, one, this
 23 question was slightly answered.

24 **TUSAHR MEHTA:** Yes, My Lord.

25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Saying that the actions of the
 26 Government, of course, there's an immunity. But if at all he needs to answer, that answer will
 27 come through the Government. *Rameshwar Prasad* one. Not two.

28 **TUSHAR MEHTA:** Yes, My Lord, but the Government of the State, because he heads the
 29 State. Kindly appreciate My Lord, he can't be joined. If a mandamus were to be issued, he will
 30 have to be joined. Then we will be violating Article 361 and who will defend him? The State
 31 may not because the State is the Petitioner. Central cannot, because I can't come and say that
 32 'no. He's my representative. We did it at my behest'. No, that's not the Constitutional scheme.
 33 Kindly see, My Lord, and the question of justiciable immunity is a separate question.

1 But now, please come to, para... at the end I will only read only few paragraphs from **Bomma**
 2 but bear... first, I'll read few paragraphs from **Bomma**. My Lord, kindly bear one factor in
 3 mind. **Bomma** was a case where the Governor's action under Article 356 of the Constitution,
 4 was impugned. Article 356 has an inbuilt condition incorporated. When can you invoke? When
 5 there is a failure of law and order and therefore Your Lordships had a test to apply whether
 6 the Governor's decision fall within this constitutionally framed condition under Article 356 or
 7 not. It was not a Constitutional decision, in the sense in which we are respectfully submitting
 8 under Article 200. Now, kindly have a look at only few paragraphs. My Lord, Volume No. 5.14.
 9 Your Lordships may first take, only paragraphs I'm giving. I'll read two or three paragraphs.

10 **CHIEF JUSTICE B. R. GAVAI:** Volume?

11 **TUSHAR MEHTA:** Volume 5.14.

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

13 **TUSHAR MEHTA:** It starts at... Your Lordships may give me a minute. 5478.

14 **CHIEF JUSTICE B. R. GAVAI:** 5-4?

15 **TUSHAR MEHTA:** 7-8. Kindly note the para numbers. I'll read only two or three, but all are
 16 My Lord, relevant. Justice Ahmadi, para 32 and 35.

17 **CHIEF JUSTICE B. R. GAVAI:** Para?

18 **TUSHAR MEHTA:** 32 to 35. Then Justice Verma for himself and Justice Yogeshwar Dayal,
 19 para 40 to 49. Then Justice Sawant, for himself and Justice Kuldeep Singh, para 59, 60, 62,
 20 74, 83, 86, 96 and 153. Then My Lord, Justice Ramaswami para 198, 201...

21 **CHIEF JUSTICE B. R. GAVAI:** Just one minute.

22 **TUSHAR MEHTA:** I'm sorry, My Lord.

23 **CHIEF JUSTICE B. R. GAVAI:** Yes, Ramaswami?

24 **TUSHAR MEHTA:** Para 198, 201, 211, 256-258. Justice B.P. Jeevan Reddy has expanded
 25 the scope of this Court's jurisdiction My Lord, and said that it is amenable and there is
 26 justiciability My Lords, that is para 331, 372...

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

TUSHAR MEHTA: I'm sorry, My Lords. My Lord, 331, 372 to 376. My Lord, they are all extracted in our main note at page 305 to 308. But please read My Lord, only one paragraph of Justice Ahmadi. It's a majority view. My Lord, kindly come to page 5558. My Lord, this was again My Lord, at the cost of repetition case of 356 where there was a binary. You can appoint or you cannot appoint Presidential rule. Why? For what reason? What should be the ground? Failure of law and all. Here My Lord, we are dealing with a situation with multiple options and multitude of contingencies under which My Lord those options are to be exercised. My Lord, 35, My Lord somewhere from Placitum G. "The expression otherwise" ..., Your Lordship gets, My Lord?

JUSTICE PAMIDIGHANTAM SRI NARASIMHA: Yes

TUSHAR MEHTA: "The expression otherwise is of a very wide import and cannot be restricted to material capable of being tested on principles relevant to admissibility of evidence in Court of Law." Now, please see. "It would be difficult to predicate the nature of material which may be placed before the President or which you may have come across before taking action under Article 356(1)." Because not only material provided by the Governor, President can have other material also. "Besides, since the President is not expected to record his reasons for his subjective satisfaction." Article doesn't say you record your reasons. That is read for the first time My Lord, in Article 200. "It would be equally difficult for the court to enter the political thicket to ascertain what weighed with the President for the exercise of power under the said provision. The test laid down by this Court in *Barium Chemicals* and subsequent decisions for adjudging the validity of administrative action can have no application for testing the satisfaction of the President under Article 356. It must be remembered that the power conferred by Article 356 is of an extraordinary nature to be exercised in grave emergencies and therefore, the exercise of such power cannot be equated to the power exercised in administrative law field and cannot therefore be tested by the same yardstick." Please note this My Lord, and kindly underline, "several imponderables would enter consideration and govern the ultimate decision, which would be based not only on

^11:29:56 AM^

events that have preceded the decision, but would also depend on likely consequences to follow, and therefore it would be wholly incorrect to view the exercise of President satisfaction on power with satisfaction recorded by Executive Officers in exercise of administrative control. The opinion with the President would form on the basis of Governor's Report or otherwise would be based on his political judgment and it is difficult to evolve judicially manageable norms for scrutinizing such political decisions. It therefore seems to me that by the very nature

of things which would govern the decision-making, under Article 356, it is difficult to hold that the decision of the President is justiciable." It's not on the question of jurisdiction of this court. It's "justiciability"

My Lord, at para 34, Your Lordships can mark. There is a marked distinction shown in the judgment only. What is the distinction between judicial review and justiciability. Something can be within Your Lordships judicial review power. But can still not be justiciable. Here, My Lord, we are dealing with a situation where the law as developed says that it's a question of law and therefore it is justiciable. Now, "to do so would be entering the political thicket and questioning the political wisdom with the court of law must avoid. The temptation to dwell into the President's satisfaction may be great, but the courts would be well advised to resist the temptation for want of judicially manageable standards. Therefore, in my view, the court cannot interdict the use of Constitutional power conferred on the President under Article 356, unless the same is shown to be *mala fide*." Because it was ultimately an administrative decision, not a Legislative decision where *mala fides* cannot be attributed. After e, placitum e. "I am also in agreement with Justice Verma when he says that no *quia timet* action would be permissible in such cases, et cetera, et cetera."

Now My Lord, kindly come to para 216, Justice Ramaswami. Rest I am not troubling Your Lordships. At 5664. Your Lordship got that? Para 216. "To test the satisfaction reached by the President, there is no satisfactory criteria for judicially discoverable and manageable standards that what grounds prevailed with the President to reach his subjective satisfaction." Please see under Article 201 or 111.

CHIEF JUSTICE B. R. GAVAI: 5645?

TUSHAR MEHTA: 5664.

CHIEF JUSTICE B. R. GAVAI: 216?

TUSHAR MEHTA: Yes. "To test the satisfaction reached by the President, there is no satisfactory criteria for judicially discoverable and manageable standards that what grounds prevailed with the President to reach his subjective satisfaction. There may be diverse, varied and variegated considerations for the President to reach the satisfaction. The question of satisfaction is basically a political one. Practically, it is an impossible question to adjudicate on any judicially manageable standards. Obviously, the founding fathers entrusted that power to the highest Executive, the President of India with the aid and advice of Council of Ministers. The satisfaction of the President being subjective. It is not judicially discoverable by any manageable standards, and the Court would not substitute their own satisfaction for that of

1 the President. The President's satisfaction would be the result of his comprehending in his
 2 own way the facts and circumstances relevant to the satisfaction that the Government of the
 3 State cannot be carried on in accordance with the provisions of the Constitution. There may
 4 be wide range of situations and sometimes may not be enumerated, nor can there be any
 5 satisfactory criteria, but on a conspectus of the facts and circumstances, the President may
 6 reach the satisfaction that the Government of the State cannot be carried on in accordance
 7 with the provisions of the Constitution. Therefore, the subjective satisfaction is not justiciable
 8 on any judicially manageable standards. Moreover, the executive decision of the President
 9 receives the flavour of the Legislative approval." That is something different because that has
 10 to go before the House. We are not concerned with this. I'm relying upon this to show that
 11 multitude of considerations go into the decision-making whether to grant assent, withhold
 12 assent, refer it to the President, or resort to the proviso. And one consideration can be, to let
 13 the situation cool down. Suppose the Parliament passes a law, Assembly passes a law that
 14 except a particular local language, we will not permit use of any other local language, maybe it
 15 is within List 2, and waiting for one year may be considered by the Governor in his
 16 Constitutional wisdom, to be a wise thing to do.

17 Then kindly come back to my note. I'm not reading any other. I have relied upon page 720.

18 **CHIEF JUSTICE B. R. GAVAI:** How much more time is required?

19 **TUSHAR MEHTA:** Ten minutes.

20 **CHIEF JUSTICE B. R. GAVAI:** More than 1 hour for that. [UNCLEAR].

21 **TUSHAR MEHTA:** I'm sorry. My apologies. Your Lordships have been very indulgent. My
 22 apologies to my learned friends also, particularly Mr. Sibal.

23 **CHIEF JUSTICE B. R. GAVAI:** You'll have to compensate that time.

24 **TUSHAR MEHTA:** I will, I will.

25 **CHIEF JUSTICE B. R. GAVAI:** We will have to compensate... Or you will compensate from
 26 your Rejoinder, then it's okay.

27 **TUSHAR MEHTA:** No, I will compensate outside the... not My Lord. I can't compensate the
 28 time, My Lord.

29 **COUNSEL:** If I may just have liberty for one person...

TUSHAR MEHTA: I have cited *A.K. Kaul*, I'm not reading it. Your Lordships may kindly read it. But please, come to page 730. On the lighter side, for the first hour, we did not start arguments. First hour was on the preliminary issues raised by them. So, nobody needs to be compensated. Now, we are being compensated for that 1 hour which we lost, on the lighter side. Entirely Your Lordship's discretion, My Lord.

CHIEF JUSTICE B. R. GAVAI: Four days was including 1 hour for the preliminary objections?

TUSHAR MEHTA: Your Lordships are right. I'm saying on the lighter vein. Your Lordships can extend time, curtail time. That's absolutely My Lordship's discretion. Page 730, I have cited one British judgment, which I generally do not cite, but two reasons. (a). Our writ power is My Lord, prerogative writs as was available in England. And second, our Constitution is essentially and broadly framed on the British Parliamentary system. Only one paragraph and this judgment is cited in India from beginning, not in a recent time. From the beginning and later it is cited with approval of this Court. Kindly see 731. "But I do not think that the right of challenge can be unqualified. It must, I think, depend upon the subject matter to the prerogative power which is exercised. Many examples were given during the argument of prerogative powers, which, as at present advised, I do not think could properly be made the subject of judicial review. Prerogative powers such as those relating to making of treaties, the defence of realm, the prerogative of mercy, the grant of honours, dissolution of Parliament and the appointment of Ministers, as well as others are not, I think, susceptible to judicial review because their nature and subject matter is such as not to be amenable to the judicial process."

Now, My Lord, I have given four classes...

CHIEF JUSTICE B. R. GAVAI: But in England, the powers of the High Court are much restricted as compared to the powers of our High Court?

TUSHAR MEHTA: Correct, My Lord. They cannot even go into the question of validity of a law.

CHIEF JUSTICE B. R. GAVAI: Validity of a law.

TUSHAR MEHTA: I'm on a limited point. Then there are certain prerogative functions of co-equal Constitutional functionaries, which would not be subjected to prerogative writs by the judiciary. That is what this judgment says. Your Lordships would be guided, that's my respectful submission, by these four factors which I am not reading or elaborating. The authority, which authority the Government is exercising under Article 200? What are the

1 nature of his functions? Second is, nature of the function. Third is the stage of the process
 2 where Your Lordships are, as held in the judicial view taken by the Division Bench, there is a
 3 permissible approach to Article 32 or 226, at a stage where the Bill is yet to become law. If you
 4 come here that withholding is wrong, grant of assent is wrong, referring, even reference to the
 5 President is wrong. Reasons are not given. Reasons are unnecessary reasons. That's what the
 6 view has taken. That view, Your Lordship may have to say, correct view or a wrong view. Then,
 7 Constitutional choice in Article 200 is not binary. My Lord, I have said My Lord, distinguishing
 8 it from Article 356. It's not that whether to appoint President rule or not to. There are several
 9 choices and multitude of contingencies to be kept in mind. My Lord, one judgment, and I'll
 10 read only one part. My Lord, somebody came here that criminals should not be inducted into
 11 the Ministry. My Lord, this Hon'ble Court, My Lord has said this at page 733. It's a five-judge
 12 bench Judgment, Manoj Narula. "Thus, while interpreting Article 75(1), definitely a
 13 disqualification cannot be added. However, it can always be legitimately expected regard being
 14 head to the role of Minister in Council of Ministers and keeping in view the sanctity of oath he
 15 takes, the Prime Minister, while living up to the trust reposed in him, would consider not
 16 choosing a person with criminal antecedents against whom charges have been framed for
 17 heinous or serious offenses, et cetera. And last, rest has to be left to the wisdom of the Prime
 18 Minister. We say nothing more, nothing less." My Lord, this applies with equal force to the
 19 Hon'ble President of India and the Governor of India. Then Your Lordships may kindly come
 20 to My Lord, ***Khaira vs Shergill***, page 734. I'll read My Lord, only the highlighted part at
 21 734, My Lord, immediately after citing My Lord, New Zealand judgment the distinctive
 22 feature, Your Lordship gets? The highlighted part? "The distinctive feature of all these cases is
 23 that once the forbidden area is identified the court may not adjudicate on the matters within
 24 it, even if it is necessary to do so, in order to decide some other issue, which it itself
 25 unquestionably justiciable, where the non-justiciable issue inhibits the defence of a claim, this
 26 may make it necessary to strike out an otherwise justiciable claim on the ground that it cannot
 27 fairly be tried." If it is unjustifiable, even connected justiciable issues would also the court
 28 would be refrained from examining." My Lord, the Chief got that, My Lord?

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

30 **TUSHAR MEHTA:** My Lord, Article 361, My Lord. This is my last point. Please come to My
 31 Lord, page 736, Rameshwar Prasad. My Lords, perhaps indicated, had in mind para 173.
 32 Incidentally, My Lord, Justice Narasimha, appeared My Lord, in the matter. Para 173, My
 33 Lord. "A plain reading..." May I read My Lord? Page 737, My Lords. "A plain reading of the
 34 aforesaid articles show that there is a complete bar to the impleading and issue of notice to the
 35 President or the Governor in as much as they are not answerable to any Court for the exercise
 36 of performance of their powers and duties. Most of the actions are taken on the aid and advice

1 of Council of Ministers. The personal immunity from answerability provided in Article 361
 2 does not bar the challenge that may be made to their actions. Under law, such actions,
 3 including those actions where the challenge may be based on the allegations of *mala fide* are
 4 required to be defended by the Union of India, or the State, as the case may be." My Lord,
 5 Union of India means President of India and Governor means State. And we are now
 6 examining... Your lordships are examining a question whether State can file a petition
 7 challenging Government section, then there will be nobody to defend it, My Lord. "Even in
 8 cases where personal *mala fides* are alleged and established, it would not be open to the
 9 Governments to urge that the same cannot be satisfactorily answered because of the immunity
 10 granted. In such an eventuality, it is for the Respondent defending the action to satisfy the
 11 Court, either on the basis of the material on record or even filing the Affidavit of the person
 12 against whom such allegations of personal *mala fides* are made. Article 361 does not bar filing
 13 of an Affidavit if one wants to file on his own."

14 I have my reservations but this is the law declared by this court. "The bar is only against the
 15 power of the Court to issue notice or making the President or the Governor answerable. In
 16 view of the bar, the court cannot issue direction to the President or the Governor for even
 17 failing to assist filing affidavits to assist the Court. Filing of an affidavit on one's own volition
 18 is one thing, then the issue of a direction by the court to file an affidavit. The personal
 19 immunity under Article 361(1), is complete, and therefore, there is no question of President or
 20 the Governor being made answerable to the court in respect of even charges of *mala fides*."
 21 I'm citing this as a judgment. As students of law, we may have our views. And kindly see in the
 22 final conclusion at page 738, para 179. The position... Your Lordship gets? "The position in
 23 law, therefore, is that the Governor enjoys complete immunity. The Governor is not
 24 answerable to any court for the exercise and performance of the powers and duties of his office
 25 or for any act done or purporting to be done by him in exercise and performance of those
 26 powers and duties. The immunity granted by Article 361 does not, however, take away the
 27 power of the court to examine the validity of the action including on the ground of *mala fides*".
 28 But again, this was not in the context of his Legislative function under Article 200. In a matter
 29 where he cannot be even defended by the State and will not be defended by the state. In
 30 ***Nabam Rebia***, I'm not reading that judgment. The Governor was issued notice. It was
 31 pointed out that 361 is immune. This is a seven Judge Bench Judgment. The court withdrew
 32 the notice issued to the Governor that no, it was a mistake. We should not have issued notice
 33 to the Governor. Kindly come to, My Lord.

34 **KAPIL SIBAL:** But he appeared on his own and filed an affidavit.

1 **JUSTICE VIKRAM NATH:** That's what the judgment also said. On his own volition he can
2 come.

3 **TUSHAR MEHTA:** That is exactly two minutes back I read that. Exactly two minutes back
4 and both of us appeared, we know that happened. This social media and reels have created a
5 problem. I'll proceed further. Please come to 741 and this is my last submission. Para 41. "It is
6 submitted that the judicial pronouncement interpreting Article 361 was in the context of an
7 action of the President or Governor not relatable to either Article 111 or Article 200 or 201 of
8 the Constitution. The cases decided by this Hon'ble Court held that Government can answer
9 on behalf of the Governor. In practice, the Secretary to the Governor is joined as a Party so as
10 to enable the Court to seek the record from the office of the Governor to satisfy itself about the
11 existence of material procedure, et cetera. But in case of executive functions". Here, material
12 may be available, but the satisfaction, which may can be in the form of grant of assent, which
13 can be in the form of withholding of assent, reference to the assent, or reference to the House.
14 Kindly see the devastating consequence. Suppose the Governor refers it back to the House,
15 and if 226 is maintainable, some private citizen will come that why it was referred to the
16 House? But, would the Hon'ble Court... I'm posing a question to myself. Start examining re-
17 enactment actions of the Constitutional Functionaries which is precisely, the law which is laid
18 down. Therefore, my submission is neither 32 is maintainable or 226 at the behest of the State.
19 Number 2, even at the behest of private individuals, they are not justiciable questions and
20 therefore, 32 and 226 would not be available, and 311 would also... I'm sorry, 131 would also
21 not be available, because it is not Union of India and the State or between two States. I have
22 cited, **B.P. Singhal** judgment. Because **B.P. Singhal**, 5 Judge Bench says that... My Lord
23 just note the para, they are not agents of the Union of India. That's what 5 Judge Bench has
24 said. 7904, para 40. I'll just read. Please note the para page number 7904. **B.P. Singhal**,
25 Volume 5.20, page 7904, para 40. "He is not an employee of the Union Government..."

26 **CHIEF JUSTICE B. R. GAVAI:** Page number?

27 **TUSHAR MEHTA:** 7904.

28 ^11:50:04 AM^

29 **CHIEF JUSTICE B. R. GAVAI:** Volume 5.14?

30 **TUSHAR MEHTA:** 5.20.

31 **CHIEF JUSTICE B. R. GAVAI:** What are the Parties name?

TUSHAR MEHTA: *B.P. Singhal vs Union of India*. Para 40. It says, he's not an Employee of Union of India or agent of the Party in power. Para 40. I'll read it fully. "It is thus evident..." Your Lordship gets? I'm sorry, My Lord. "It is thus evident that a Governor has a dual role. First, is that of a Constitutional head of a State, bound by the aid and advice of his Council of Minister. The second is a function as a vital link between Union Government and the State Government...", which, My Lord, the Chief Justice were indicating. He's a link in the State Government. "...In certain special or emergent situations, he may also act as a special representative of the Union Government." In special situations.

CHIEF JUSTICE B. R. GAVAI: Yes.

TUSHAR MEHTA: "He is required to discharge the functions related to his office, different roles harmoniously, assessing the scope and ambit of each role properly. He is not an Employee of the Union Government, nor the agent of the Party in power, nor required to act under the dictates of political Parties. There may be occasions when he may have to be impartial or neutral Umpire where the views of Union Government and the State Government are in conflict. His peculiar position arises from the fact that the Indian Constitution is *quasi* federal in character." So, if Governor cannot be joined, Governor cannot be made answerable, and it's an issue between Union and the State, I'm putting a question to myself My Lord, who will defend the Governor? If the law is right, that if he doesn't do it, come to us. If the President doesn't do it, come to us, and they will have to do it in this fashion. These are my respectful submission. I'm really grateful for the indulgence. It was an indulgence given by Your Lordships.

