FROM RULE TO STANDARD - JUDICIALLY IMPOSED DEADLINES ON CONSTITUTIONAL AUTHORITIES IN INDIA AND SOUTH AFRICA

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ABSTRACT

The absence of any express time limitations for the exercise of power by constitutional authorities is a major challenge to constitutional governance in a democratic government. These authorities are vested with significant powers and functions. However, sometimes they fail to fulfil them within a reasonable timeframe. This inaction creates a legal vacuum, enabling officials to neglect their duties and avoid accountability without any explicit violation of the constitution. This paper will discuss this situation and analyse whether the courts in these democracies can compel the performance of such acts through judicially imposed time limits or not.

While on one hand, imposition of time limits by the courts offer a strong remedy against bureaucratic delay, corruption, and violation of fundamental rights, on the other hand, it tests the boundaries of the principle of separation of powers between the organs of the government which compels the judiciary to step into the shoes of policy makers and administrators, interfering with the functions of the other organs.

This paper examines the development and constitutional validity of deadlines imposed on organs of the government by the courts in two of such States, i.e., India and South Africa by comparing their legal and constitutional framework and judicial decisions. For the Indian scenario this paper focuses on the constitutional remedies under Arts. 32, 226 and 142 of the Constitution and the role of the judiciary in the development of continuing mandamus and time bound directions. In case of South Africa, the focus is on Sec 38, 165 and 172 of the Constitution and judicial orders, structural interdicts, mandamus and suspended declarations of invalidity. This paper compares the approaches of both the systems and concludes by answering the question, whether transplanting the South African model of imposition of deadlines by the courts in India is a viable option or not.

Keywords: India, South Africa, Governor, Deadlines, Executive Inaction, Gubernatorial Powers, Structural Interdicts.

1. Introduction

It is presumed in all constitutional democracies where the doctrine of separation of powers is recognised that all the three organs of the government will act in their respective spheres. A legislature will make the laws; executive will implement those laws while the judiciary will interpret them. Accordingly, it is also presumed that the head of the state or the Governor will exercise the powers that the Constitution vests in them. But most Constitutions are silent on the situation where a constitutional actor does not act and does not fulfil their obligations, for instance, when a bill is left pending, reports gather dust or when an official says or does nothing at all. Such inaction is common but is not very evident as a constitutional crisis like an unlawful dismissal or unconstitutional law is. Still, a persistent and unexplained delay or inaction by a constitutional institution can be as harmful for the government as any other violation of law by any government official or office because it changes a discretionary power into a de facto veto and leaves ordinary legal and political processes with no other options as there is no official decision at all.

Judicial bodies across common law and mixed constitutional frameworks have to interpret and reinterpret whether and how to respond to this dilemma of executive inaction. There are two responses which repeat across different constitutional systems. The first is the rule-based response, where the court lays down a fixed time period within which such office must act and imposes a consequence in case of failure to act within such time. The second is a standard-based response where the court does not fix a deadline but reserves a power to intervene in case of a significant and unexplained delay that amounts to dereliction of a constitutional duty.[1]

The preference between these two responses shows the views of the court on three issues – the proper relationship between the judiciary and other organs, competence of judges to manage administrative and political timelines and legal limits of what a court can compel the government to do.[2] This paper examines the same through a comparative study of two different constitutional democracies – India and South Africa which share broadly similar constitutional principles despite their distinct institutional frameworks.

[1] Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 Duke Law Journal 559 (1992), https://scholarship.law.duke.edu/dlj/vol42/iss3/2.
[2] *Id.* at Pg 562.

In India, at the State level, Art 200 of the Constitution provides the courses of action that the Governor has when he receives a bill for his assent. He may either give assent, or withhold his assent or reserve the bill for assent of President of India.[3] However, there have been many instances where due to failure in exercise of this power within a reasonable time by the Governor, the bills remain pending indefinitely. The Supreme Court in State of Tamil Nadu v Governor of Tamil Nadu prescribed deadlines for gubernatorial action under Article 200 and exercising its powers under Art 142 of the Constitution, developed the doctrine of deemed assent.[4] Later after a Presidential Reference was issued, the Supreme Court in In Re: Assent, Withholding or Reservation of Bills by the Governor and the President of India held that deadlines cannot be imposed on the Governor or President and that deemed assent doctrine is unconstitutional.[5]