SIDHARTH LUTHRA: I'll just take a moment, My Lord. Our understanding was that this issue was not being addressed. But we have, as State of Andhra Pradesh has filed the 32, therefore, I would reserve my rights to seek instruction, My Lord. If My Lord may permit at the end...

CHIEF JUSTICE B. R. GAVAI: You have filed 32?

SIDHARTH LUTHRA: And some other issue, My Lord. It's a circumstance. It's not an issue because in para 13. Para 13, the SG's submission is broad based. 14, it qualifies it. 60 qualified with 13...

TUSHAR MEHTA: I'm saying, 202, 201.

- 1 **SIDHARTH LUTHRA:** I'll have to take instructions on it, that's all. I'm not saying, I want
2 to respond to it, but I'll have to take instruction. At the end, I'll just ask Your Lordships for,
3 maybe a few minutes.
- 4 **TUSHAR MEHTA:** It's a proposition of law. I'm not on Telangana, even Madhya Pradesh,
5 Rajasthan, Maharashtra, nobody can file. State of... cannot file it. That's all.
- 6 **CHIEF JUSTICE B. R. GAVAI:** You would have to take instruction as to what is the stand
7 of the issues.
- 8 **SIDHARTH LUTHRA:** But we are sourcing and supporting the standard, the AG and the
9 HG, not this is the only issue.
- 10 **TUSHAR MEHTA:** Yes, certainly.
- 11 **CHIEF JUSTICE B. R. GAVAI:** We have seen the timetable. Some side, there are two to
12 three Counsel. This side we have...
- 13 **TUSHAR MEHTA:** We have, My Lord...
- 14 **CHIEF JUSTICE B. R. GAVAI:** One minute. When we are saying such thing, we don't
15 expect... when you object to his interim....
- 16 **TUSHAR MEHTA:** No, no, My Lord...I am sorry.
- 17 **CHIEF JUSTICE B. R. GAVAI:** Their case, we did not allow more than one Counsel for one
18 State. Insofar as the other side is concerned, we did not permit more than one Counsel to
19 appear for one State. So, you will have to make a choice. In case of some States, they have given
20 names of three, four...
- 21 **SIDHARTH LUTHRA:** I'll try and work it out in the lunch, My Lords.
- 22 **CHIEF JUSTICE B. R. GAVAI:** They will have to choose whoever wants to...
- 23 **SIDHARTH LUTHRA:** I understand.
- 24 **CHIEF JUSTICE B. R. GAVAI:** Whoever wants to represent. Both of you will have to sort
25 it out.
- 26 **SIDHARTH LUTHRA:** We'll do, My Lords.

1 **DR. ABHISHEK MANU SINGHVI:** Well, it's my Submissions, Your Lordship will find in
 2 Volume 2.2 starting, I am told, at 470. The actual Submission start from 480. The rest is an
 3 Index.

4 **CHIEF JUSTICE B. R. GAVAI:** Volume 2.2?

5 **DR. ABHISHEK MANU SINGHVI:** Volume 2.2.

6 **CHIEF JUSTICE B. R. GAVAI:** Volume 2.2 starts from? You are telling the PDF page?
 7 Running page?

8 **DR. ABHISHEK MANU SINGHVI:** No, running page. This is the way it looks like.
 9 Running page is given by, Your Lordships. Will it be here? It's on the link also. It's supposed
 10 hard set also. It actually starts at 480. When Your Lordship starts using it, Your Lordships
 11 may do me the favour of using the second page on the right side rather than the big page. It'll
 12 be easier. Use the smaller page when you actually use it, just for convenience. Let me tell Your
 13 Lordships in two minutes, the structure and the sequence. The three bigger issues I'll be
 14 dealing with, the first which starts with page 480. That is page 1, is about the whole concept of
 15 discretion, the lack of it, the degree of it. et cetera, between in 200, Article 200. So, that's the
 16 broad discretion point. That is, I think up to pages 61 up to 63. This smaller page 63 of my
 17 Submissions, it deals with questions one and two. So discretion is the Presidential reference
 18 questions one and two. I will then deal with questions three, four, six and nine collectively,
 19 which is broadly judicial review/justiciability/supremacy of judiciary, et cetera, et cetera. That
 20 will run from 63 to 103. And all our quotations really, because rather than take Your Lordships
 21 to the judgment, the relevant lines are underlined and quoted as Mr. Mehta has done. The
 22 third broad issue, I'll deal with is the timelines, which will be from page 104 onwards in detail.
 23 And then I'll deal very briefly with the relatively more subsidiary issues, which is question 8,
 24 10, 11, 13 and 12 that's clubbed together towards the end of the submissions.

25 What I have done was in structure is that on each head, for example, I'm starting with
 26 discretion. I've summarized everything I want to say on that in two pages in the beginning, to
 27 give the sequiturs and the consequences, and the rest is an elaboration of that, broadly in the
 28 same sequence. So, now, if Your Lordships will turn to 200 which is at page 1, which is page
 29 480, the longer page, Your Lordship should use the smaller page.

30 **CHIEF JUSTICE B. R. GAVAI:** Page?

31 **DR. ABHISHEK MANU SINGHVI:** 480. My first head starts with discretion and Article
 32 200 and in that, in the beginning, I have given in two pages, all the summary points. Seven

1 points in summary of what I'm saying on discretion, just summarizing the propositions.
 2 Summary is this.

3 First, I will deal with the fact that the Governor and the President, I'm reading para 2 at page
 4 1. "Articular heads functioning within a federal parliamentary form of Government bound by
 5 their respective State and Central Council of Ministers, with no discretion as to executive
 6 decision-making, save and except where so explicitly conferred by the Constitution that too,
 7 in a few rare cases."

8 **CHIEF JUSTICE B. R. GAVAI:** What about 163?

9 **DR. ABHISHEK MANU SINGHVI:** Fully dealt with those. That's fully dealt with. I'll make
 10 good that. And in each system, this is the pattern I'll follow in each. And under each also, CAD
 11 first, sub-case law, then and the first principle Directly 163,162 will be dealt with this. Now,
 12 the para 3 and 4 are interlinked in an interesting way. I am going to say that there is strong
 13 material as per para 3. Give me a minute to oralise. That in each of the three options in Article
 14 200 opening, in each of the three, the Governor is bound by the advice of the ministry. In
 15 returning back also, and it refers to the President also. And there is material strongly to suggest
 16 that but I immediately after that put para 4 that without prejudice in the alternative, I have
 17 argued fully on the basis that in Option 2 and Option 3, he's not bound in the first time. But
 18 Your Lordships will see, the material in the para 3 will show that the intention was even for
 19 the Council of Ministers to bind him and guide him when he refers back, how to refer back,
 20 when to refer back, if to refer back and also to the President. But that is not necessary for me
 21 to maintain my arguments. I put para 4 after that. Let me 3 and 4 now. There is strong material
 22 especially in *Shamsher* and *Nabam* as also in the last at least three speeches in the
 23 Constituent Assembly respectively by Dr. Ambedkar, Mr. Krishnamachari, Mr. Brijeshwar
 24 Prasad to conclude that all the three options exercised by the Governor under 200, namely,
 25 first is assent to a Bill, withholding assent or reserving the Bill are intended only to facilitate
 26 lawmaking by the Council of Ministers, and therefore each of the three options subjects the
 27 Governor to the binding aid and advice of the Council of Ministers. This is expanded in paras
 28 pages 29 to 44. They are the internal pages, the smaller pages. However, without prejudice to
 29 the previous paragraph and apart from and distinct from it, the Governor in any event, in any
 30 event has only three options, and if he chooses not to assent to the Bill, he may even without
 31 being bound by the aid and advice of the Council of Ministers either return the Bill to the State
 32 Assembly once or refer it to the President when the Governor first receives the Bill, assuming
 33 he has discretion to do that without being bound in those two cases. Fifth is, there is no so
 34 called fourth option of making the Bill fail or fall through. I'll be showing a phrase, two words
 35 have plucked out of completely out of context, completely and how this one fall through theory,

or as he calls it, withholding assent simpliciter negates the whole of 200 and the first proviso. Liquidates it. Then para 6, nor is there any fifth option. So fourth option is not there, "Nor is there any fifth option of sending the Bill for Presidential assent after having first exercised the second option of withholding assent. Returning it to the State Assembly and receiving it back from the State Assembly under the regime of the First Proviso." Actually, and the debates are very interesting on this. Whenever they talk of the Governor's discretion in other articles, which Your Lordships knows well. Some articles he's given discretion by the Constitution. They cite 200 only for the Second Proviso. A Governor has a discretion in Article X, in Article Y, which we all agree there's no dispute. Some judgments when they cite those articles, club 200 specifically *qua* the Second Proviso, which we all agree, also specifically gives the Governor discretion that two subject to the words *qua* the High Court. Not general.

CHIEF JUSTICE B. R. GAVAI: Subject to?

DR. ABHISHEK MANU SINGHVI: The words given *qua* the High Court, Second Proviso. So that discretion envisaged in the whole of 200 is actually only envisaged, limited to Second Proviso, only, which has been My Lords, misread and with great respect, is distorted in submitting that he has discretion generally under 200. Now, this is the entire summary of my first part and this runs from up to page 63, all quoted at one place. Let me start with the first part, para 8. "The Constitution of India envisages a Parliamentary form of Government." That My Lords I will skip. Para 8.1. "While the Executive Power *de facto* lies with the Council of Ministers. The Executive Power is formally expressed to be taken in the name of the Governor. Thus, the executive powers are wielded by the Council of Ministers."

Then 8.3. "The Governor does not have any independent discretion in the discharge of their Constitutional functions. This is in consonance with both democracy and federalism, and indeed, basic structure, which has been held part of basic structure." The former President called it 'friend, philosopher and guide', quoting from Pandit Thakur Das Bhargava. He was quoting My Lords. He was not saying it himself. "My submission is that according to me, the Governor shall be a guide, philosopher and friend of the Ministry as well as the people in general, so that he will exercise certain functions, some of which will be the nature of unwritten conventions, and some will be such that'll be expressly referred. He will be a man above Party, and he will look at the Minister and Government from a detached standpoint. He will be able to influence the Ministers and Members of the Legislature in such a manner that the administration runs smoothly. In fact, to say that a person like him is merely a dummy, an automaton or a dignitary without powers, is perfectly wrong, because previous things have said, he has a role." He's not a dummy, he's not a... "It is quite right that so far as our conception of a Constitutional Governor goes, he will have to accept the advice of his Ministers

1 in many matters. There are many other matters in which the advice will neither be available
 2 nor will be bound to accept their advice." This is Pandit Thakur Das Bhargava. Now, let's come
 3 My Lords, going back from the beginning. Dr. Ambedkar.

4 **CHIEF JUSTICE B. R. GAVAI:** He also recognizes that in some matters he will bound by
 5 the aid and advice of the Governor?

6 **DR. ABHISHEK MANU SINGHVI:** Which are being expressly conferred. There's a whole
 7 list I've given.

8 **CHIEF JUSTICE B. R. GAVAI:** In some matters, he may have his discretion?

9 **DR. ABHISHEK MANU SINGHVI:** Some matters he'll be having his discretion.

10 **CHIEF JUSTICE B. R. GAVAI:** Therefore, you'll have to read 200 along with 163.

11 **DR. ABHISHEK MANU SINGHVI:** Therefore, when they say that you have discretion, of
 12 course, he has discretion, in five or six listed Articles, which I'm going to deal with. One of
 13 them is 200, only *qua* the second proviso.

14 There is no discretion prior to that. If you read it against me, as I've given in the alternative
 15 argument, he has one discretion, that first time he can refer back, or first time he can refer to
 16 the President, if you call that discretion. In fact, it's very interesting, but it's not told to Your
 17 Lordships. The 35 Act had a discretion in both the opening words of the counterpart of 200
 18 and in the proviso. Then first round, in the debates of the Assembly, they removed the word
 19 'discretion' from the opening part. Then again, there were fights on the word discretion. Then
 20 in the second part, they removed the word 'proviso' also. And Dr. Ambedkar comments why.
 21 Clear pattern, idea was to give you discretion only in the second provision. Therefore,
 22 whenever Your Lordship finds discretion mentioned, 163(1) and (2) are not blanket provisions.
 23 They say they are accepting so far as the Constitution says, and the Constitution gives you...
 24 I've got a list a provisions. Take out the list of provisions. One of the list of provisions is 200,
 25 but only second proviso. That's the scheme. Now let's kindly come to Dr. Ambedkar. He calls
 26 it purely 'ornamental'. These are not my words, the word 'ornamental' and the selection of the
 27 Governor would depend upon the personality, status, character, education, position. Now
 28 kindly read Dr. Ambedkar. "It's been said in the course of the debate, argument against
 29 election, speaking for myself, that was not the argument which influenced me, because I do
 30 not accept that even under election, there'd be any kind of rivalry between the Prime Minister
 31 and the Governor. For the simple reason that the Prime Minister would be elected to the basis
 32 of policy, while the Governor could not be elected on the basis of policy because he could have

1 no policy, not having any power." Now, this is when they were debating to elect the Governor,
2 not nominate him. So, he said, I accept that he elect him, even though there's no rivalry.

3 **CHIEF JUSTICE B. R. GAVAI:** He will have no power?

4 **DR. ABHISHEK MANU SINGHVI:** He will have no power. "So far as I could visualize, the
5 election of the Governor would be on the basis of his personality. Even if you are electing him.
6 Look at it. He has no power, even as the elected person. Is he the right sort of person by status,
7 by his character, by his education, by his position in public to fill in the post of Governor? In
8 the case of the Prime Minister, the position would be, is his programme suitable? Is his
9 programme right? There could therefore not be any conflict even if we adopt the principal
10 elections." Dr. Ambedkar was very clear because to say this, when you're talking of election, is
11 to have clear clarity about what a Governor is in terms of powers. The other argument is, "if
12 we are going to have a Governor who's purely ornamental, is it necessary to have such a
13 functionary elected at so much cost and trouble?" So, from being ornamental, he goes to only
14 nomination. "Why spend money on elections?" Then, page 5 middle, "in my judgment, there
15 is no fundamental distinction between the second alternative and the amendment itself. The
16 second alternative suggested is also a proposal for nomination. It was a variant for this
17 nomination is some conditions. The only thing is that there are certain qualifications, namely

18 ^12:10:11 PM^

19 that the President should nominate out of a panel elected by the Provincial Legislature. But
20 fundamentally, it is a proposal for nomination. In that sense, there is no vital and fundamental
21 difference between the second proposal proposed by the Drafting Committee and the
22 amendment which has been tabled by Mr. Prashad". Then the bold-face lower down. My Lord,
23 I'm reading the bold-face, I'm not trying to avoid anything. I can always read something which
24 is missed out by mistake, but it saves time if I read the bold-face subject to some other parts.
25 "I want to warn the House that the real issue before the House is really not nomination or
26 election. Because as I said, this functionary is going to be a purely ornamental functionary.
27 How he comes into being, whether by nomination or by some other machinery, is a purely
28 psychological question. What would appeal most to the people? A person nominated or a
29 person in whose nominated the Legislature has in some way participated. Beyond that, it
30 seems to me, it has no consequence. Therefore, the thing I want to tell the House is this. The
31 real issue before the House is not nomination or election, but what powers you propose to give
32 to your Governor if the Governor is a purely Constitutional Governor. Repeatedly the entire
33 approach is, My Lord. That's why we are called a parliamentary democracy, with no more
34 powers than what we contemplate expressly to give him in the act." The express power is a

1 proviso of 200 second proviso and some other provisions. "If the Governor is a purely
 2 Constitutional Governor with no more power than what we contemplate, and has no power to
 3 interfere with the internal administration of a provincial ministry, I personally do not see any
 4 fundamental objection to the principle of nomination." Then My Lords, I skipped the middle
 5 para, Mr. Chaudhary. Come back to Dr. Ambedkar next para.

6 "Will that power an elected or a nominated governor will have if he happens to call the wrong
 7 person to form a ministry?" That's the question Mr. Chaudhury asked. What will happen if he
 8 calls the wrong person? He will soon find his cause that he has made a wrong choice, after
 9 three or four lines. "That is not the aspect of the question, which is material. The aspect of the
 10 question, which is material, is this. Is the Governor going to have any power of interference in
 11 the working of a ministry which is composed of a majority in the local Legislature? If that
 12 Governor has no power of interference in the internal administration of a ministry which has
 13 a majority, then it seems to me that the question whether he is nominated or elected is a wholly
 14 immaterial one." Then My Lords, three lines later, "they should bear in mind this question.
 15 What are the powers with which the Governor is going to be endowed ornamental? Nothing
 16 except a constitutional status. That power, I submit, is not before us today. We shall take it up
 17 at a later stage when we come to the questions of 200 and 188." My Lords, 188 is wrongly...
 18 What happened My Lords was 188 ultimately dropped, never came in any reincarnation. It
 19 was found similar to 287 which is 356. But 188 and 287 were overlapping. Ultimately, 287
 20 became 356. 188 went away. 175 is the present 200. "The House should be careful and watchful
 21 of these new sections that will be placed at a later stage." So, 200 is yet to come. He says that
 22 and ends that part, My Lords.

23 Then next page 8 is Dr. P.K. Sen. Now, he confesses that he changed his view. Earlier he had
 24 a different view. Now I have a different view, is what he says. "I must also confess that I am
 25 one of those members who have changed their views." What is the change, My Lords? Come
 26 to the middle of page 8. "Since then on sober and serious reflection, evidently, the members
 27 of the House are now persuaded that a General Election of that kind whereby the Governor
 28 was to be elected by adult suffrage, would impose a tremendous strain upon each province and
 29 would hardly subserve the purpose for which it was being held. What is the purpose? The
 30 upholding of democratic ideas. The question is whether by interfering." So, My Lords,
 31 democracy itself, is the basis when you change him from a non-executive Governor to any
 32 executive role. Democracy itself is at stake. The question is whether by interfering, the
 33 Governor would be upholding the democratic idea or subverting it? It would really be a
 34 surrender of democracy. We have decided that the Governor should be a Constitutional Head,
 35 the Premier..." My Lord, the note is there...

1 **CHIEF JUSTICE B. R. GAVAI:** That is Chief Minister?

2 **DR. ABHISHEK MANU SINGHVI:** Chief Minister. He used to be called a Premier for a
 3 long time. "With his Council of Ministers, is really responsible for the good governance of the
 4 province. The whole of the executive power is vested in the premier and his Council of
 5 Ministers. That being so, if there is another person who is able to feel that he has got the
 6 backing of the whole province behind him, and therefore he can come forward and intervene
 7 in the governance of the province, it would really amount to a surrender or subversion of
 8 democracy." Not in the debate, but somewhere else I read. I'm not able to trace it. The Hindi
 9 phrase, *ek myan mein do talwar*, two swords in one scabbard. That is the antithesis of
 10 democratic functioning by an elected Chief Minister. You should not do anything by
 11 implication or interpretation which will make it two swords in one scabbard. "It would make
 12 it impossible for the premier or his Council of Ministers to initiate measures which would be
 13 in the best interest of the Province. Only in exceptional cases of emergency should he have the
 14 power or the function to step in and interfere with the actual governance of the Province for a
 15 short time." 356 came down the line. That time it was 180, it became 287, et cetera, et cetera.
 16 "Of course, the condition and circumstance were such therefore, in the best interest of
 17 democracy, in the best interest of Parliamentary form of Government, which has been decided
 18 upon the basis of the draft Constitution. The election of the Governor by adult suffrage is
 19 uncalled for and inappropriate. The next method of election that is suggested is election by the
 20 Legislature. There also there is mischief only in another form, and a conflict would arise
 21 between the Premier and his Council of Ministers on the one hand, and the Governor and
 22 certain other sections of factions which should be in his support. Therefore, I believe that
 23 instead of being in the interest of Parliamentary Government, be a thorn on the side of the
 24 Premier and the Council of Ministers and would prevent them from carrying out any measures
 25 which are in the best interests of the Province." Then come to the next page. "The function that
 26 the Governor has to fulfil as it is now borne in upon the Members of the House is that of a
 27 lubricator." If I may use that expression. A facilitator is another word, which he doesn't use.
 28 "He is not to interfere, but he has to just smooth matters. If there are factions, if the different
 29 sections of the community are at loggerheads, it is for him to act more or less as a lubricator,
 30 a cementing factor. He is to help the machinery of the Government, which is in the hands of
 31 the Prime Minister and the Council of Ministers. He is not to come and interfere and cause
 32 confusion or chaos. He would be the person really to lubricate the machinery and to see to it
 33 that all the wheels are going well by reason not of his interference, but his friendly
 34 intervention." And this I believe, Mr. Sen who had counter view earlier. He says, I confess I've
 35 changed my view.

36 Then My Lords, so we've done with the CAD debates, we are only on the general point.

Transcribed by TERES

1 **CHIEF JUSTICE B. R. GAVAI:** He now supports the view that he should be appointed by
2 the President?

3 **DR. ABHISHEK MANU SINGHVI:** Yes.

4 **CHIEF JUSTICE B. R. GAVAI:** On the aid and advice of the Central Government?

5 **DR. ABHISHEK MANU SINGHVI:** Correct. But on the reasoning that any other
6 alternative will give him a role which he should not have. He's formal, he's Constitutional, he's
7 titular. It's in his name that you act. The reasoning is what I quoted. Of course the debate was
8 elect him like this, elect him like that. Nominate him like this, nominate him like that.

9 **CHIEF JUSTICE B. R. GAVAI:** Elected directly or elected by the Members of the
10 Legislative Assembly or nominated.?

11 **DR. ABHISHEK MANU SINGHVI:** So this is my first summary, still going on 200 on the
12 first part about the meaning of this whole discussion.

13 **CHIEF JUSTICE B. R. GAVAI:** Powers of the Governor?

14 **DR. ABHISHEK MANU SINGHVI:** Yes. Powers of the Governor. We've done with the
15 CAD. Now we come to the case law. First obviously, *Shamsher. Shamsher* has held the field
16 for decades. It's 7 Judges and it's very comprehensive. I'm only quoting those which are
17 relevant to this on the lines and the thrust of the CAD of the Constituent Assembly. "Under the
18 Cabinet system of Government as embodied in our Constitution, the Governor is the
19 Constitutional or Formal Head of the State and he exercises all his powers and functions
20 conferred upon him, by and under the Constitution on the aid and advice of his Council of
21 Ministers." Now, this is a summary of 163 also broadly, "Save in spheres where the Governor
22 is required by or under the Constitution to exercise his functions at his discretion." The
23 Constitution itself tells you, the text tells you, not some general omnipresent, omniscient
24 residual power in the interstices hiding which is inherent in him. No.

25 "This Court has consistently taken the view that the powers of the President and the powers of
26 the Governor are similar to the powers of the Crown under the British". It's very interesting, it
27 says it is the crown, where it is, I would say, it would be horrifying if the Queen ever decided
28 to do any of the things which we are having sometimes now. But just note on the side. On the
29 side, it will come later. In my smaller numbered page 28, I have given in para 13.4, a list of
30 those specific powers of the Constitution. My Lords, should note only the side only. It's
31 coming.

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Page?

2 **DR. ABHISHEK MANU SINGHVI:** At page 28. The smaller page. The smaller page. Para
 3 13.4, I have listed. Article 167, if the Governor so requires. 200, proviso second. 356, 371(a).
 4 There may be more. I'll give an illustrative list only, schedule so and so. Please come back to
 5 para 28. I have my small page 11. Please come back to 11. "This Court has consistently taken
 6 the view that the powers of the President, and powers of the Governor, are similar to the
 7 powers of the Crown under the British Parliamentary system". And so many cases are cited.
 8 Turn the page, **Ram Jawaya**. That famous case. Then next page, "the initiation of
 9 legislation, the maintenance of order, the promotion of social and economic welfare, the
 10 direction of foreign policy, the carrying out of the general administration of the State are all
 11 Executive functions. The Executive is to act subject to the control of the Legislature. The
 12 Executive power of the union is vested in this President. The President is the formal or
 13 Constitutional Head. The real Executive powers are vested in the minister of the Cabinet.
 14 There is a Council of Ministers. The Prime Minister the head to it." I'm very sorry to say, there
 15 is a para in Mr. Tushar Mehta's submissions. I'll read that para. Where many of these very
 16 things settled by **Shamsher** years ago, he says, "the Governor may have to hold a Bill back
 17 because he has to consider these things." And I am assailing that para for another reason.
 18 Dooms Day scenarios are given. Nine dooms day scenarios which have not happened happily
 19 in 75 years of our Republic. A State says, only Tamilians can enter the State. A State says, only
 20 local language can be used. Hypothetically, the sky may fall on our heads. My Lords have very
 21 evocative passages that please don't judge, especially Constitutional adjudication by disaster
 22 scenarios. That para has got nine examples which are unheard of, unthinkable. And happily,
 23 with all the distortions of our democracy in 75 years, have not happened in 75 years. So, they
 24 are very imaginary, and the imagination is febrile and fertile.

25 Now, let us come back to page 12. "The provisions of the Constitution which expressly require
 26 the Governor to exercise his powers in his discretion are contained in Articles to which
 27 reference has been made. To illustrate 239..." Now, this is the example Your Lordship is asking
 28 where they are giving. They are given the power. The Governor is given power by the
 29 Constitution. "...To illustrate, Article 239 states that where a Governor is appointed
 30 Administrator of an adjoining Union Territory, he shall exercise his functions as such
 31 Administrator, independently of his Council of Ministers." Now, My Lords just see, this is
 32 **Shamsher**, what is happening? He is in some paras of other judgments. They quote the same
 33 thing as a general 200, without saying second proviso, and then it is used by the Government
 34 to say that it is general discretion in 200. **Shamsher**, correctly says that they are talking of
 35 the second proviso, where, of course, there is discretion.

1 **CHIEF JUSTICE B. R. GAVAI:** When the Governor of Punjab...

2 **DR. ABHISHEK MANU SINGHVI:** Yes.

3 **CHIEF JUSTICE B. R. GAVAI:** He's also an Administrator for the city of Chandigarh. So,
4 for Chandigarh, he would not be bound by the aid and advice of the Council of Ministers.

5 **DR. ABHISHEK MANU SINGHVI:** And look at our Constitutional framework My Lord.
6 They foresaw pursue it, whether then or now in 239. Obviously, it created a ridiculous
7 situation, but giving an example, this should not have it, therefore correctly. So, they thought
8 of it, they gave it. Now, the second part is what interests me. Just come to the second part of
9 the same para. My Lord is on page 12. The Honourable Chief Justice mentioned this. Just come
10 to the lower part of page 12. "Again, Article 200 requires the Governor to reserve for
11 consideration any Bill, which in his opinion, if it became law, would so derogate from the past
12 of the High Court so as to endanger the position which the High Court is designed to fill in the
13 Constitution." This is the second proviso, which has discretion. And while I was just pointing
14 out the error when My Lord, the Chief Justice gave that example. In many judgments, 200 is
15 mentioned as an example of discretion. But some judgments, few of them don't add the
16 subsequent words which ***Shamsher*** added. And that is used to say your general discretion.
17 This is the discretion, which is in 200. 200 is one of those articles where the Governor is given
18 discretion. It is part of my list of 167, 239, et cetera. But only *qua* the second proviso. As Your
19 Lordship said of Chandigarh, Governor can't allow My Lords the High Court to be ticketed
20 with like this. So, Your Lordship thought of it and put it there.

21 Next para My Lords, page 13. "In making a report under 356, the Governor will be justified in
22 exercising his discretion even against the aid and advice." Another example, because 356 says
23 so. There's no question about seeking the aid and advice of the Government of State
24 Government to dismiss the State Government. There is no question. Now, see the last part of
25 that page 13 My Lords. "In all other matters where the Governor acts in discretion, he will act
26 in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel
27 administration within the State by allowing the Governor to go against the advice of the
28 Council of Minister." And the previous lines I have not underlined to save time, are all saying
29 he must act at the aid and advice, they say again and again.

30 Now My Lords, I had read para 54 above at page 12. My Lord has noted page 12? Para 54 I've
31 quoted of ***Shamsher***. Two paras later, they say the same thing in para 56, but they don't use
32 the suffix of the second proviso. So, my learned friend says that what is clarified two paras
33 earlier, in 56 means you have general discretion in 200. I hope I'm clear with this? Now, come

1 to 56 at page 13. "Similarly, 200 indicates another instance where the Governor may act
 2 irrespective of any advice from the Council of Ministers. In such matters, where the Governor
 3 is to exercise his discretion, he must discharge the duties to the best of his judgment. The
 4 Governor is required to pursue such courses, which are not detrimental to the State." Just a
 5 para before that which is quoted at page 12, they were discussing examples which included a
 6 second proviso of 200. This has to be read in that context. It is not an independent source of...
 7 Otherwise, **Shamsher** for the last 40 years would be read as an independent source of
 8 discretion of the Governor. **Shamsher**, Your Lordship, cites for every presidential discretion,
 9 every Governor discretion. If this para is led literally to mean that 56 is not anchored in or
 10 relatable to 54, then My Lords, he has complete discretion. It can never be. Nobody read it like
 11 this till now. Nobody.

12 Then My Lords, page 14. "For the foregoing reasons, we hold that the President or the
 13 Governor acts on the aid and advice of the Council of Ministers, with the Prime Minister at the
 14 head. In the case of the Union and the Chief Minister at the head. In the case of the States, in
 15 all matters which vests in the executive, whether those functions are executive or legislative in
 16 character. Neither the President nor the Governor is to exercise the executive functions
 17 personally". This is **Shamsher**, seven judges, 40 years ago, more than 40 years ago. The
 18 present appeals concern... ignore that. Now My Lords, come to Justice Krishna Iyer. Not only
 19 for the language, but for a very fundamental concept he raised. He said, this cuts the root of
 20 our democracy, if you start recognizing the Governor as having discretion. He takes it to
 21 democracy level rather than basic structure. Please see that. Same page 14. "Thus, vindicating
 22 our democracy instead of surrendering it to a single summit soul". Single summit soul is a
 23 Governor, My Lords. "Whose deification is incompatible with the basics of our political
 24 architecture, lest national elections become dead sea fruits. Legislative organs become labels
 25 full of sound and fury, signifying nothing. And the Council of Ministers put in a quandary of
 26 responsibility to the House of the people and submission to the personal decision of the head
 27 of state." This is not fully strong Krishna Iyer language not difficult to understand. It also is
 28 lyrical. "A Parliamentary style republic like ours, could not have conceptualized its self-
 29 liquidation by this process", I think it's a very pity sentence and very effectively put. Some
 30 parts of the Krishna Iyer sometimes My Lords, make us want to go to the dictionary or to Mr.
 31 Shashi Tharoor. But this is not so.

32 ^12:30:18 PM^

33 This is the truth, I believe actual classes, which my colleague is doing on this. Difficult words
 34 thrown to him and he finds a way out.

1 **CHIEF JUSTICE B. R. GAVAI:** One of the learned judges in Kerala follows him.

2 **DR. ABHISHEK MANU SINGHVI:** Yes, I heard that.

3 **CHIEF JUSTICE B. R. GAVAI:** Justice Devan Ramachandran.

4 **DR. ABHISHEK MANU SINGHVI:** This is simpler Krishna Iyer J and very effectively pity.
 5 Next para. "We declare the law of this branch of our Constitution to be that the President and
 6 the Governor custodians of all executive and other powers under various Articles shall by
 7 virtue of these provisions, exercise their formal Constitutional Powers only upon and in
 8 accordance with the advice of their Ministers save in a few well known, exceptional situations.
 9 Without being dogmatic or exhaustive, these situations relate to, one, the choice of the Prime
 10 Minister." So now Your Lordship is spelling out broadly the area where there has to be
 11 discretion, suppose the House is being dissolved or somewhere that a majority is lost.
 12 Obviously they have discretion. You can't be bound by those situations.

13 "By paramount considering would command a majority. The dismissal of a Government which
 14 has lost its majority but refuses to quit office. The dissolution of the House for an appeal to the
 15 Country's necessities, although in this area the head of the State should avoid getting involved
 16 in politics and must be advised by his Prime Minister (Chief Minister), who will eventually
 17 take the responsibility for the step. We do not examine in detail the Constitutional proprieties
 18 in these predicaments except to utter the caution that even here, the action..." Even here My
 19 Lords, even here where he does have discretion, "the action must be compelled by the peril to
 20 democracy and the appeal to the House of the country must become blatantly obligatory."
 21 Now, My Lords, another interesting example of royal assent, where there is the minimal zero
 22 discretion they give that example. "We have no doubt that D. Smith's statement regarding
 23 royal assent holds good for the President and the Governor in India. Refusal of the royal assent
 24 on the ground that the monarch strongly disapproved of a Bill or that would intensely mark
 25 the word "monarch strongly disapproved of a bill", according to Mr... Five paras of Mr. Mehta's
 26 Written Submissions. He can judge security, friendly relations, need, calm down, cooling
 27 period, political considerations, everything he can judge. And 50 years ago, seven Judges said
 28 this. 50 years ago. "Or that it was intensely controversial would nevertheless be
 29 unconstitutional refusal of assent, even though it's intensely controversial." And he
 30 disapprove...

31 **TUSHAR MEHTA:** This was two judge. What you are reading is two judge.

1 **DR. ABHISHEK MANU SINGHVI:** I stand corrected. This one is there. This is there. Very
 2 well. Two judges held the field for many decades. Perhaps My Lords, they want to change it.
 3 Your Lordships can... Just check-up. Let me check-up.

4 **CHIEF JUSTICE B. R. GAVAI:** Is it the minority view?

5 **KAPIL SIBAL:** No, no, it's not concurring.

6 **DR. ABHISHEK MANU SINGHVI:** Concurring. Let me just check-up. I want to be sure.
 7 What happened was...

8 **GOPAL SUBRAMANIAM:** Justice Bhagwati, Chief Justice Ray was with Justice Baig,
 9 Justice Mathew, Justice Chandrachud, Justice Ali Baig. Five.

10 **DR. ABHISHEK MANU SINGHVI:** I stand recorrected in my favour and Mr. Mehta
 11 should stand corrected also in his error.

12 **JUSTICE SURYA KANT:** Reference of Potomac and Thames comes from this?

13 **DR. ABHISHEK MANU SINGHVI:** Yes. Potomac and Thames is here, that the waters of
 14 Potomac, not the Potomac, but not the Potomac and the Thames but the Ganges should
 15 fertilize. That part is also in this. But, My Lords I was just going to check-up. This is all part of
 16 the concurring. I'm sorry. Just give me a minute. Just turn to, they are taking it that we make
 17 it akin to refusal of royal assent. And in royal assent, D. Smith was one book, Wade is the other
 18 book. Much before in the old days, in England they have said that even if he's intensely
 19 controversial and he strongly disapproves even then, if he withholds assent it's
 20 unconstitutional. I will read the para of Mr. Mehta, where he says much more. He actually in
 21 that para makes the Governor having holding the departments of national security, foreign
 22 affairs and a few other departments. I will read that para. It's not me. Yes. Your Lordship,
 23 because we have done the extracts. Please note in Volume 5.7 just for Your Lordship was the
 24 correction of the interruption by Mr. Mehta. There should be a correction on that. In V 5.7,
 25 page 2912, the actual SEC. Krishna Iyer J and on behalf of himself and Bhagwati J concurring.
 26 My learned friend Mr. Gopal Subramaniam is absolutely right. Then they go on. The
 27 concurrence goes on.

28 "The only circumstances in which the withholding of the royal assent might be justifiable
 29 would be if the Government itself were to advise such a course." If you do not try to distort the
 30 Constitution, everything falls into place. If you want to achieve a preconceived result, then
 31 you'll be distorting. "A highly improbable contingency, or possibly, if it was notorious, that a

Bill had been passed in disregard to mandatory procedural requirements. Since the government the latter situation, with the opinion et cetera." That's not relevant for us. So, this is ***Shamsher***, seven judges. Now come to ***Nabam Rebia***. My learned friend wants me to read one para which is not quoted by me. The very first para of the judgment of Justice Krishna Iyer, where he starts. Your Lordships will not pick up. Just note the reference. Volume V7, page 2912, just I'm reading it. V7, 2912. "These two appeals by a couple of small judicial Officers whose probation has been terminated by orders of concerned Ministers, in conformity with the recommendation of the High Court, have projected Constitutional issues whose profound import and broad impact if accepted..."

JUSTICE PAMIDIGHANTAM SRI NARASIMHA: Which para are you reading?

DR. ABHISHEK MANU SINGHVI: I'm sorry. 2912 of V7. Some of the greatest cases are made from very small litigants with small grievances. This is one such case. But the Judges pick up the larger import, howsoever small the case is. And Justice Krishna Iyer, with his usual felicity, formulated the issue. "...Have projected Constitutional issues whose profound import and broad impact have accepted, may shake up or reshape the Parliamentary cornerstone of our nation." And it did, ***Shamsher*** has reshaped, because it stood the ground. "Great deference and complete concurrence would have otherwise left us merely to say we agree to what has fallen from the learned Chief Justice just now. But when basic principles are assailed with textual support, academic backing and judicial dicta, speech, not silence, is our option." That's his justification for having a concurrence, then the later parts I have read. Thank you.

Now, come to ***Nabam Rebia*** at my para, page 16. They said clearly that, "the apparent Executive legislative powers are, in fact, not independent powers and are to be carried out strictly on the aid and advice..."

CHIEF JUSTICE B. R. GAVAI: You are reading which para?

DR. ABHISHEK MANU SINGHVI: I'm now on my page, small page 16, after now ***Shamsher*** is over, I'm on ***Nabam Rebia***. Now, My Lords, that page 16, bottom, which is not highlighted perhaps, he explains, "the above edict is not applicable in situations where the Governor is expressly required to exercise his function." The bottom of page 16, Justice Narasimha.

CHIEF JUSTICE B. R. GAVAI: Yes, after Article 163?

DR. ABHISHEK MANU SINGHVI: Yes. "The question that will need determination at our hands is whether the underlying cardinal principle, with reference to the discretionary power

1 of the Governor is to be traced from Article 163 or from 161 or from 163(2). Undoubtedly..."
 2 I'm on the bold face five lines later. "...Undoubtedly all Executive actions of the Government
 3 of a State are expressed in the name of the Governor." He is, in that sense, he is the State. Of
 4 course he's the State. His name is there. Even Your Lordships ordinary letters come in the
 5 exercise of power than they buy in under the name of the Governor. "That, however, does not
 6 *per se* add to the functions and powers of the Governor. It is also necessary to appreciate that
 7 in the discharge of Executive functions, the Governor of a State has the power to grant pardons,
 8 reprieves, respites or remissions of punishments or to suspend, remit or commute. The
 9 Governor's power under 161 is undisputedly exercised on the aid and advice of the Chief
 10 Minister." Why, My Lords? The Governor has full discretion, you will say, because it says, the
 11 Governor may grant pardon. Tomorrow you will argue his full discretion. "The Governor's
 12 power under 161 is undisputedly... The Governor has power to frame rules for the convenient
 13 transaction of Executive business. This instant responsibility is also discharged on aid and
 14 advice. All in all, it is apparent that the Governor is not assigned any significant role in the
 15 Executive functioning of the State.

16 We would also endeavour to examine the duties and responses to govern the Legislative
 17 functioning of a State. My Lord, one sentence I may just digress here. No doubt the Governor
 18 is part of a 'legislative process'. The word should be 'process'. He is not part of legislation or
 19 legislation making. He is part of a process. He is not in any manner, a Legislature or a
 20 Legislator. That is clarified by Your Lordship's judgment which I have quoted here in a
 21 minute... in a while. "Even though Article 168 postulates that the Legislature of a state would
 22 comprise of the Governor, yet the Governor has not assigned any legislative responsibility in
 23 any house of the State Legislature..." This is one part, which is clear. And on the next page,
 24 "the Governor shall not be a member of either House. Insofar as the legislative process is
 25 concerned, the only function vested with the Governor is expressed through 200, which *inter*
 26 *alia* provides that a Bill passed is to be presented to the Governor for his assent. And its
 27 ancillary provision, 201, wherein a Bill passed by the State Legislature and presented to the
 28 Governor may be reserved by the Governor for consideration. The only exception to the non-
 29 participation of the Governor and legislative functions is postulated in 213," where My Lords
 30 he calls and he... So My Lords, he.. that means everywhere else he's not part of the legislative
 31 function. When he has to do an ordinance My Lords, and things like that, because there is
 32 nothing there My Lords. He's the executive authority in that sense. Coming out from... There
 33 he plays a role in 213 and 123, in the central case. "The only exception to the non-participation
 34 of the Governor, only one exception, which apparently vests with the Governor some
 35 legislative power, the Governor under 213 can promulgate ordinances during the period not

1 in session." This function also My Lords, is exercised undisputedly on the aid and advice of the
2 Council with the Chief Minister as the head. You may have a role, but it is on the aid and advice.

3 Then My Lords, next page. The same thing is... Again, they repeat My Lord, at page 19. Page
4 19 they repeat. "All in all, it is apparent that the Governor is not assigned any significant role
5 even in the legislative functioning of the State." Now I go to para 148. "The above position
6 leaves no room for any doubt that the Governor cannot be seen to have such powers and
7 functions and would assign to him a dominating position..." Kindly mark those words. "Over
8 the State Executive and the State Legislature. The interpretation placed on 163(2)." And this
9 is all dealing with both 11...

10 **CHIEF JUSTICE B. R. GAVAI:** That is what I was asking the learned Solicitor from the
11 beginning.

12 **DR. ABHISHEK MANU SINGHVI:** My Lords, what more domination will you have if you
13 are able to do all the things which the written submissions say you can do? Forget domination
14 My Lords, he becomes exclusive authority. Kindly see, Your Lordships will be distorting the
15 whole scheme for decades. This is only saying a dominating position. That's a very mild word,
16 I would say My Lords, as compared to what the written submission suggest that you can... My
17 Lords, I'm very sorry to say. It's all right. We are making all kind. I was hearing on VC. The
18 submission is also that a referral back or a refusal can include a money Bill. Specific argument
19 was made. I went back to the constitution. I actually spent 15 minutes, I told my learned friend
20 also, I said I must have misread something. The answer given to support that argument was
21 that, no, no, it will be so. That argument was made and stuck to. But it was supported by
22 reference to 207. I again examined 207. 207, is a very interesting provision, My Lords. We
23 have, on Fridays in Parliament, and in Legislature some particular day. To let off steam, we
24 have private member Bills. Friday afternoons are normally kept in most places for private
25 members Bill. They can bring any Bill; they let off steam. At the end My Lords, either they
26 withdraw or they get an assurance from the Government that we'll look into it. Nothing. There
27 are only about five private member Bills which have been passed till now, I think in the entire
28 history. And that to by Government adopting it.

29 Now, 207, was enacted that for a Financial Bill, you cannot have a Private Member Bill. You
30 must do it only with the recommendation of the State. That provision is cited to support that
31 the Governor can return a Bill which is even a Money Bill. That's coming later. It's My Lords,
32 in sync with the submission that the Governor is in a super... he's not a dominating position.
33 He's a super Chief Minister. Possibly trenching beyond super Chief Minister also.

1 ^12:45:24 PM^

2 Now, let's kindly come back. "The above position leaves no room for any doubt that the
 3 Governor is a dominating position. The interpretation placed on 163(2) on behalf of the
 4 Respondent just that effect. Secondly", middle of that para. I'm sorry. My apologies. "Because
 5 the following contentions. Firstly, whenever a question arises whether in discharging a
 6 particular function, the Governor can or cannot act in his own discretion. According to the
 7 Respondents, the discretion of the Governor on the above position is final on the above
 8 question is final. Secondly, since the provision itself postulates that the decision of the
 9 Governor and his discretion shall be final and the validity of anything done by the Governor
 10 shall not be called in question on the ground that he ought or ought not to have acted according
 11 to the Respondents". This is exactly the same argument dealt with by Constitution Bench
 12 clearly. "Makes the Governor's orders, based on his own discretion, immune from judicial
 13 review." Kindly just give me a minute. I have to go a little slow here. This is where I've stopped
 14 down, the full stop, is dealing with those areas where you have given the power to the Governor
 15 in his discretion. Now, the court says that is only those given to you specifically and even those
 16 you are fully subject to judicial review. They are saying two points here, **Nabam Rebia**,
 17 kindly read on. "Accepting the above position will convert the Governor into an all pervading
 18 super constitutional authority." And they've used dominating just two paras earlier. "This
 19 position is not acceptable because an examination of the Executive and Legislative functions
 20 of the Governor from the surrounding provisions of the Constitution clearly brings out that
 21 the Governor has not been assigned any significant role, any significant role, either in the
 22 executive or the Legislative functioning of the State. The position adopted on behalf of the
 23 Appellates, on the other hand augurs well, in an overall harmonious construction of the
 24 provision of the Constitution. Even on a cursory examination of the relevant provisions they
 25 are inclined to accept the submissions advanced on behalf of the Appellates."

26 Then the next para starts talking of 141. Chief Justice is asking this question. I'm reading that
 27 also about 160. What became 163. It was a draft 143, which became 163, middle of that page,
 28 page 20. "The crucial position that it's clarified from a perusal of the Constituent Assembly
 29 debates arising from the onset of the query whether the Governor should have any
 30 discretionary power at all. The debates expound that the retention of discretionary power with
 31 the Governor was not in any way contrary to the power of responsible Government, nor should
 32 the same be assumed the power akin to that vested with the Governor under the Government
 33 of India 35 Act. And from that emerges the answer that the retention and vesting of
 34 discretionary powers with the Governor should not be taken in the sense of being contrary to
 35 or having the effect of negating the powers of responsible Government. Significantly with
 36 reference to the Governor's discretionary powers, it was emphasized by Dr. Ambedkar." The

clause is a very limited clause. This is 163(1), 163(2) everywhere else, there is discretion everything. It says, "except in so far as he is buyer under this Constitution, therefore, 163 will have to be read in conjunction with such other Articles which specifically deserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his Ministers in any matter in which he finds he ought to disregard it. Therefore, I think the fallacy of the argument of my Honourable... therein lies the fallacy. In our considered view, the Constituent Assembly debates leave no room for doubt." This is **Nabam Rebia** now. They were quoting Dr. Ambedkar. This is the text of the judgment. "Have leave no room for any doubt, as the framers of the Constitution desire to embody the general and basic principle describing the extent and scope of the discretionary power at 163(1), and not in (2) as suggested. They strongly endorse and there are very clear passages in Justice Punchhi's report. In para so and so, the Justice Punchhi Commission, the observations of Dr. Ambedkar have been highlighted. So there's a full connectivity and there is a seamless sync. There is a harmony in what's happening. Dr. Ambedkar says something, 163 says something, Your Lordships' case law says something, the Punchhi Commission says something. All are in the same direction. "The Governor, under the Constitution, has no functions which he can discharge by himself. No functions at all," this is Dr. Ambedkar, My Lords. "While he has no functions, he has certain duties to perform. And I think the House will do well to bear in mind his distinction. This Article nowhere either in (a) or (b) or (c) says that the Governor in any particular circumstances may overrule the Ministry. Therefore, the criticism that is in made somehow enables the Governor to interfere or upset with this is entirely beside the point." Then My Lords, they quote, "in a very limited field, however, the Governor may exercise certain functions in his discretion, as provided in 163(1). The first part of 163(1) requires the Governor to act on the aid and advice of his Council. There is, however, an exception in the latter part regard to matters where he's by or under the Constitution required to so function." I have given the list of those provisions is... page 28, para 13.4.

CHIEF JUSTICE B. R. GAVAI: You have given those six instances.

DR. ABHISHEK MANU SINGHVI: "The expression required signifies that the Governor can excise his discretionary powers only if there is a compelling necessity to do so. It has been held at the expression by and under the constitution means, necessity to exercise such powers may arise from any express provision of the Constitution, or by necessary implication. We'd like to add the said necessary may also arise from rules and orders." So, you may have such provision. "Thus the scope of discretionary powers as provided in the exceptions, has been limited by the clear language of two clauses. It is an accepted principle that in a Parliamentary democracy with a responsible form of Government, the powers of the Governor as Constitutional or formal Head of the State should not be enlarged at the cost of the real

Executive, should not be enlarged at the cost of the real Executive Council of Ministers. The scope of discretionary powers has to be strictly construed, effectively dispelling the apprehension of any that the area for the exercise of discretion covers all or any of the functions to be exercised." This makes the balance perfect. There's no problem with 163, unless you start distorting it. "In other words, 163 does not give the Governor, a general discretionary power to act against or without the advice of his Council of Ministers. The area for the exercise of discretion is limited. Even in this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, acted by good faith. We are therefore, of the considered view that, insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited to situations wherein a Constitutional provision expressly so provides that the Governor should act in his own discretion. Additionally, a Governor can exercise his functions in his own discretion in situations where an interpretation of the Constitutional provision is concerned, could not be construed otherwise." So, you are compelled to so construe that it must.... 356. Anybody says, you must consent for anything, will be ridiculous situation. "We, therefore, hereby reject the contention advanced on behalf that the Governor has the freedom to determine when and in which situation he should take decision in his own discretion without the aid and advice of the Chief Minister and his Council. We also accordingly turned down the contention that whenever the Governor, in the discharge of his functions, takes a decision in his own discretion, the same would be final and binding and beyond the purview of judicial review. We are of the view that finality expressed in 163(2), would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of 163(1) and additionally, in situation where the clear intent underlying a Constitutional provision so requires, namely, where the exercise of such power and the aid and advice would run contrary to the Constitutional scheme or would be contradictory in terms." Here, Your Lordship is asked to read 200 to nullify 201. The opening and the first proviso. Not to further the Constitutional scheme, but to dilute or liquidate it.

Now, Mr. Kamath in para 13.1 had moved the amendment to remove this acceptance so far as. That's para 13.1. He didn't like this exceptional, insofar as by and under the Constitution, required to assess. That's then draft 143. Now 163. "Mr. Krishnamachari...", next para 13.2, "...opposed it and reassured the Assembly that the expression was only a safeguard." And what did he mean? "Since independent discretion could be exercised by the Governor only under the provisions which specifically require the Governor to exercise such discretion, independent of the aid and advice." So, Mr. Krishnamachari said that your opposition, Mr. Kamath, may not be justified because this is the object. Next page 25.

CHIEF JUSTICE B. R. GAVAI: You won't be finishing in five minutes?

1 **DR. ABHISHEK MANU SINGHVI:** No, no, certainly not. Well, incidentally, I mentioned
2 Mr. Shashi Tharoor's name in admiration.

3 **CHIEF JUSTICE B. R. GAVAI:** Beg your pardon?

4 **DR. ABHISHEK MANU SINGHVI:** Just to clarify the record, I mentioned Mr. Shashi
5 Tharoor's name in admiration. I mentioned... It's not a defensive comment. I mentioned in
6 admiration, not in derogation.

7 **CHIEF JUSTICE B. R. GAVAI:** We don't know what [UNCLEAR] on social media.

8 ^12:55:29 PM^

9 You sort it out with him.

10 **DR. ABHISHEK MANU SINGHVI:** Yes, yes. I will.

11 **CHIEF JUSTICE B. R. GAVAI:** We won't permit more than one hour for that.

12 **DR. ABHISHEK MANU SINGHVI:** I'll get the list and just check it out.

13 **CHIEF JUSTICE B. R. GAVAI:** 334 is not...

14 **DR. ABHISHEK MANU SINGHVI:** No, no, no, we are not saying.

15 <<< LUNCH BREAK >>>

16 **CHIEF JUSTICE B. R. GAVAI:** Yes, Dr. Singhvi.

17 **DR. ABHISHEK MANU SINGHVI:** My Lords, in a lighter vein this case is about timelines.
18 In a lighter way in this case is about timelines, about Governor and President. It is easier for
19 Your Lordship to solve this case on timeline than for me to look at the timelines of that list and
20 solve it. So I leave it to My Lords. I saw the list for the first time during lunch.

21 **CHIEF JUSTICE B. R. GAVAI:** We [UNCLEAR] considering one concept for one side. That
22 is what we have followed for the other side. We don't want to deviate from that.

23 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We can't adjudicate that.

24 **CHIEF JUSTICE B. R. GAVAI:** We can't adjudicate. Normally, we don't permit more than
25 one Counsel to appear for one side.

1 **DR. ABHISHEK MANU SINGHVI:** So My Lord we are at 24 My Lords of my submissions.
 2 In 24, that phrase "except and so far as is by under the" comes up with the CAD. Mr. Kamath's
 3 words starts and opposes in 13.1, I've read. He says...

4 **CHIEF JUSTICE B. R. GAVAI:** He proposed an amendment to delete that.

5 **DR. ABHISHEK MANU SINGHVI:** That's right. So Mr. Krishnamachari says in next para,
 6 "it is only a safeguard, since independent discretion could be exercised by the Governor only
 7 under the provisions which specifically require the Governor to exercise such discretion
 8 independent of the aid and advice of the Counsel." Next page 25. Middle, bold face. "Actually,
 9 I think this is more by way of a safeguard because there are specific provisions in this Draft
 10 Constitution, which occur subsequently, where the Governor is empowered to act in his
 11 discretion irrespective of the advice tendered by his Council of Ministers." Then, after a few
 12 lines. "Here, the general proposition is stated that the Governor is normally to act on the advice
 13 of his Ministers, except insofar as the exercise of his discretion is covered by those Articles in
 14 the Constitution in which he is specifically empowered to act in his discretion." So long as there
 15 are articles occurring subsequently in the Constitution, where he is asked to act in his
 16 discretion, which completely cover all cases of departure from normal practice, to which I see
 17 my Honourable friend Mr. Kamath has no objection, I may refer to 188. The overlap of which
 18 is 356. I see no harm in the provision in this article being as it is. If it happens that this House
 19 decides that in all the subsequent articles, the discretionary power should not be there, as it
 20 may conceivably do. This particular provision will be of no use and will fall into destitute. The
 21 point that my Honourable friend is trying to make while he concedes that the discretionary
 22 power of the Governor can be given under 188 seems to be pointless. If it is given under 188,
 23 there is no harm in the mention of it remaining here. No harm can arise by specific mention
 24 of this, except of Article 143," that is present 163. 143 is present 163 "...therefore, the serious
 25 objection Mr. Kamath finds for mention of this exception is pointless, I therefore think the
 26 article will..." "...If it is necessary for the House, either to limit the discretionary power of the
 27 Governor, or completely do away with it. It could be done in the Articles that occur
 28 subsequently, where a specific mention is made, without which this power that is mentioned
 29 here cannot, at all be exercised." Then My Lords, Dr...

30 **CHIEF JUSTICE B. R. GAVAI:** There is no discussion that after the Subsequent Articles
 31 have taken into consideration...

32 **DR. ABHISHEK MANU SINGHVI:** (A) look at it, after that.

33 **CHIEF JUSTICE B. R. GAVAI:** ...this could be revisited.

DR. ABHISHEK MANU SINGHVI: "Revisited." Exactly, revisited is the right word, revisited is the right word, revisited and those Articles may be having specific provisions saying "you have a specific discretion, then therefore you'll fit in there. If you have a specific provision, we have no problem." But My Lords this whole argument of general discretion, which Your Lordship is finding out on case- to-case basis, it will create chaos.

Then, My Lords, Dr. Ambedkar broadly supports Mr. Krishnamachari, and says the same thing, "other such Articles will specifically reserve." That's what he says. Some of them are coming later. Some are there, he says. Others, which is at page 27. Next page after Dr. Ambedkar starts "The clause is a very limited clause." He says, third line 27. It says "...acceptance so far raises by under this clause, therefore 143, i.e. 163 will have to be read in conjunction with such other Articles, which specifically reserve the power to the Governor. It is not a general clause, giving the Governor power to disregard the advice of his Ministers, in any matter which he finds he ought to disregard. Therefore, as I've said, having stated, there is nothing incompatible with the retention of the discretionary power, and the Governor in specified cases with the system of responsible Government. The only question that arises is, how should we provide for the mention of this discretionary power. It seems to me, there are three ways by which this could be done..." My Lords he gives those ways. Then after some lines, "...the other way would be to say in 143, except is provided in Articles so-and-so, specifically mentioned or whatever they are. But the point I'm trying to submit is that the House cannot escape from mentioning in some manner, that he shall have discretion." Because there are specific Articles, so he said, we'll say it.

Then My Lords, next page 28. "I personally, myself, would be quite willing to amend the last portion of Clause (1) of 143." This is a revisiting point Honourable Chief Justice made. "if I knew, at this stage, what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor. My difficulty is that we have not as yet come either to Article 175 or 188..." 175 is present 200. "...or nor have we exhausted all the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend Article 143 and to mention the specific Article, but that cannot be done now."

Now My Lords, 13.4 is important, though not exhaustive. It is giving Your Lordship exact provisions which give him that phrase, and that discretion. They have exact My Lords - provision "empowering, enabling, using diverse words." All are quoted there My Lords. They are quoted there.

1 So I am done with my proposition, which said that even My Lords "on a general issue of
 2 discretion, no such general discretion was envisaged." This is on the entire constituent
 3 discretion of a Governor, all the relevant things according to me have been covered. And the
 4 "thrust" Your Lordships can have a sentence word here, 'thrust', is clearly, that you are not
 5 there without specifically conferred discretion. Now, I come to two sets of argument, the first
 6 of which is only showing material which I believe has strong resonance to suggest that for each
 7 of the three options, each of the three... First one doesn't matter, the first one anyway, he gives
 8 assent. Second and third option, he still acts on the binding aid and advice. Second and third.
 9 And immediately after that, I'll come that very well, I don't press the first one. In any case, he
 10 at the most will have one referral back and one presidential reference. So, I'm dealing with this
 11 in separate boxes. Page 29 is my first set of submissions, that Your Lordship will see some
 12 paras which may have throw light on this, because Your Lordships get a complete picture. If I
 13 am partially right or right in this one, then I'm certainly right on the next point. Therefore My
 14 Lords, just see this facet, which suggests that they intended not to have any discretion, with
 15 the one exception of second proviso. With the one exception of the second proviso.

16 Page 29. This runs My Lords, this point runs from 29 to 44. Only on this point that every option
 17 has a binding aid and advice...

18 **CHIEF JUSTICE B. R. GAVAI:** Of the...

19 **DR. ABHISHEK MANU SINGHVI:** Of the Constitution. "There is strong material,
 20 especially in *Shamsher* and *Nabam* as also in at least three speeches in the Assembly, that
 21 of Dr. Ambedkar, Krishnamachari and Brijeshwar Prasad, to conclude that all the three
 22 options exercised by the Governor under 200, assent, withholding assent, or reserving, are
 23 intended only to facilitate law making. That's the rationale, by the Council of Ministers, and
 24 therefore, each of the three options subjects the Governor to the binding aid and advice.
 25 Ultimately, the Governor is only facilitating. In Article 200, neither the main Clause nor the
 26 first proviso, leave any scope....

27 **CHIEF JUSTICE B. R. GAVAI:** Normally, the second option of withhold will not arise
 28 unless it is a private Bill, because the Bill would be present in his House only on the, after the
 29 Cabinet approves it. So, there would be no question of withholding it.

30 **DR. ABHISHEK MANU SINGHVI:** No, that's I've dealt with it. Let me oralize, 30 seconds.
 31 Now, we are considering the argument that all the three options, he has to act on the binding
 32 aid and advice. My Lord, rightly asked me, why have a second one of sending back on the
 33 binding aid and advice of the Council, right? Well, that's one. The answer is, there are many

1 situations where the Government wants to rethink, a change of policy. We have noticed some
 2 error, we want to make an amendment, we want to make a mid-course correction, or we want
 3 to call it back and rethink the whole issue at all. We'll not send it back to you. All these are
 4 possibilities why you will act even on the second option of sending it back. I'll develop it in a
 5 minute.

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

7 **DR. ABHISHEK MANU SINGHVI:** The third option of the Presidential arises where the
 8 government frequently either knows that this requires Presidential Assent. There are
 9 provisions I'll be showing where the provision requires Presidential Assent. Constitutional
 10 provision requires or the Government is in doubt that there is some competence issue where
 11 it is better that the Governor send it to the President.

12 **CHIEF JUSTICE B. R. GAVAI:** But suppose, if the Governor himself has doubt...

13 **DR. ABHISHEK MANU SINGHVI:** That is my next argument.

14 **CHIEF JUSTICE B. R. GAVAI:** That a particular...

15 **DR. ABHISHEK MANU SINGHVI:** In this argument, I believe, he cannot have a doubt.
 16 He is bound.

17 **CHIEF JUSTICE B. R. GAVAI:** No, no. If he has a doubt, that the Statute is repugnant to
 18 some Central Statute, wherein the Governor will not have a discretion.

19 **DR. ABHISHEK MANU SINGHVI:** Appreciate, My Lord. Therefore, My Lord, I divided it.
 20 The next set of arguments is that he has the discretion, wants to send it back and wants to the
 21 President. That's the next set of arguments after page 44.

22 **CHIEF JUSTICE B. R. GAVAI:** That is your alternative argument?

23 **DR. ABHISHEK MANU SINGHVI:** Alternative argument.

24 **CHIEF JUSTICE B. R. GAVAI:** That he has limited discretion.

25 **DR. ABHISHEK MANU SINGHVI:** For me, it makes no difference. Please accept that. But
 26 there are five pieces of evidence, two judgments and three speeches, which suggest that my
 27 prior argument is not without solid material. That is, that is bound by all three.

- 1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** If, for example, something impinges
2 upon 286, 287 then, in this case what would happen?
- 3 **DR. ABHISHEK MANU SINGHVI:** In which case?
- 4 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Of course, the Bill impinges upon...
- 5 **DR. ABHISHEK MANU SINGHVI:** Yes.
- 6 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** ...Issues connected to 286, 287 or 288
7 or another. I'm not mentioning all the provisions. And if it comes to him, and definitely the
8 Council would not advise it to be referred back or would always be insisting for an assent. What
9 would he do at that time?
- 10 **DR. ABHISHEK MANU SINGHVI:** No...
- 11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It will anyway not ask for reference to
12 the President?
- 13 **DR. ABHISHEK MANU SINGHVI:** No, I'm not saying they'll ask on this case. I'm saying
14 My Lords, what Your Lordship is saying...
- 15 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** He has no option according to you.
16 According to you, even if the Bill is apparently impinging upon provisions.
- 17 **DR. ABHISHEK MANU SINGHVI:** Absolutely. He is not the Judge. My Lord is right. The
18 Governor is not the judge of the legality.
- 19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Take a glaring example. We are just
20 asking you to test the proposal.
- 21 **DR. ABHISHEK MANU SINGHVI:** I don't want to take a glaring example of the kind listed
22 there, which I'll be showing in a minute.
- 23 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** No, not on that basis. I'm saying, if it
24 is apparent from the Bill that it is impinging upon those specified in the Constitution itself,
25 but there is a difference of opinion between the Council of Ministers and the Governor, and
26 Governor thinks that it is apparently, directly impinges upon, you are saying that there is no
27 such option for him except to...

- 1 **DR. ABHISHEK MANU SINGHVI:** What is my answer? The answer in the second set of
2 submissions which I'm now on, from page 29 to 44, he has no option.
- 3 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's it.
- 4 **DR. ABHISHEK MANU SINGHVI:** That he has no option. This Bill may be illegal. My
5 Lord is right. After he appends his signature, it will be challenged in Court. Your Lordships
6 may want to strike it down.
- 7 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Just wanted to know.
- 8 **DR. ABHISHEK MANU SINGHVI:** The Constitutional scheme will not change about the
9 binding nature of the aid and advice, barring My Lord, as I don't again repeat, want to go
10 through examples that he passes a Bill that I take over the Taj Mahal. He passes a Bill that the
11 Government of India should be dissolved. So that is no...
- 12 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** But that approach you take, then the
13 second question becomes even more important.
- 14 **DR. ABHISHEK MANU SINGHVI:** Yes.
- 15 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** When you say that once it comes
16 back, he has no option. At least at that stage, there is a possibility for him to refer to the
17 President, saying that I've told you that it's impinging...
- 18 **DR. ABHISHEK MANU SINGHVI:** That is coming later.
- 19 **CHIEF JUSTICE B. R. GAVAI:** That is the third argument.
- 20 **DR. ABHISHEK MANU SINGHVI:** That's the argument after that. That's the argument
21 after that.
- 22 **CHIEF JUSTICE B. R. GAVAI:** That is the third argument.
- 23 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We're just flagging it, that's all.
- 24 **DR. ABHISHEK MANU SINGHVI:** I am glad.
- 25 **CHIEF JUSTICE B. R. GAVAI:** He said in the beginning itself that there are three
26 alternative arguments?

1 **DR. ABHISHEK MANU SINGHVI:** My Lord is right. Absolutely. That I'm not conceding
 2 at all. I am saying, he, the entire structure I'll read of 200 and the first proviso is the initial
 3 stage structure. It's the initial stage structure. In fact he can then chances. The referral back
 4 can become a device to refer to the President, which he never thought necessarily refer to the
 5 President. Anyway, let me come to that. That will be in its place. Let me first make the first
 6 argument only because there are, according to me, some resonance in these five pieces which
 7 suggest that in this work, he's bound. His job is not to... My Lords in practice, the example My
 8 Lord Justice Narasimha gave. It is entirely possible in a normal, harmonious thing, which we
 9 have seen many times, and we have known many, Governors and Chief Ministers who will pick
 10 up the phone and say, "look, this is not quite right, that is 286." That tradition may be
 11 vanishing fast, we don't know. That tradition may be vanishing fast, but those are practical
 12 solutions to real problems, much, much lasting nature. But, if push comes to shove and Your
 13 Lordships is asking a constitutional question, then this proposition is that he's not, and it will
 14 be set aside by a Court of Law. So the organ created is "Your Lordships." That's, not the organ
 15 created.

16 "Now My Lords, kindly come to 29. "In Article 200 neither the main clause nor the first proviso
 17 leaves any scope of discretion with the Governor, and as a first argument, it is submitted that
 18 the provision enables exercise of any and all of the three options under 200, and also of the
 19 first proviso, only on the binding aid and advice." That's head two. "Before turning to the CAD,
 20 it may be stated at the outset on a conceptual basis, that the structure of 200 provides, well,
 21 firstly, for three options read with the first proviso. And the third — so the first proviso also
 22 deals with the methodology, mode, manner, and execution of the second of the three options."
 23 The point I'm making here is, the proviso, the first proviso, is basically telling Your Lordships,
 24 the mode, methodology and manner were the second option. It's focusing on the second
 25 option.

26 **CHIEF JUSTICE B. R. GAVAI:** That is what has been held by the...

27 **DR. ABHISHEK MANU SINGHVI:** Lordship, please.

28 **CHIEF JUSTICE B. R. GAVAI:** Division Benches, so we are not in Appeal.

29 **DR. ABHISHEK MANU SINGHVI:** No, that's a fact. I must also put at the back of this
 30 entire submission, the relevant paras on each of these just for... I know Your Lordships is not
 31 appeal, Your Lordships is not there, but all the relevant paras on each topic of the Division
 32 Bench, just as an Appendix at the end, that's why this is long. It's not that long at all. It's just
 33 put there for reference.

Now My Lords, para 18. "In respect of the second option in Article 200, it is entirely..." now this is a conceptual answer to the query, Justice Narasimha asked, Chief Justice also asked, conceptual My Lords. "It is entirely possible that the Assembly or the Government, which has assented to the Bill, wants to reconsider some aspect, alter or amend it, or put it on hold, or permanently stop it, or reflect in it a modified policy perspective. Such situations cannot be exhaustively itemised and can arise in diverse and myriad contexts. In all such cases, the State Assembly could be well within its right to bind the Governor by its aid and advice, seeking a return of the Bill. This is the second option.

Then the third option, how does it operate? "As far as the third option is concerned the State Government may similarly have decided that certain Bills necessarily require Presidential Assent, without which they may be unconstitutional, entrenching upon contrary central law, this situation again necessitates the binding aid and advice of the Governor to refer such a Bill to the President. Additionally, apart from repugnancy, certain provision of the Constitution themselves, require prior Presidential Assent." This list My Lords is given here now. These are all, they all say My Lords "unless Presidential Assent is obtained or provided Presidential Assent is obtained," Your Lordships may just know a illustrative list, My Lord mentioned 286, 288 is there. 288 is there, 304 is there, 360 is there. Now, I am now trying to give a conceptual reason, why they may bind even on the second and third option.

Then My lords, now let us look at the evolution, and whether there is a CAD material for this. Turn to the next page. Page 31, under para 20, 20.1. Section 75. Now, this is interesting. Why I'm arguing that? Now, you have no discretion at all. You have no discretion, because discretion was consciously discussed over several sessions, and deleted first from the main body and then from the proviso. Let's see that first. "A Bill which has been passed by a Provincial Legislative Assembly, or, in the case of a Province having a Legislative Council, has been passed by both chambers. The Provincial Legislature shall be presented to the Governor. And the Governor, in his discretion, shall declare either that he assents or that he withholds assents therefrom" This is according to me very strong evidence of what Your Lordship now has in contrast? And why delete it? Second "...provided that the Governor may, in his discretion, return the Bill." So two discretions, body and proviso.

In the next para, "In the draft Constitution prepared by the Advisor, draft 147...." That is the original, 147 is the original 200 draft version. "... The word discretion was removed from the main Clause but retained in the proviso." If My Lord sees, I've reproduced 147. My Lord will not find 'discretion' there. It's gone, but in the next line, it remains in the proviso. "Provided that where there is only one House of a Legislature of a Province, and the Bill has been passed by that House, the Governor may, in his discretion, return the Bill together with a message

etc., etc." The Governor... just kindly pause here. "The Governor may, in his discretion return..." If I delete it, one argument possible is, there's a possibility of return is also not bound by discretion. It is bound by the aid and advice. This clause said, you may return in discretion. You deleted it. That means for the second option also, you are bound by the aid and advice. Let's go further. "Subsequently, 175, initially prepared by the Drafting Committee, discretion was retained in the proviso." Now, it came to the Drafting Committee, so they retained it in the proviso, initially. The first was gone already. They never put it back. Here Your Lordships see that page 33," The proviso retains discretion". This is the next stage of the Drafting Committee. Now, Dr. Ambedkar consciously moves an amendment. It's a very, very deliberative conscious process. Dr. Ambedkar in para 20.4 says, "I had moved an amendment to remove the word discretion from the proviso also..." Come to the next para. "... I beg to move that for the proviso to Article 175, the following proviso be substituted." This proviso My Lords, I can't show negative, does not have discretion, does not have discretion. Now, come to 34. On this also, the learned SG has a para, which is a wrong submission that they had a parallel main clause. Now, just see this. 34. "Sir. This is in substitution of the old project...", Dr. Ambedkar speaking. "...The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislation and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself". So, Dr. Ambedkar straight away scrapes on in the issue, directly. "Secondly, the right to return the Bill with the recommendations applicable to all Bills, including money Bills. Thirdly, the right was given to the Governor to return the Bill only in those cases where it was unicameral. It was felt then that in a responsible Government there can be no room for the Governor acting on discretion. Therefore, the new proviso deletes.

My Lords, I have an alternative argument, but I mean, I am in no compulsion, I believe, in a weak wicket to press this argument. Just give me a second My Lords.. There are three options. The first option is irrelevant because you are assenting it. There's no issue with this. This discussion of discretion arises only in the second and third option. Dr. Ambedkar, in the middle of page 34 is giving a direct reason that with responsible governance, there can be no room for the Governor acting on discretion, in the context of why he deletes the proviso in 200, in present day 200. Then why should Your Lordship, even for the first time, imagine a discretion to refer back or refer to the President? Your Lordship will not be My Lords.... These examples given, even the milder example, it will be unconstitutional Bill, it will be unconstitutional Bill. Of course, governance is premised on the fact that both people collaborate and do...the State will not sense it as unconstitutional Bill, as the milder example My Lord gave. And the Governor will, maybe talk on the telephone and solve it. But as I said

1 at the end, this principle, the intent of the framers is clear, and there can be no better intent of
 2 the Framers than Dr. Ambedkar himself. He's not even responding. He's moving it. He's moving
 3 it. Similarly, it is felt that this right to return the Bill should not be extended to a money bill...
 4 leave the money bill, I will come to it later.

5 Then My Lords, now again, this is very interesting because the dialectics starts My Lord.
 6 Thesis, antithesis and synthesis. When Dr. Ambedkar tells Brajeshwar Prasad raises the
 7 antithesis. He complains, "Why are you deleting discretionary?" So, we get some more light.
 8 He says at page 34, bottom, draft 175. "Why are you deleting?" 35. 35. "I am not in favour of
 9 this provision." Then he cannot *veto* a Bill that has been twice passed by the Assembly. Even
 10 that is not acceptable to me. He has not got power in his discretion to *veto* a Bill or to reserve
 11 a Bill for the consideration of the President. So, second and third option are directly mentioned
 12 by Dr. Brijeshwar Prasad, Mr. Brijeshwar Prasad. I hope I'm clear. Mr. Brijeshwar Prasad is
 13 touching directly on the second and the third option. And his opposition gives clarity in my
 14 respectful, humble submission. Then My Lords after a few lines, they are not underlined,
 15 middle of page 35, Brijeshwar Prasad says, "secondly, I am in favour of the President having
 16 power to reserve a Bill for his consideration on his own initiative and authority." I'm sorry. I've
 17 not underlined that

18 **CHIEF JUSTICE B. R. GAVAI:** It is before that also. I want that the Governor...

19 **DR. ABHISHEK MANU SINGHVI:** "I want that the Governor should have power in
 20 discretion to veto a Bill passed, whether passed once or twice by it." I'm grateful because that's
 21 the Governor. Next sentence is President. Secondly, "I am in favour of the President having
 22 power to reserve a Bill for his concerned own initiative. He should have power to issue an order
 23 to the Governor directing that a Bill passed should be reserved." So President can do that
 24 according to Brijeshwar Prasad. "I know that this proposition will not be in consideration what
 25 is supposed to be the democratic tendencies. People think they are living in a democratic age."
 26 There's some typo there My Lords. "But I feel that we are living a totalitarian age. I want power
 27 to be vested in the hands of the Governor of vetoing." Now, I want to ask this. Justice... I believe
 28 Justice Narasimha's query at least had some element of the last sent sentence. I may be wrong,
 29 but that query is at least some sentiment. Not the extreme examples, but some... "vetoing
 30 unjust and unsound legislation". Our frameworks have thought of it, and one framer objected,
 31 and Dr. Ambedkar says no, and, if this is the basic intent Your Lordship is asked to demolish
 32 my third lesser argument. Your Lordship is supposed to be saying that even my lesser
 33 argument, he has one power referral back. That is also wrong. I think these few underlying
 34 lines show clearly that the intent was to give him no discretion. Which is why I've given
 35 examples why the Government may want to bind him for the second option also and the third

1 option also. It is not that the Governor will do it. The Government may want to do it. That's
2 why the second option is given, that's why the third option is given.

3 Now My Lords, Justice Krishnamachari retorts or responds at page 36. "The Governor will not
4 be exercising his discretion in the matter of referring a Bill back to the House with a message."
5 Directly the language. If this was a statute of the Constitution is clear that provision has gone
6 out of the picture. The Governor is no longer vested with any discretion. If it happens, that as
7 per Amendment 17, the Governor sends a Bill back for further consideration, he does so
8 expressly on the advice of his Council of Ministers. Nobody objects to Krishnamachari, they
9 object to Brijeshwar Prashad. Nobody in the House does.

10 "The provision has merely been made to be used if an occasion arises when the formalities
11 envisaged in article which has already been passed. Do not perhaps go through, but there is
12 some point of the Bill which has been accepted by the upper House, which the Ministry
13 thereafter finds to be modified. Then they will use this procedure, they will use the Governor
14 to hold up the further proceedings of the Bill and remit it to the lower House with his message."
15 So this is the problem of discretion, they are saying. Don't give discretion. There's a flip side
16 to it. It's not so easy. Your Lordship is told, even the lesser option is bad. If my Honourable
17 friend understands that, the Governor cannot act on his own he can only act on the advice of
18 the Ministry, then the whole picture will clearly fall in place before him. It may happen that
19 the whole procedure envisaged in 172 also goes through, and then again, something might
20 have to be done in the manner laid down by this proviso, but perhaps unlikely. This is what I
21 said. We want to correct. You may want mid-course correction. "It is a saving clause and vests
22 power in the hands of Ministry to remedy a hasty action that they might have undertaken or
23 enable them to take an action which they feel they ought to do in to meet popular opinion
24 which is reflected outside the House in some form or another, and for this purpose only, the
25 new proviso has been put in". This is a facet which has been ignored. The above shows that
26 Brijeshwar Prashad's understanding was not accepted and Mr. Krishnamachari's
27 understanding of Dr Ambedkar's statement was.

28 Next page. "Thus, the Union of India..." submission in para 82 now, this is the error. I've
29 quoted the word 182 of the submission is erroneous because it says I don't know how they say
30 that, "The amendment moved by Dr. Ambedkar to remove discretion from the first proviso
31 was not accompanied by a parallel intention to fetter the main clause powers." Now, this is
32 even factually wrong. Earlier it was legally wrong. Main clause powers is the previous one they
33 deleted before. Main clause power was deleted much earlier, finished, gone. Never got it back.
34 Subsequently, Proviso was also deleted.

1 So, 182 is saying that the amendment moved by Dr. Ambedkar to remove discretion, the first
 2 proviso was not accompanied by "parallel intention to fetter the main clause powers" it is
 3 patently wrong, factually wrong, legally wrong. Now let us turn to the judgments. So I said,
 4 well, if there is strongly arguable material, three speeches of the most important, I would say,
 5 not speeches, My Lords Dr. Ambedkar's conception. Not challenged by anybody.

6 Now we turn to **Shamsher Singh**. **Shamsher Singh** says My Lords, in paras 26 at page 37
 7 that "...there are narrow, rare and exceptional strips of discretion." The word 'strip' is not My
 8 Lords. The word 'strip' is of **Shamsher Singh** which the Governor has under the
 9 Constitution. Justice Iyer, if I remember right. "...the itemisation specifically highlights only
 10 the second proviso." Now, this part, My Lord, is partly seen. This is the 54, 56. Para 54, which
 11 I did in the morning, contrast with 56. Just see the bottom of page 37. "Draft Article 175 Proviso
 12 said that the Governor may, in his discretion, return the Bill together with a message
 13 requesting the House will reconsider the Bill. So, **Shamsher Singh**, 7-judges have accepted
 14 this deletion of the discretion. "Those words that the Governor made is discretion were
 15 omitted, when it became 200. The Governor, under 200, may return the Bill with a message
 16 requesting that the House will reconsider the Bill. Draft 188...", which ultimately became a
 17 different Article as 356 "...dealt with the provisions in case of grave emergencies. 188 used in
 18 his discretion in relation to powers," this is My Lords 356.

19 **CHIEF JUSTICE B. R. GAVAI:** 356.

20 **DR. ABHISHEK MANU SINGHVI:** Now come below. "Under the Cabinet system of
 21 Government, as embodied in our Constitution, the Governor is the Constitutional or formal
 22 Head of the State, and he exercises all his powers and functions conferred on him, by or under
 23 the Constitution on the aid and advice of his Council of Ministers save in spheres where the
 24 Governor is required by or under the Constitution to exercise" The provision. Now, this is, it's
 25 starting with the proviso deletion, then. It is coming to 28, then coming to 54 and 54 then
 26 stops says "yes, except where he has given directly with given power. And the direct power
 27 given to him for discretion is the second proviso. It says so." In 56, two paras later, they have
 28 summarised the same thing. But they say 200 alone. They don't say two... second proviso. That
 29 can't be the way to interpret this judgment. The provision I'm reading My Lords bottom of 37,
 30 "the provisions of the Constitution which expressly require the Governor to exercise his
 31 powers in his discretion are contained in Articles to which reference has been made to
 32 illustrate...", My Lord, will just mark paragraph 54 it's very important. "Article 239 states that
 33 where a Governor is appointed an administrator of an adjoining Union Territory, he shall
 34 exercise...

- 1 **CHIEF JUSTICE B. R. GAVAI:** This portion has already been read by you.
- 2 **DR. ABHISHEK MANU SINGHVI:** Done. I'll leave it. 56 also I've done the next para, right,
3 My Lords?
- 4 **TUSHAR MEHTA:** In fact, I have also read all these My Lords, in my...
- 5 **DR. ABHISHEK MANU SINGHVI:** No, unfortunately not. I think unfortunately not. You
6 just kindly check-up Mr. Mehta.
- 7 **TUSHAR MEHTA:** You were not here, but...?
- 8 **DR. ABHISHEK MANU SINGHVI:** There as far as I can see, My Learned Friend's
9 Assistant has quoted only 56.
- 10 **TUSHAR MEHTA:** No, no, no.
- 11 **DR. ABHISHEK MANU SINGHVI:** Yes. I got it here. 207. I've got it here. It doesn't matter,
12 but at least as far as I see 207 quotes only 56. He has quoted 54 elsewhere. But in the quote
13 where he's saying 56, he has quoted only 56. Doesn't matter My Lord, it doesn't matter.
- 14 **TUSHAR MEHTA:** It can be re-read. I have no...
- 15 **DR. ABHISHEK MANU SINGHVI:** That's all right. Anyway, let's leave that. Nobody can
16 change the Articles of these provisions or this paras. Now, let's go on My Lords 40.
- 17 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Irrespective of you quoting, not
18 quoting, and we have to go through and draw our own conclusion.
- 19 **DR. ABHISHEK MANU SINGHVI:** No, of course Your Lordship has to. 40 para 139, "Of
20 course, there is some qualitative difference between the position of the President and the
21 Governor. The former, under 74, has no discretionary powers, the latter too has none. The
22 latter too has non, save in the tiny strips..." this Justice Iyer, My Lords Krishna Iyer "...in the
23 strips covered." Now, these are the strips. That's why we say accepted so far as the Constitution
24 gives you 163(2), 371, so-and-so, 371, so-and-so, VI Schedule...VI Schedule.
- 25 **CHIEF JUSTICE B. R. GAVAI:** But 163(2), cannot be said to be "tiny street"?
- 26 **DR. ABHISHEK MANU SINGHVI:** No, whatever, It's a strip Your Lordships knows the
27 scope of it. I mean, we discussed in the previous section on discretion. It is there, it also is not

any wider than My Lords, what is given to you. It is not an implied discretionary tank of power because otherwise, 163, all the entire constituents came... 163 can be, has to be subordinated to the overall scheme of the Constitution, all their Articles. These discretionary powers exist only where expressly spelt out. Now My Lords, Justice Iyer as a concurring judgment, is saying so clearly, and even those are not left to the sweet will of the Government but are remote controlled by the Union Ministry which is answerable to Parliament for those sections. Five lines later, "For a centrally appointed Constitutional functionary to keep a dossier on Ministers..." "This I have read in the morning. "In all its Constitutional functions, it is the Ministers who act only in the narrow area specifically marked out for discretionary exercise, he's untrammelled by the State Minister's acts and advice." And then My Lords, "...We declare the law without being dogmatic or exhaustive." This part is read My Lords. Page 41 was read in the morning. And then at the bottom of 41 is the royal assent point.

Nabam also 154, has been read, which follows My Lords, **Shamsher** and **Nabam** go together on this point. Now, My Lords, **Valluri**, which is page 43, just before I end this section, to the same effect as **Valluri**, para 19, "The Governor is, however, made a component part of the legislature of a State under 168 because every Bill passed by the State has to be reserved." Under that Article, the Governor can adopt one of the three courses, namely, he may give assent; two, he may accept in the case of a money Bill, withhold his assent, in which case, the Bill falls through, unless the procedure indicated in the first crisis is followed; Return the Bill to the Assembly for reconsideration of the message. He may subject...", "he may". This is why I put **Valluri** here. I mean, it doesn't matter. I put **Shamsher** and others but just note this. "... he may subject to Ministerial advice, reserve the Bill for consideration of the President, in which case the President may adopt." That's the reason I put it here. This also Constitution Bench. So, I'm done now, My Lords. My second head is over.

My third head is, there are only three options and let us assume that he has discretion in the second and third option to send it once to the State and once to the President. That is My Lords my third head. It starts from 44, starts at 44, ends at 54. This section is page 44 to 54. This third one, which is that, textually, contextually, the Articles are clear. It is only a three-option Article. And let us accept that for two and three, for option two and option three, he's bound. Sorry, he's not bound, by the aid and advice. He's not bound. That's my heading at page 44. "Assuming, without conceding that the Governor is not bound by the aid and advice, while exercising the second and third option, in any event the Governor has no fourth option beyond the three available to him, in the opening words of 200. All the material and above is antithetical to each of the principles advanced by the Government". On this point of fourth and fifth. "All the CAD Supreme Court material would be rendered nugatory and is patently antithetical to the concept of the Governor in the exercise of the second option..." This is

1 having bizarre results. Just bear with me, I'll paint out the bizarre results.".... simply holding
 2 back the Bill either indefinitely, or neither passing nor returning it, thereby rendering it dead.
 3 This would enable the Governor to completely negate the will of the Assembly and be the last
 4 word decider of the fate of legislation proposed by the Government." Does Your Lordship's
 5 Article suggest that the last word decision on the Bill is the Governors? Does any part of the
 6 Constitution suggest that My Lords? And none of the elected, elected government?

7 Furthermore, now this is very interesting, My Lords, this incentivization point. " Furthermore,
 8 it would incentivize such a Governor..." That is, it will incentivize, in case Mr. Mehta is correct.
 9 ".... to hold on indefinitely to a Bill because the Governor would know that if he sent back the
 10 Bill, he is subject to a mandatory direction to pass it second time." But is much better off by
 11 not sending it back and immunizing himself from a second reference back. Just hold on, put
 12 it in his cupboard and go to sleep. So the very.... Why should he send it back at all? Because
 13 Your Lordship has held in a judgment now. That's the contention of the Government. Now the
 14 contention is, now the Government should hold by judgment that he can withhold simpliciter.
 15 Then you have actually made the first proviso zero. Because the first proviso, you know, if I
 16 send it back and he sends it back to me, I'm bound. Why should I send it? It'd be a very foolish
 17 Governor would want to send it back. And why should he do it at all? This would lead... at the
 18 bottom of that page. "This would lead to an absurd negation of the entire...." Actually, the
 19 whole first proviso gets liquidated. I may be exaggerating. I don't think so. I don't think so.
 20 The entire concept of the first proviso is liquidated.

21 Now a further absurdity on the next page 45. A further absurdity if you simply withhold. All
 22 this is about simply withhold, fall through, withhold simpliciter, that was the three sub legs of
 23 the argument. "The language of Article 200 and the first proviso in particular"...

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

25 **DR. ABHISHEK MANU SINGHVI:** Page 45 now. There is another absurdity of this
 26 interpretation. If you so... They are all absurdity, of you so interpret it, I'm saying. "A further
 27 absurdity would follow if the Governor was recognized to have power to simply withhold
 28 assent. The language of 200 in the first proviso in particular is crystal clear that even the
 29 limited power of one return is not available to the Governor if a Money Bill is involved." I'll
 30 read this in a minute. Moreover, under... so that is 200 itself says so. Now, 199 is one provision
 31 before 200. 199(3), says, "If any question arises whether a Bill introduced in the Legislature of
 32 State, which has a council is a Money Bill or not, the decision of the Speaker of the Assembly
 33 of such a State thereon shall be final." Now My Lords I am the Speaker. I certify this is a Money

1 Bill, it goes to the Governor. The Governor doesn't send it back, doesn't refer it to the
2 President, but under my learned friend Mr. Mehta's theory, he simpliciter withholds assent.

3 **TUSHAR MEHTA:** Not for Money Bill. I'm sorry. I never said that.

4 **DR. ABHISHEK MANU SINGHVI:** You did.

5 **TUSHAR MEHTA:** Money Bill cannot be withheld. I never said that.

6 **DR. ABHISHEK MANU SINGHVI:** Can I...

7 **TUSHAR MEHTA:** And I gave the answer also.

8 **DR. ABHISHEK MANU SINGHVI:** Allow me to complete. I thought it out.

9 **TUSHAR MEHTA:** No, you quoted me therefore, it's not my case that Money Bill can be
10 withheld.

11 **DR. ABHISHEK MANU SINGHVI:** I apologize. I'm wrong, actually your esteemed
12 colleague said so directly. And I hope my memory, and My Lord's memory does the same. Mr.
13 Salve argued, and I hope he is not going to argue against you. On the same side as you, that it
14 will apply to a Money Bill also. At which point Mr. Mehta intervened to support the argument.

15 **TUSHAR MEHTA:** Yes, I said there is no occasion because Money Bill is always placed
16 with... Article 207 I had showcased with the concurrence of the Governor. There is no question
17 of withhold.

18 **DR. ABHISHEK MANU SINGHVI:** We heard you with rapt attention. We never
19 interrupted you. Allow me to...

20 **TUSHAR MEHTA:** This is the importance of [UNCLEAR] when other side is arguing.

21 **DR. ABHISHEK MANU SINGHVI:** Yes. No, no, this is the importance of also being correct
22 in what the whole world saw, whether you are present or not. You did not raise the point, Mr.
23 Salve raised the point. Question number one. Factually answer, yes. Now, question number
24 two, at which point you invoked 207. Now 207 is the next para. Mr. Mehta supported Mr.
25 Salve's argument, saying, that it is not necessary to have an exemption for a Money Bill because
26 a Money Bill will have to come with a Governor's recommendation only. Now, therefore I deal
27 in the next para with 207, before that allow me two minutes. Just turn to the Constitution.
28 Turn to three parts of it. First turn to 199 then turn to 200. Sometimes it can be more accurate,

1 by momentarily not being in court, and sometimes you're going to be more inaccurate while
2 being sitting in court. That's also possible. Why is it not possible?

3 199(3). If any question arises... 199(3). "If any question arises whether a Bill introduced in the
4 Legislative State, which has a Legislative Council is a Money Bill or not the decision of the
5 Speaker of the Assembly of such State thereon shall be final". Not the Chief Minister, not the
6 Governor. Speaker. Now My Lords 200 the implication of saying that you have a right to
7 simply withhold assent. Simply. That's the argument we are considering, that was the main
8 argument of Mr. Mehta. In that context see the proviso "provided that the Governor may as
9 soon as possible after the presentation to him of a Bill for Assent, return the Bill, if it is not a
10 Money Bill together with a message." So My Lords asked the question. This is not Mr. Mehta,
11 this is. Mr. Salve, that if you say that you can withhold it simpliciter, as Mr. Mehta, had argued.
12 Then what do you say about a Money Bill? So My Learned Friend says it would equally apply
13 to a Money Bill, that's in the transcripts also. Then if that is so, My Learned Friend says 207,
14 that Mr. Mehta said this time, 207 is the answer to the Money Bill, because the Governor and
15 the State would have recommended it, and there'd be no need. Now, just see that Article and
16 just see Your Lordships interpreted already 207, has no, no application at all. Completely
17 wrongly invoked. "A Bill or Amendment making provision for any of the matters specified in
18 (a) to (f) shall not be introduced or moved, except on the recommendation of the Governor",
19 is what Mr. Mehta intervened to say. "And a Bill making such provision shall not be introduced
20 in a Legislative Council." Now, this provision facially suggests this. It has been interpreted by
21 the Court and otherwise understood to me, this is only a provision to Bar, Money Bills. Money
22 Bills being moved by private members or Financial Bills being moved by private members.
23 And secondly, Your Lordship has held that even here the Governor is bound by the
24 recommendation of the State. 207 is bound completely. But the basic purpose of 207 is not
25 that Your Lordships will hold simplicity, withhold assent, even in a Money Bill. Because 207
26 already has a prior consent of the Governor. I hope I'm clear. The purpose of 207, is to bar a
27 private member, moving anything to do with a Financial Bill. Second is the Case Law holds
28 that in 207 also, the Governor is bound. Just see my para 29.3 now.

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

30 **DR. ABHISHEK MANU SINGHVI:** Kindly come to 29.3. Now, on the last part of this
31 argument, of this part. "The contention of the Learned Solicitor that 201 specifically
32 requires..."

33 **CHIEF JUSTICE B. R. GAVAI:** [UNCLEAR]?

DR. ABHISHEK MANU SINGHVI: 29.3, at page 45. So the previous para is the one Your Lordship has dealt with Money Bill. In support of the Money Bill - 207 is a Red Herring My Lords that's not relevant, for this reason. "The contention Learned Solicitor that 201, specifically requires a recommendation of the Governor. And consequently even Money Bill, which the Governor in his opinion deems to be unfit or in opposite can be held back by him, is completely misplaced." 201, It's "207 is intended for a completely different purpose wholly inapplicable. The phrase recommendation of the Governor, which means the State, governance " Governor doesn't mean governance, it means the State, "...means that no Financial Bill shall be introduced or moved except by the Government, and is intended to exclude the moving of any Financial Bill to Private Members Bill. The phrase recommendation of the Governor in fact means the recommendation of the State, because 207 does not give any special discretionary powers to the Governor." Now this is held in **Valluri**. This is exact same point is held in **Valluri**. Next para My Lords, next page 46. And **Valluri** is talking of 207 itself. Para 18. "The Governor is a Constitutional Head of the State Executive and therefore has to act on the advice of a Council. The Governor is, however, made a component part of the Legislature." Skip all that. May I, with your permission, skip it. "He also has a similar power of causing to be laid before the State Legislature, the Annual Financial Statement under 202 and of making demands for grants and recommending money Bills under 207, in all these matters, the Governor is the Constitutional Head of the State is bound by the advice of the Council of Ministers."

So, this is one part of the answer. This is all part section is on withholding assents simpliciter or the falls through argument. Falls through. Now, the second part of the same argument, same section, same subject is My Lords, it's a completely artificial, non-existent, distinction made between withholding and returning. This argument has been invented to suggest a dichotomy between 'withholding and returning.' Withholding must lead to return. The first leads to the second. There are not two separate options of withholding and returning. For returning, you have to withhold assent, then only you'll return. It's as simple as that. Kindly come to 29.5 My Lords. My learned friend makes it an artificial dichotomy, saying, "You have a separate head of withholding simpliciter. Returning is a separate head." So, entire 2nd, 1st proviso goes. You'll never return. Don't need to return. First proviso is only about returns. First Proviso is only about return. Whole proviso, ten lines of the Constitution are irrelevant. The first proviso of 200 is mandatorily linked to and expands upon the second option. "Withholding of assent to ensure that the object is not rendered *otiose*."

My Lords, just give me 30 seconds on the first proviso. Please see the proviso as drafted. It is directly dealing only with the second option, even as structured. It is crystal clear My Lords. My Lord ends the first five lines by three options, "shall declare either that he assents to the

1 Bill, or that he withholds assent, or he reserves." Now, the proviso is not a fourth option. It is
 2 talking about second option namely, that when the Governor may, as soon as possible after
 3 presentation, return the Bill if it is not a money Bill, together with a message requesting, you
 4 cannot do it without withholding assent. Withholding is the first step and returning is the
 5 second step, they are composite one. They are one composite integrated steps, that's all. And
 6 because, thereafter, they say, " And when a Bill is so returned, the House shall reconsider the
 7 Bill and if the Bill is passed again by the House with or without amended, and presented, the
 8 Governor shall not withhold assent." This word, "withhold assent" in the end of... kindly give
 9 me a second. The last line of "shall not withhold assent in the first proviso" is the same as the
 10 body of the 200 itself. Same withholding not different assent you are withholding? The
 11 opening words...

12 **CHIEF JUSTICE B. R. GAVAI:** First option is, either give assent. First option is to give
 13 assent.

14 **DR. ABHISHEK MANU SINGHVI:** That's assent?

15 **CHIEF JUSTICE B. R. GAVAI:** Yeah. Third, reserve it for the President.

16 **DR. ABHISHEK MANU SINGHVI:** The middle option in the opening words of 200 and
 17 the text itself are, " withholds assent" and the same words I use my proviso, the proviso is only
 18 meant to deal with the second option, and you nullify the second option by saying, you may or
 19 may not return, but you can withhold permanently. It will make a mockery of whole proviso.
 20 And imagine the harm we are causing to a settled scheme which is delicately balanced. One
 21 word here and there. Yes, certainly, certainly. The opening words of 200 are short. Five lines,
 22 which in the last two lines have three options. May I read the last two lines? "Either that he
 23 assents to the Bill or that he withholds assents therefrom, or that he reserves the Bill for the
 24 consideration. "

25 As My Lord the Chief Justice said, the first and the third, leave it aside for a time being. Now,
 26 the middle word is, "or that he withholds assent". The Constitution chooses not to be silent. It
 27 addresses in the first proviso the issue, what happens when you withhold assent. Withhold
 28 assent is not that you put in a cupboard and go to sleep over it. The addressing of the
 29 Constitution is that when you withhold assent, proviso must follow, and the last two lines...
 30 Last line of the proviso, just see for a moment last line of the proviso.

31 **CHIEF JUSTICE B. R. GAVAI:** "Otherwise the words as soon as possible."

32 **DR. ABHISHEK MANU SINGHVI:** Forget as soon as possible. Just give me a minute.

1 **CHIEF JUSTICE B. R. GAVAI:** [UNCLEAR]

2 **DR. ABHISHEK MANU SINGHVI:** Very grateful. That's the next one. That's the next
3 submission. It's coming up next, but just for a minute give me. See the last line of first proviso.

4 **CHIEF JUSTICE B. R. GAVAI:** Last line that you can withhold till eternity.

5 **DR. ABHISHEK MANU SINGHVI:** (a) that. (b), see the last line of the first proviso. Is the
6 same as the second option. Withholding of assent.

7 **CHIEF JUSTICE B. R. GAVAI:** Shall not with hold.

8 **DR. ABHISHEK MANU SINGHVI:** Shall not withhold. So withholding... My Lords you
9 can't return a Bill without withholding. Can you return a Bill where you are assenting? This is
10 My Lords, absurd interpretation. Can you return a Bill which you are assenting? You must
11 withhold and return. It is part of one intertwined composite process. It's as simple as that.
12 There's no dichotomy, unless you want to create a dichotomy. Now, the second argument,
13 which is immediately coming, I'll just say it here, as soon as possible also becomes useless,
14 forget the timeline. There's no question of as soon as possible, because there is a fourth option,
15 the covered option, the eternity option. I have a chart coming at the end here, only of 20
16 examples. The chart is of three States. Telangana, Andhra, and Tamil Nadu. That is only of 20-
17 30 pages only for four years, '21 to '25.

18 **CHIEF JUSTICE B. R. GAVAI:** Telangana, Andhra, and?

19 **JUSTICE SURYA KANT:** Tamil Nadu.

20 **CHIEF JUSTICE B. R. GAVAI:** But Andhra is supporting the argument of other side.

21 **DR. ABHISHEK MANU SINGHVI:** These are not necessarily the same dispensations. '20
22 to '25 periods Your Lordship knows the changes of dispensation.

23 **CHIEF JUSTICE B. R. GAVAI:** We don't know anything.

24 **DR. ABHISHEK MANU SINGHVI:** No, no. It's a historical fact that the judicial notice can
25 be taken on. Forget that, it's very interesting. This thing, or cupboard option, pocket veto they
26 call it. There are... Nobody has thought of this withholding assent simpliciter. That is the
27 invention in this case only, but indefinite semi-permanent holding back that I've selected only
28 20 egregious cases. 20. I've given a chart of all above 30 days, but 20 out of them have 1468
29 days.

1 **TUSHAR MEHTA:** We are not going into facts. I have many Bills, why we withheld it, etc.
2 We are only on interpretation.

3 **DR. ABHISHEK MANU SINGHVI:** Mr. Mehta it is not a fact, because when I come to...

4 **CHIEF JUSTICE B. R. GAVAI:** As my learned brother said it yesterday, the other day, hard
5 facts bring out good law.

6 **TUSHAR MEHTA:** No. Always hard facts makes a bad law. I have a list of Bills which were
7 withheld in past, rightly withheld in past, another dispensation, but we cannot decide
8 interpretation...

9 **CHIEF JUSTICE B. R. GAVAI:** We have to interpret the provision of the Constitution.

10 **TUSHAR MEHTA:** ... list of Bills from Andhra and...

11 **CHIEF JUSTICE B. R. GAVAI:** Whatever we'll be laying down. We will not be laying down
12 for a particular political party.

13 **TUSHAR MEHTA:** It can never depend upon one dispensation, another dispensation. What
14 is this argument. He may have a list of one or two States. I have the national-wise details. I can
15 show right from 1950, what were the Bills withheld by the Parliament, President etc., etc., but
16 that's not the...

17 **CHIEF JUSTICE B. R. GAVAI:** We will be interpreting 200...

18 **TUSHAR MEHTA:** Exactly. My learned friend has some list of Andhra, Telangana Bills et
19 cetera. That can't be the way in which you interpret Constitution.

20 **DR. ABHISHEK MANU SINGHVI:** With great respect to my esteemed learned friend, it
21 is a premature intervention. Hugely premature. Nobody is asking Your Lordship to judge.

22 **CHIEF JUSTICE B. R. GAVAI:** Forget about the listing you [UNCLEAR] interpretation.

23 **DR. ABHISHEK MANU SINGHVI:** My learned friend will not decide the way I argue the
24 matter because he doesn't know what I'm talking about. Before I open my mouth...

25 **JUSTICE SURYA KANT:** Dr. Singhvi invited Mr. Mehta to respond therefore he took that...

26 **DR. ABHISHEK MANU SINGHVI:** He is now doing what on a much lesser threshold, he
27 accused Mr. Sibal of.

1 **CHIEF JUSTICE B. R. GAVAI:** In fact, we are obliged to both of you. The proceedings had
2 become somewhat boring.

3 **DR. ABHISHEK MANU SINGHVI:** It can never be boring. The moment we become little
4 boring Your Lordship livens it up also.

5 **CHIEF JUSTICE B. R. GAVAI:** It brought back life.

6 **DR. ABHISHEK MANU SINGHVI:** My Lords it is not that when I mention a chart, he gets
7 up and interrupts to preclude me by saying question of fact. That is not the issue at all. I'm not
8 arguing any facts.

9 **TUSHAR MEHTA:** You said I have a chart of Andhra, Telangana...

10 **DR. ABHISHEK MANU SINGHVI:** Let me complete my sentence. Mr. Mehta, you
11 interrupted me. That's why I call it premature intervention. I was not even...This is got nothing
12 to do with adjudication of facts.

13 **CHIEF JUSTICE B. R. GAVAI:** Anyway let us know....

14 **DR. ABHISHEK MANU SINGHVI:** We will go ahead in the same sequence. Just one
15 sentence. There is a whole section here that felt necessities of the time require an evolutionary
16 purposive, teleological interpretation of law. That's a legal proposition. Not, that Your
17 Lordship in 1950, did not put a timeline or removed it. The felt necessities of the time require
18 a teleological purposive interpretation is a Doctrine of Law, which I've dealt with. So, I am
19 saying not about quashing this Act or helping Telangana or going against Tamil Nadu. I am
20 giving Your Lordships a chart of things which are three—three years old, two years President,
21 one year Governor. Three years pending today, as I speak. Why can't I give that? I'm not asking
22 for any adjudication in effect. It's just that it's inconvenient for Mr. Mehta to hear it.

23 **TUSHAR MEHTA:** No. I have many inconvenient facts for you to show.

24 **DR. ABHISHEK MANU SINGHVI:** The reality...

25 **TUSHAR MEHTA:** But are we going on those facts for the purpose of interpretation?

26 **DR. ABHISHEK MANU SINGHVI:** I am applying the doctrine of felt necessities of the
27 time.

28 **TUSHAR MEHTA:** That is from 1950, I have collected the facts, but I have not shown it.

1 **DR. ABHISHEK MANU SINGHVI:** My Learned Friend....We didn't interrupt at all. We
 2 disagreed with most of what he said, we never interrupted him. Allow me to make my wrong
 3 arguments. It's our fundamental right to do some wrong arguments also. Only Your Lordships
 4 has the right to control us.

5 **TUSHAR MEHTA:** He doesn't disagree with me in all arguments. Let him say My Lords
 6 which arguments he agrees, so that there may be lesser of the dispute.

7 **CHIEF JUSTICE B. R. GAVAI:** Dr. Singhvi argued before us in Court No. 2 that in *Kihoto*
 8 and I think the other judgments who did not frame any timelines. Insofar as the reason of the
 9 Speaker is concerned, so the Speaker has a right to keep the matter pending unlimited for
 10 unlimited period.

11 **DR. ABHISHEK MANU SINGHVI:** And Your Lordship knows...

12 **CHIEF JUSTICE B. R. GAVAI:** While putting their argument, you observe that the
 13 Constitution Bench, at that time did not anticipate that the Speaker, should give the matters
 14 in a cupboard for years together.

15 **TUSHAR MEHTA:** Yes.

16 **CHIEF JUSTICE B. R. GAVAI:** And lead to a situation, that patients are under observation,
 17 until patient dead.

18 **TUSHAR MEHTA:** I understand.

19 **DR. ABHISHEK MANU SINGHVI:** I am very happy, Your Lordship has given that
 20 example.

21 **TUSHAR MEHTA:** That can't be decided on examples.

22 **DR. ABHISHEK MANU SINGHVI:** I very happy Your Lordships given an example. (a)
 23 because estoppel applies to Your Lordships, not to me, My Lords. And (b) More important.
 24 More important, Your Lordship should be consistent to follow that judgment.

25 **CHIEF JUSTICE B. R. GAVAI:** We will be consistent. But we are also...

26 **DR. ABHISHEK MANU SINGHVI:** I'll be bowing down...no...no.

1 **KAPIL SIBAL:** In *Kihoto* we argued My Lords, Mr. Nariman and myself that this should be
 2 struck down as unconstitutional. Don't, please put the Speaker in that position. Three to two
 3 we don't know....

4 **CHIEF JUSTICE B. R. GAVAI:** No. But the reason given was that Mr. A K Sen feels that
 5 our experience with the Court and Election Commission is so bad, that the matters are kept
 6 pending and the Mr. Sen has given an example about their Symbol, that by the time the Symbol
 7 dispute was decided, they had already won the election on the another Symbol and they
 8 thought that the Speaker would decide it in expeditiously.

9 **KAPIL SIBAL:** Experience goes otherwise My Lords. And we knew that once the Speaker
 10 doesn't leave his Party when he becomes a Speaker. He acts on behalf of the Party, and we've
 11 seen that happen over years. That's the fact.

12 **DR. ABHISHEK MANU SINGHVI:** Anyway, I was arguing a totally different thing, and
 13 My Learned Friend need not have interrupted me. I am saying that the doctrine of law Your
 14 Lordships purposive interpretation is dynamic, and takes into account contemporary realities.
 15 Your Lordship does not sit in Ivory Tower. Your Lordships sees the felt necessities of the time,
 16 and interprets the Constitution, the living document in the light of that. That's all I was saying.
 17 Nothing to do with adjudication on individual State. Why can't I say that? My Learned Friend
 18 can't preclude me on that because, the facts are very inconvenient. Not that Your Lordships
 19 would adjudicate that.

20 **CHIEF JUSTICE B. R. GAVAI:** Okay, any ways lets now move on, since we....have enough
 21 of hard work.

22 **DR. ABHISHEK MANU SINGHVI:** Okay 46. Page 46. Till Mr. Mehta's, next interruption.
 23 29.5.

24 **JUSTICE VIKRAM NATH:** Mr. Mehta, is helping you. So, the Bench is more receptive in
 25 hearing your argument, since the Bench is awake.

26 **DR. ABHISHEK MANU SINGHVI:** Yes, that may well be. No, that Mr. Mehta
 27 interruptions do help me to also clarify, so many things. That I agree My Lords, so I don't
 28 grudge.

29 **TUSHAR MEHTA:** It's my mistake My Lords, you should never interrupt an opponent when
 30 he's committing a mistake.

- 1 **JUSTICE VIKRAM NATH:** Yes.
- 2 **DR. ABHISHEK MANU SINGHVI:** Please follow that. Please follow that for once.
- 3 **KAPIL SIBAL:** Interrupted him, My Lords.
- 4 **TUSHAR MEHTA:** Now this would be a reel in the evening My Lords.
- 5 **DR. ABHISHEK MANU SINGHVI:** And also My Lords...
- 6 **TUSHAR MEHTA:** Mr. Sibal demolished the Central Government.
- 7 **DR. ABHISHEK MANU SINGHVI:** One more thing My Lords.
- 8 **TUSHAR MEHTA:** "Mr. Sibal snubs the SG", there would people, out there on Reel.
- 9 **DR. ABHISHEK MANU SINGHVI:** No, very important.
- 10 **TUSHAR MEHTA:** There are some pseudo way of...
- 11 **DR. ABHISHEK MANU SINGHVI:** Given the frequency of his interruptions, it means I'm
- 12 right many times, My Lords.
- 13 **KAPIL SIBAL:** Yes.
- 14 **DR. ABHISHEK MANU SINGHVI:** Given the frequency, that means my rightness is quite
- 15 a high rate My Lords. Now, 29.5, page 46. "The first proviso of 200 is mandatory linked." I've
- 16 read that. Come to the second sentence. "The words withhold..."
- 17 **CHIEF JUSTICE B. R. GAVAI:** Paragraph. 29.?
- 18 **DR. ABHISHEK MANU SINGHVI:** 29.5.
- 19 **CHIEF JUSTICE B. R. GAVAI:** [UNCLEAR]
- 20 **DR. ABHISHEK MANU SINGHVI:** I'm sorry. I'm sorry, Your Lordship left it, at 200. Just
- 21 give me two minutes first on 200. My Lords were at 200. So, two points My Lord notes at 200.
- 22 One is that withhold assent is the focus of the proviso. So, My Lord has noted the same
- 23 language. Second is 'as soon as possible'. These are meaningless words if the interpretation
- 24 there is accepted. There is no question that this is absolutely meaningless if Your Lordship

gives this interpretation,' withholding assent indefinite '. It completely makes no sense then.
In the light of that, the third aspect is the middle of para 29.5 at page 46.

Moreover, this is a third aspect. "Moreover, the words withholding and returning are not mutually contradictory as interpreted in para 114. They signify two components of the same action. The first leads to the second." Or I should say should lead to the second. My learned friend says, "No". Now, Pillai says this at page 47. Now, this, Your Lordship may skip. This is on the proviso's importance. This is not on 200. This is a judgment on the rule of interpretation of a proviso. That provisos have to be read in the connection that they are dealing with, in the context.

Come to **Punjab** at 29.7. **Punjab**, I had the privilege of assisting the Court and was actually very seriously going into all aspects. Some of the present aspects did not go into, but they saw the whole scheme of 200. 200 was seen in entirety. "The present case turns upon how the first proviso is to be construed..." it's very important because the first proviso on the withholding assent simpliciter, is made as zero, nullity, as per this interpretation. So, this para is important. "...In construing the first proviso, it needs to be noted that the substantive part of 200 provides the Governor with three options. An option to assent, an option to withhold, an option to reserve. The first proviso opens with the expression the Governor 'may', in contrast to the second proviso which began the expression Governor 'shall not' assent. The 'may' in the first proviso is because the first proviso follows the substantive part, which contains three options. The first proviso does not qualify the first option", right My Lords? Nor the third option. That's how My Lord Chief Justice said, first and third are out. "The first proviso attaches to the second option, withholding of assent and hence begins with an enabling expression 'may'. By the mandate of the second proviso, there is an embargo on the High Court issue...." Leave that aside with us. "The Governor is by the mandate required to reserve... the second proviso impacts upon the option, which is provided for the substantive part of 200, to reserve a Bill for the consideration of the President by making it mandatory in the situation and envisaged there. The option of reserving a Bill for the consideration of President's turn into a mandate where the Governor has no option but to reserve it for the consideration. The second proviso is therefore in the nature of an exception to the option which is granted by the substantive part", right My Lords?

Now, asking myself, second proviso is given all the weight. Then why is the first proviso not linked to the second option? This is another aspect. My learned friend is treating the first proviso as unconnected to the second option. Falls through, withholds assent. The interpretation just told Your Lordship in these two paras is, first proviso linked to second option. Second proviso, linked to third option, in a narrow case of the High Court. On this

1 interpretation, why is the second, first proviso to be given no connectivity and link with the
 2 withholding of assent? Namely, withhold assent and send it back. Return it with a message,
 3 without a message, money Bill, blah, blah, etc. How can you interpret a proviso like this? You
 4 give some weight to the second proviso; you ignore the first proviso. It's unheard of, My Lords.

5 Now come to the next para. " This is compatible with the fundamental tenet of a Parliamentary
 6 form of Government, where the power to enact legislation is entrusted to the elected reps of
 7 the State. The Governor as a guiding statesman, may recommend reconsideration of the
 8 entirety of the Bill or any part thereof and even indicate the desirability of introducing
 9 amendments. However, the ultimate decision on whether or not to accept the advice of the
 10 Governors, as contained in the message belongs to Legislators alone. That the message of the
 11 Governor does not bind the Legislature is evident from this expression, " if the Bill is passed
 12 again, with or without amendments." Then My Lords, come to the middle of para 24. Middle
 13 of para 24.

14 **CHIEF JUSTICE B. R. GAVAI:** This is by a bench strength of?

15 **DR. ABHISHEK MANU SINGHVI:** Division Bench, three judges. The expression," as soon
 16 as possible" is significant, is the middle of para 49. "It conveys a Constitutional imperative of
 17 expedition, failure to take a call and keeping a Bill duly passed for indeterminate periods."
 18 'Indeterminate periods'. My learned friend says permanently actually, you can just withhold
 19 it. "Is a course of action inconsistent with that expression. Constitutional language is not
 20 surplusage. In State of Telangana, this Court observed expression as soon as possible, has
 21 significant constitutional content and must be borne in mind by Constitutional authorities."
 22 My Lords have used it, My Lords have applied it, My Lords have given weight to it. "The
 23 Constitution evidently contains this provision, bearing in mind the importance which has been
 24 attached to the power of Legislation which squarely lies in the domain of the State Legislature.
 25 The Governor cannot be at liberty to keep the Bill pending indefinitely without any action."
 26 "The Governor cannot be at liberty to keep the Bill pending". Now the argument can be, you
 27 must please overrule a three judge bench. This last sentence has to be overruled by a
 28 Constitution Bench for the other side's argument to be correct. There's no other way. And My
 29 Lords, it is contrary to previous Constitution Benches that... now there are two words falling
 30 through. If you don't hold it contrary, there's no falling through. Falling through is...

31 **CHIEF JUSTICE B. R. GAVAI:** They use the word, unless.

32 **DR. ABHISHEK MANU SINGHVI:** Unless the first proviso. Next paragraph of mine says
 33 that.

- 1 **CHIEF JUSTICE B. R. GAVAI:** The argument is that...
- 2 **DR. ABHISHEK MANU SINGHVI:** If you don't use the first proviso.
- 3 **CHIEF JUSTICE B. R. GAVAI:** If you don't use the first proviso the [UNCLEAR].
- 4 **DR. ABHISHEK MANU SINGHVI:** The first proviso is interlinked. You have to use it
- 5 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** First proviso has a 'may'.
- 6 **DR. ABHISHEK MANU SINGHVI:** 260 is a section on falling through.
- 7 **CHIEF JUSTICE B. R. GAVAI:** How do you bid those two Constitution judgment?
- 8 **DR. ABHISHEK MANU SINGHVI:** *Kameshwar* and that is exactly.... *Kameshwar*
- 9 and the other one.
- 10 **CHIEF JUSTICE B. R. GAVAI:** If he withholds it, the Bill will fail through unless it is...
- 11 **DR. ABHISHEK MANU SINGHVI:** Page 55 to 60.
- 12 **CHIEF JUSTICE B. R. GAVAI:** That is their argument
- 13 **DR. ABHISHEK MANU SINGHVI:** Exactly.
- 14 **CHIEF JUSTICE B. R. GAVAI:** Their argument is that, if the Governor doesn't decide to
- 15 take an option of the proviso, the Bill will fail.
- 16 **DR. ABHISHEK MANU SINGHVI:** So My Lord is on page 50. Page 55 to 60 is that
- 17 argument. I'm coming to that.
- 18 **CHIEF JUSTICE B. R. GAVAI:** You're coming to that.
- 19 **DR. ABHISHEK MANU SINGHVI:** And since Your Lordship asked the question. Give me
- 20 30 seconds. A, *Kameshwar* and that *Valluri* have nothing to do with this subject which
- 21 you're discussing here. I've dealt with it. But more important, they have nothing to do with it
- 22 at all. More important, what they are saying is if the procedure of this first proviso is not
- 23 followed, which means that the State doesn't send it back, it will fall through. That one word
- 24 "falls through," plucked out, is completely wrongly put. If I My Lords withhold and they send
- 25 it back to the State, and the state never sends it back it will fall through. That's all there is to

1 it. But let me come in five minutes there. Let me finish this at page 50, now. Your Lordships
2 at 50.

3 **JUSTICE VIKRAM NATH:** Your submission is that once the Governor withholds the
4 assent, he makes a declaration to that effect?

5 **DR. ABHISHEK MANU SINGHVI:** Because of the first proviso, has to send it back.

6 **CHIEF JUSTICE B. R. GAVAI:** He has to send it unanimously?

7 **DR. ABHISHEK MANU SINGHVI:** Mandatorily.

8 **JUSTICE VIKRAM NATH:** Mandatorily send it back. Then why the word 'may' has been
9 used there, not 'shall'?

10 **DR. ABHISHEK MANU SINGHVI:** No My Lords may means that My Lords, may is a form
11 of option.

12 **JUSTICE VIKRAM NATH:** Everywhere else, it is shall, shall, shall Second proviso it is also
13 shall. Why 'may' here?

14 **DR. ABHISHEK MANU SINGHVI:** My Lord may is not meant for this option. May is
15 meant that he in a particular circumstance may want to withhold assent then he must send
16 back. May without, he doesn't withhold assent very time, he can give assent. He may not
17 withhold assent, he may withhold assent, he may refer. This thing happens after you withhold
18 assent. The moment I may exercise one option of withholding assent, I must send it back. But
19 whether I exercise the option of holding it back or not is, My Lords, one of the three options.
20 So that's the 'may'. The may is not that after withholding, I have an option not to send it back.
21 There is no may line for that, otherwise the whole proviso... kindly see if Your Lordship applies
22 the proviso. If the proviso is read to mean...

23 **JUSTICE VIKRAM NATH:** "We like to mean" provided that the Governor, where he
24 withholds the assent, shall send it back, simple as that. Why complicate it with 'may' and 'shall'
25 and all different terminology? Where the Governor withholds the assent, declares, makes a
26 declaration. He will... He shall send it back to the House, with or without a message for
27 consideration?

28 **DR. ABHISHEK MANU SINGHVI:** No, it makes sense. I'll tell you why. 'May' in the
29 proviso links to the previous line, there are three options the Governor has. Then this may not
30 rise in the first and third option at all. Now this proviso is put to consider solo a second option

1 only. In the second option, you have to reach that option. But once you reach the option, which
 2 is withholding assent, second option, there is no further option may not send. That will
 3 otherwise... suppose My Lords, let me look at the commonsensical.... Suppose Your Lordship
 4 reads the first proviso to mean that he may not send back.

5 **JUSTICE VIKRAM NATH:** With common sense. We are dealing with the provision here or
 6 we are interpreting it?

7 **DR. ABHISHEK MANU SINGHVI:** No.

8 **JUSTICE VIKRAM NATH:** Common sense may be lacking is there, is something different?

9 **DR. ABHISHEK MANU SINGHVI:** No, My Lords as somebody said that law is supposed
 10 to be common sense, but frequently it is uncommon nonsense. That's a different matter. But
 11 when you can't, this is not.... There's no problem with the Constitution on this. I'll show you in
 12 a minute. My Lords are conferring. The 'falls through' happens when on first withholding
 13 assent. You have to send it back. That is mandatory. The State may not send it back to you
 14 after reconsideration for repassing. That is the falling through. It makes perfect sense. The
 15 reason why he may send it back is because he may assent. The reason he 'may' send it back is
 16 he may give to the President. The 'may' does not give him an option that withholding assent
 17 means covering in his cupboard, and never sending it back to the State

18 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Your side argued that...

19 **DR. ABHISHEK MANU SINGHVI:** The other...

20 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It was being read as shall before the
 21 three judge bench.

22 **DR. ABHISHEK MANU SINGHVI:** No. That is My Lords in the contextual. It will be shall.
 23 The whole proviso is a shall.

24 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** So that's your argument?

25 **DR. ABHISHEK MANU SINGHVI:** Yes.

26 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Shall?

27 **DR. ABHISHEK MANU SINGHVI:** Contextually, the proviso has to mean shall, the
 28 moment he withholds assent, the moment he withholds assent it has to be shall. In the...

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Just for that argument, you referred
2 it the before the 2-Judge Bench?

3 **DR. ABHISHEK MANU SINGHVI:** Yes, absolutely, Now Your Lordship also looks at the
4 various facets of interpretation. Take a case just forget the word common sense My Lords Take
5 purely Constitutional Law, and we can't describe lack of common sense to one of our founding
6 fathers. If Your Lordships were to have the option of indefinitely holding the Bill in your
7 cupboard, because there is no declaration by him. He just says "there's nothing". He just keeps
8 it back. Withholding assent is, no message nothing, keep it back.

9 **JUSTICE VIKRAM NATH:** That is a situation, where he is not exercised any of the three
10 options.

11 **DR. ABHISHEK MANU SINGHVI:** Any of the three options.

12 **JUSTICE VIKRAM NATH:** Correct.

13 **DR. ABHISHEK MANU SINGHVI:** Then My Lords, why will a situation ever arise, unless
14 he wants, of returning the Bill? I am the State, I've sent the Bill to him. My intention is to pass
15 it. All this discretion, titular head... that means out of 100 Bills, some Governor will send back
16 99. Some will send back one. And by keeping it back, he achieves a far larger power than
17 anywhere in 200. He can nullify all the options. His power becomes larger than the President
18 because he refers, President may do it. His power to assent, not necessary. Then he becomes
19 the controlling authority, not the passer of the Bill me, but he becomes the boss. Dominating
20 will, dominating all this, it will run a coach and forth through the entire structure and My
21 Lords have read may and shall in the context hundreds of times.

22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes

23 **DR. ABHISHEK MANU SINGHVI:** But that 'falls through' I must have come back in five,
24 three minutes. Just having to finish three pages more. It's coming in three minutes.
25 **Kameshwar** and that's completely mistakenly applied. Come to 25. Sorry, page 49,
26 paragraph 25. "The Governor, as an unelected Head of State, is entrusted with certain
27 Constitutional powers. This power cannot be used to thwart the normal course of lawmaking
28 by the State Legislatures. Consequently, if the Governor decides to withhold assent under the
29 substantive part of 200, the logical course of action is to pursue the course indicated in the
30 first proviso, the Bill, to remit it back to the State for reconsideration." This Your Lordship is
31 reading from **Punjab judgment** at 29.7. It starts at page 47, since My Lordships got a long
32 para here. This is very important. They've dealt with this exact case. Of course, it is open to

1 Constitutional Bench to disagree. Is it such a wrong reasoning here, which Your Lordship
2 would disagree with? That is a different issue.

3 "If the first proviso...", page 50, "....is not read in *juxtaposition* to the power to withhold assent
4 conferred by the substantive part of 200, the Governor as the unelected Head of State, would
5 be in a position to virtually *veto* the function of the Legislative domain by a duly elected
6 Legislature, by simply declaring that assent is withheld without any further recourse." In fact,
7 any Bill at any time and he may suddenly wake up after five years and say, "no, I'm passing the
8 Bill now". Such a course of action will be contrary to fundamental principles of a Constitutional
9 Democracy based on a Parliamentary pattern of governance. Therefore, when the Governor
10 decides to withhold assent under the substantive part of 200, the course of action which is to
11 be followed is that which is indicated in the first proviso." Apart from the fact that Your
12 Lordship doesn't adopt an interpretation which makes that proviso, nugatory. That also is
13 another aid of interpretation Your Lordships follows. Then come to 29.8, which is at page 50,
14 bottom.

15 "Turning now to the third option, the structure of the opening words make it clear that all the
16 three options are contemplated at the initial stage of the Bill being received by the Governor
17 and not later. It is also clear that each of the three are mutually exclusive and non-overlapping,
18 since 'or' is used," disjunctive is 'or'. In para 19, I've already done it above, which is at page 43
19 of my earlier page of my Written Submissions, also finds three altered... This is **Valluri** saying
20 so. It says so. "...Three alternative, mutually exclusive and non-overlapping options. It is
21 further submitted that once the Governor has used one option, namely, the option of returning
22 the Bill back, he has chosen one of the finite three alternative options. It is contrary to all
23 Constitutional text, CAD and Supreme Court *jurisprudence*, to allow the Governor to use a
24 reference back from the Assembly as a device to exercise the original third alternative". It
25 becomes a device and see one more very great anomaly. You think that this should be returned.
26 This is my second argument on my second basis that you are not bound by the aid and advice,
27 and you can return it on your own.

28 **CHIEF JUSTICE B. R. GAVAI:** No, but suppose, if the Governor finds, that some of the
29 provisions in the Statute are repugnant to a central statute, and he advised that, please look
30 into this and reconsider whether this provision should be there or not. And if it is returned.

31 **DR. ABHISHEK MANU SINGHVI:** Two answers.

1 **CHIEF JUSTICE B. R. GAVAI:** The Legislature passes the Bill as it is, without any
 2 modification. Then can't he send it to the President? Can't he reserve it for the President, to
 3 consider whether...

4 **DR. ABHISHEK MANU SINGHVI:** The answer is 'no' for the following reason My Lords.
 5 In the first instance, on my first model, his reference on all three options is bound by the aid
 6 and advice. I finished that argument, that My Lord has noted. So, on that he has no discretion.
 7 Zero. On my second basis, I send him a Bill; he finds an error which he believes should be sent
 8 back. The act of sending back is an exclusion of the third alternative at that stage itself.

9 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** How? How?

10 **DR. ABHISHEK MANU SINGHVI:** Because he has three options when he receives.

11 **CHIEF JUSTICE B. R. GAVAI:** Even his wisdom, should find that I should give one
 12 opportunity to the Legislature to correct the error committed and quite possibly the better
 13 wisdom may prevail upon the Legislature and find that particular provisions are repugnant to
 14 the central statute, and they may delete that and pass the Bill and thereafter he may give
 15 assent. But suppose, even if with that message...

16 **DR. ABHISHEK MANU SINGHVI:** May I say?

17 **CHIEF JUSTICE B. R. GAVAI:** Will he pass? Can't he send it to the President to find
 18 whether these provisions are repugnant to the central statute or not.

19 **DR. ABHISHEK MANU SINGHVI:** Two reasons. One, on my alternative argument,
 20 obviously not my main argument. We are only seeing that. He gets the three options first,
 21 apply....

22 **CHIEF JUSTICE B. R. GAVAI:** We are aware he gets the three options. We are not
 23 quarrelling on that. He gets the third option and the first option itself he has an option to
 24 reserve it for the President, these certain provisions are repugnant. But rather than doing so,
 25 if you find that I will give an opportunity with the second provision, correct itself...

26 **DR. ABHISHEK MANU SINGHVI:** Therefore that he can do (a) by referencing it first and
 27 (b) answer to My Lords query, he cannot do it second because it violates the first proviso,
 28 which mandates him to pass it, because you have now exercised the will of the Legislature
 29 which says, you shall pass.

1 **CHIEF JUSTICE B. R. GAVAI:** Then the only option would be for the Court to examine
2 whether it is...

3 **DR. ABHISHEK MANU SINGHVI:** Yes that's the third answer. If there is...this question
4 My Lord is asking about repugnancy, error, legality is available only to the courts. He is not a
5 judicial reviewer. Absolutely right with great respect, with great humility. This is a balance
6 between the elected Legislature... Somebody said the elected Government has the duty to do
7 right, but it also has the power to do wrong. And the power to do wrong of an elected
8 Legislature is a great power, which is only in many cases settleable either in the courts or the
9 next hustling. That's why Your Lordships caution every day was, Your Lordship says every day.
10 If the Governor starts saying I believe it is repugnant, now twice the State has said, no, it's not.
11 First it sent you, the State did not think so. Second time the State sent you back, the State
12 doesn't think so. Who are you to think so? You can't.

13 **CHIEF JUSTICE B. R. GAVAI:** And your argument would be that second proviso will be
14 only for a limited area.

15 **DR. ABHISHEK MANU SINGHVI:** No, second proviso doesn't come into it. Second
16 proviso doesn't come into it all. Second proviso is the only one which gives him discretion
17 completely. Second proviso will not come into this example at all because that is the one
18 proviso which gives him complete discretion. *Qua* of course, he has to satisfy the language.

19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** His opinion. Chief Justices' question
20 to you was on the second issue that you have raised.

21 **DR. ABHISHEK MANU SINGHVI:** Yes.

22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That is on the textual interpretation
23 of the proviso.

24 **DR. ABHISHEK MANU SINGHVI:** Yes.

25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You have gone past the first stage of
26 aid and advice, but you must answer the textual interpretation of the proviso. Why can't it be
27 linked to... Why should it be...

28 **DR. ABHISHEK MANU SINGHVI:** Yes. and when a Bill is so returned, the House or
29 Houses shall reconsider the Bill. Now, the consideration that is repugnant, it's bad, it's

1 unconstitutional all that has gone into the State a second time and the Houses, and if the Bill
2 is passed again by the House or Houses with or without amendment...

3 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It shall be assented.

4 **DR. ABHISHEK MANU SINGHVI:** ...and presented, the Governor shall not withhold.
5 Now, he says...

6 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Governor shall assent. Does it say
7 that?

8 **CHIEF JUSTICE B. R. GAVAI:** In other words Governor shall grant assent.

9 **DR. ABHISHEK MANU SINGHVI:** Obviously. Absolutely. Shall not because he shall
10 assent. Nobody has argued happily till now. That will also not be. 100% yes. Now, you may
11 have had a provision for a second reference, you may find a legitimate ground for repugnancy.
12 You have to leave it to the wisdom of the courts. The courts are the only recourse. Once Your
13 Lordship has an order, a judicial order giving Your Lordship's thought... somebody is
14 responding to my arguments.

15 **CHIEF JUSTICE B. R. GAVAI:** Not from this side.

16 **DR. ABHISHEK MANU SINGHVI:** Now My Lords, when you have had first one chance,
17 then the Legislature had two chances. You applied your mind. Nothing is in front of...
18 somebody said Your Lordships is right because you are final.. somebody said, Your Lordships
19 are right, because you are final, you are not...

20 **CHIEF JUSTICE B. R. GAVAI:** We are not final, we are right.. Of your right.

21 **DR. ABHISHEK MANU SINGHVI:** My Lords, Therefore, if I keep on checking with Your
22 Lordships rightness is not something, which this rightness can only come to Your Lordships.
23 They can't go to the Governor. Otherwise why do you have a Legislature? Why do you have a
24 second reference? And how does Your Lordship then reconcile the last four lines of the first
25 proviso, and the contrast, that's another point My Lords, the contrast of the last three lines of
26 proviso with the second proviso, which says, yes, you may have a discretion for High Court
27 matters. It gives you a discretion, that would be making it. And if it is so repugnant, as Your
28 Lordship puts it. I'm saying clearly he has no business to go into repugnancy. He's not the
29 judge of that, but if he has so much, it's the first reference, where he could refer it to the
30 President of India. Whether it is a review or a curative, I don't know. If you are a curative.

1 **KAPIL SIBAL:** It happens in chambers.

2 **DR. ABHISHEK MANU SINGHVI:** According to me, this would be beyond the curative as
3 far as the Constitution is concerned. It gives you no right. There is no 'hurrah' here, which
4 gives you a second right. There is no "hurrah" here giving you a second rightness.

5 Now, just see here also My Lords at 29.9, page 51 this is **Valluri** again, in another paragraph
6 with the same 19 paragraph. "Under that Article, the Governor can adopt one of the three
7 courses. Can adopt one of the three. This is alternative.... three alternatives, not overlapping,
8 not conjunctive. He may give his assent. He may accept the case of Money Bill, withhold his
9 assent, in which case it falls through unless the procedure indicated in the first proviso is
10 followed. That is, return the Bill to the Assembly for reconsideration. It falls through only when
11 the return, the Bill doesn't...the Assembly doesn't pass it." That's the meaning of fall through.
12 The Governor can't make it fall through. "It all harmonises. He may, subject to ministerial
13 advice, reserve the Bill for the consideration in which case, the President adopts the procedure.
14 The first proviso to 200 deals with the situation. Where a Governor is bound to give his assent
15 when the Bill is reconsidered and passed by the Assembly." Then My Lords, forget Laxmi
16 Narayan, this is general interpretation.

17 **CHIEF JUSTICE B. R. GAVAI:** Then how do you withhold his assent? Therefore, in which
18 case the Bill falls through?

19 **DR. ABHISHEK MANU SINGHVI:** Unless... the Bills falls through if, when the procedure
20 of the proviso is followed, the State does not repass-it or resend-it. That's how it falls through.
21 If the procedure is not followed, the State does not repass it, My Lord a State can have five
22 reasons. It amends it, It keeps it in limbo, It rethinks it, It doesn't send it back. That's the only
23 reason I'm interpreting it My Lords, loses interest in the Bill, whatever. My Lords the proviso
24 and the second option...

25 **CHIEF JUSTICE B. R. GAVAI:** It doesn't say that... the Governor has to mandatorily return
26 it, on the one read the wordings are "unless if the procedure is indicated."

27 **DR. ABHISHEK MANU SINGHVI:** My Lords, falling through... fall through My Learned
28 Friend is asking more than once. It's coming next. One digression before that, please turn to
29 My Learned Friend, Mr. Tushar Mehta's, para 100 for 30 seconds. Para 100 is at Volume 1.1,
30 page 155. This is the last point before I come to falls through again. Which is at page 155, of
31 Mr. Mehta's Volume 1.1. This para we were using earlier. The main submissions of Mr. Mehta.

32 **TUSHAR MEHTA:** Page? Abhishek, page? 156?

1 **DR. ABHISHEK MANU SINGHVI:** 155 and 156. They are the main submissions My Lords
2 were using.

3 **JUSTICE VIKRAM NATH:** Paragraph 101?

4 **DR. ABHISHEK MANU SINGHVI:** 100.

5 **JUSTICE VIKRAM NATH:** There he has given so many examples.

6 **DR. ABHISHEK MANU SINGHVI:** I'm not even going to read them. Your Lordship may
7 see it. This is the basis for arguing that the Governor must be given a judicial review or a
8 gubernatorial review power because disasters will happen and the sky will fall on our heads.
9 See any example. State Legislature will pass an amendment to the Constitution. Your Lordship
10 may be having the reverse situation. Not this one. They remove the concept of reservation
11 altogether, based only on religion. Take any of them. I'm not going to details. Therefore, My
12 Lords, My Lord has said in the last part of the section, page 54 of my note. "This is not the way
13 to do Constitutional adjudication." On that basis, My Lords will never do any Constitutional
14 adjudication because Your Lordship will be keep looking at extreme scenarios. Your Lordship
15 has said so at page 54 of my note, my submission. Page 54. I have quoted one out of many.
16 "We are clearly of the opinion that the argument about the relevance of this matter is incorrect.
17 This Court has in numerous rulings to which it is unnecessary to refer, that the possibility of
18 abuse of the powers under the provisions contain any Statute in no ground for declaring." But
19 this is much more, this is disaster scenarios. This is absolute, extreme things.

20 Now My Lords, on 'falls through'. This I've already told. 'Falls Through' means, it has to go
21 back and not come back. Now, let me analyse **Kameshwar** and this other one My Lords,
22 **Valluri**. Actually, **Kameshwar** is the only one because **Valluri** and **Hoechst** follow
23 completely as it is. So, just come to **Kameshwar** in page 55, para 33. "While considering a
24 different question..." Now, My Lords, **Kameshwar** at page 55 is dealing with a totally
25 different question, so keep that in mind. So different, that one phrase is completely out of
26 context. "A different question, whether a Bill has to be granted assent by the Governor to
27 become a law, for it to be referred to the consideration of the President." Now, this is a little
28 extreme argument. You must first grant assent and then refer it. I hope I'm clear. That is the
29 question.

30 "In that context...", in the middle of page 55, lower part. ".... It is therefore urged that after the
31 Bill is passed by the State Assembly, the Governor must assent to it, so that the Bill becomes a
32 law, and then that law, to have effect, must be reserved for the consideration." This is far-
33 fetched argument, and there's no connection with our case. Two lines later, "I am unable to

1 accept this line of reasoning". I don't understand how any Court could accept this that you
 2 must first pass the Bill then refer it to the President. That means, it will become law, allow it
 3 to become illegal law and then refer it to the President. The procedure to be followed after the
 4 Bill is passed is laid down 200. So, they discuss periphery in that context. "Under that Article,
 5 the Governor can do one of three things. Namely, he may declare that he assents to it, in which
 6 case the Bill become the law. Or he may declare that he withholds assent, in which case the
 7 Bill passed, falls through, unless the procedure indicating in the proviso is followed." The
 8 procedure in the proviso is that they must return it back.

9 **CHIEF JUSTICE B. R. GAVAI:** Why do they say 'unless'?

10 **DR. ABHISHEK MANU SINGHVI:** Unless, because it falls through, if the procedure in
 11 the proviso, which is returning back of the Bill doesn't happen. It will fall through. If the State
 12 doesn't return it back, the Bill will fall through. The proviso says the procedure is to send it
 13 back. The proviso was created for the State to send it back, after which you have to pass it. The
 14 State may for 100 reasons to choose not to send it back. The State may for hundred reasons
 15 amend it out to of recognition. The State may put it in cold storage.

16 **JUSTICE VIKRAM NATH:** If that goes back, and never comes back, then there is no
 17 question of the Governor granting any assent or sending it to the States for whatever.

18 **DR. ABHISHEK MANU SINGHVI:** Exactly.

19 **CHIEF JUSTICE B. R. GAVAI:** That is your argument, that the Governor is bound to return
 20 it to the Legislature. And if the Legislature doesn't follow the procedure, and if it doesn't pass
 21 the Bill, then it falls. Am I correctly understanding your argument?

22 **DR. ABHISHEK MANU SINGHVI:** With great respect, yes. And one more thing. This is
 23 one answer, clear.

24 **CHIEF JUSTICE B. R. GAVAI:** If the Legislature decides not to proceed further.

25 **DR. ABHISHEK MANU SINGHVI:** That's right. It falls through.

26 **CHIEF JUSTICE B. R. GAVAI:** Then the Bill falls through.

27 **DR. ABHISHEK MANU SINGHVI:** Because the procedure is...

28 **CHIEF JUSTICE B. R. GAVAI:** So far as Governor is concerned.

- 1 **DR. ABHISHEK MANU SINGHVI:** He has no power.
- 2 **CHIEF JUSTICE B. R. GAVAI:** According to you it is his mandated to return it to the...
- 3 **DR. ABHISHEK MANU SINGHVI:** Read with the, connected with the basic concept that
4 the consequences will render the whole of the first proviso nugatory, because if the Governor
5 has an independent power of locking it in his cupboard, then Your Lordship is giving a go by
6 actually to all the three options and making this the most dominant super option.
- 7 **CHIEF JUSTICE B. R. GAVAI:** Are there any discussions in these judgments on 'falls
8 through'?
- 9 **DR. ABHISHEK MANU SINGHVI:** This is all. Nobody has still now plucked out these two
10 words. These two words have been plucked out only by the ingenuity in this case. There is no
11 judgment, so I am putting...
- 12 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** When the Bill is with the Legislature
13 of the Parliament, only thing that will happen if it doesn't go further, it'll lapse.
- 14 **TUSHAR MEHTA:** Lapse doesn't...
- 15 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** This is the concept of the falling
16 through [UNCLEAR]
- 17 **DR. ABHISHEK MANU SINGHVI:** This is not a statutory language, 'Falls through' is a
18 colloquial language, correct. Fall through is a colloquial language.
- 19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Either way, you are right. You are
20 right. The judgment is not to be read as statutory.
- 21 **DR. ABHISHEK MANU SINGHVI:** Yes, yes.
- 22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Either way, it has created much of a
23 problem in its interpretation. But then when it goes back, 'Fall through' is not correct
24 expression to use.
- 25 **DR. ABHISHEK MANU SINGHVI:** You are right. My Lord is right.
- 26 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Domain of the Legislature of the
27 Parliament, if nothing happens, the Bill lapses. If it is in the Governor, it doesn't lapse.

1 **DR. ABHISHEK MANU SINGHVI:** My Lord is right. These are not words term used in
2 this para as terms of art.

3 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Correct, absolutely right.

4 **DR. ABHISHEK MANU SINGHVI:** Now, fortunately for me, they've added, "unless the
5 procedure indicating the first proviso is followed." Now, clearly that procedure... My Lord,
6 there are only two options. Suppose their procedure is that the Bill is sent back to the
7 Governor, then can it fall through, My Lords? Suppose the State sends it back to the Governor,
8 can it fall through? It can't.

9 **CHIEF JUSTICE B. R. GAVAI:** Then he's bound to [UNCLEAR] only.

10 **DR. ABHISHEK MANU SINGHVI:** It can only fall through..

11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:**it doesn't.

12 **DR. ABHISHEK MANU SINGHVI:** I beg your pardon?

13 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Even after dissolution, if it is in the
14 Governor, it doesn't. It continues to...

15 **CHIEF JUSTICE B. R. GAVAI:** That's the very... it doesn't. Even after dissolution...

16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Back to the Assembly.

17 **DR. ABHISHEK MANU SINGHVI:** No, no, we are considering only one argument.
18 Withholding assent simpliciter is a head by itself. That's all. All these are sub-arguments under
19 that. You can withhold simpliciter which is neither assenting nor sending back nor Presidential
20 reference, nothing. Now, one of the sub-arguments of that is that I hold it back and it falls
21 through. Namely I, the Governor decide the fate of any Bill at my subjective, absolute
22 discretion. All the things I've read about discretion will be nullified then. I, the Governor,
23 decide, forget the word fall through. There's no fall through separate argument although we
24 are reading it separately. The argument is that they withhold assent simpliciter is not an
25 assent, not a Presidential reference, not a return back. It's a fourth grand option. This fourth
26 option follows the entire Article. And look at the consequences how unmanageable Your
27 Lordships, any such sentence would be. And how do you control and guide and curb and crib
28 and confine the discretion of withholding simpliciter? That's a huge discretion beyond
29 anything which Dr. Ambedkar dreamt of. All this will have to be seen, My Lords. I will
30 continue.

- 1 **CHIEF JUSTICE B. R. GAVAI:** So you sort of, time allowed... Only one Council will speak.
- 2 **KAPIL SABIL:** Principle will be followed.
- 3 **DR. ABHISHEK MANU SINGHVI:** Very deeply obliged.
- 4 **CHIEF JUSTICE B. R. GAVAI:** Next would be I think... 2nd and 3rd...
- 5 **DR. ABHISHEK MANU SINGHVI:** I beg your pardon?
- 6 **JUSTICE SURYA KANT:** Next hearing again is in the next week.
- 7 **DR. ABHISHEK MANU SINGHVI:** Tuesday.
- 8 **CHIEF JUSTICE B. R. GAVAI:** 2nd and 3rd. week. 4th will be again...
- 9 **DR. ABHISHEK MANU SINGHVI:** Miscellaneous Day.
- 10 **P. WILSON:** My Lord one intervening application alone, if it's to be allowed.
- 11 **CHIEF JUSTICE B. R. GAVAI:** No interventions.
- 12 **P. WILSON:** Already Your Lordships had allowed it.
- 13 **CHIEF JUSTICE B. R. GAVAI:** Gopal Sankaranarayan has given the middle law path. So
- 14 you can follow him.
- 15 **DR. ABHISHEK MANU SINGHVI:** Deeply obliged.
- 16 **TUSHAR MEHTA:** He's also intervener. Gopal is also intervener.

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END OF DAY'S PROCEEDINGS