In South Africa however, judicially imposed deadlines have been ordinary and settled remedial tools for a long time now. Sec 172(1)(b) of the Constitution of Republic of South Africa empowers the Courts to make any order that is just and equitable. It also recognises the possibility of suspending the declaration of constitutional invalidity for any period and on any conditions to allow the competent authority to correct the defect.[6] The Constitutional Court in Government of the Republic of South Africa v Grootboom imposed a structural interdict on the State requiring it to report the compliance with constitutional obligations within the time limit fixed.[7] In Minister of Health v Treatment Action Campaign, the Court emphasised that judiciary will not dictate on how the executive functions. However, courts are constitutionally mandated to intervene when executive's policy is deficient in fulfilment of its obligations.[8] In Economic Freedom Fighters v Speaker of the National Assembly, the Court issued an interdict on the National Treasury and also imposed a deadline upon the President to comply with its directions.[9]

This paper assesses the effectiveness of judicially-mandated deadlines by comparing the approaches undertaken by the two countries. It discusses the structural challenges posed by

[3] India Const., Art. 200.
[4] *State of Tamil Nadu v. Governor of Tamil Nadu*, (2025) 8 SCC 1.
[5] *In Re: Governor and President: Assent, Withholding or Reservation of Bills*, (2026) 1 SCC 1
[6] S. Afr. Const., 1996, Sec 172(1)(b).
[7] *Government of the Republic of South Africa v. Irene Grootboom*, 2000 SCC OnLine ZACC 20.
[8] *Minister of Health v Treatment Action Campaign*, 2002 SCC OnLine ZACC 3.
[9] *Economic Freedom Fighters v. Speaker of the National Assembly*, 2016 SCC OnLine ZACC 26.

court-mandated deadlines and the risk of judicial overreach and analyses the viability of legal transplant of the system of court-mandated deadlines in India.

2. India: From Standard to Rule, and Again Back to Standard

2.1. Constitutional Framework

Art. 200 of the Constitution lays down that when a Bill, passed by a state legislature, is presented to the Governor for his assent, he shall give assent to the Bill; withhold assent to the Bill, that is, reject the Bill, in which case, the Bill fails to become law; or reserve the Bill for the consideration of the President.[10] The proviso permits the Governor to return the Bill, other than a money bill, with a message requesting reconsideration by the State Legislature. If the Legislature passes the bill again, with or without any changes, the Governor cannot withhold his assent anymore.[11] Art. 201 is a similar provision about the President's powers regarding a bill reserved by the Governor. Neither of these provisions impose any explicit deadlines upon the Governor or President to fulfil their obligations.[12]

The word "shall" is used to describe the Governor's options in Art. 200 but it does not specify the time within which the Governor has to choose from among them. The drafting choice can mean on one hand that the Constituent Assembly deliberately left the Governor's discretion untimed, trusting convention and comity to prevent abuse and on the other hand, that the absence of an express timeframe was never meant to license indefinite inaction, since a power that can be exercised at any time, or never, ceases in substance to be qualified discretion the Constitution describes.[13]

2.2.The Standard Phase

The Indian Supreme Court's earliest approach was standard based. In State of Punjab v Principal Secretary to Governor of Punjab, the Governor had taken no action on four bills which had been passed by the Punjab Vidhan Sabha for a long time. The Court held that Art. 200 empowers the Governor to withhold assent to a Bill. "In such an event, the Governor must

[10] India Const., Art. 200.
[11] *Id.*, Proviso.
[12] *Id*., Art. 201.
[13] Vinod Rai, *Governors Cannot Delay Bills Indefinitely: Landmark Judgement by India's Supreme Court*,(Nov. 29, 2023), https://www.isas.nus.edu.sg/papers/governors-cannot-delay-bills-indefinitely-landmark-judgement-by-indias-supreme-court/

mandatorily follow the course of action which is indicated in the first proviso of communicating to the State legislature "as soon as possible" a message warranting the reconsideration of the Bill. The expression "as soon as possible" conveys a constitutional imperative of expedition. Failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression."[14] Similarly, in State of Telangana v. Governor of Telangana, it was held that the phrase, "as soon as possible" has substantial constitutional weight even if it prescribes no fixed period.[15] The Court in both these cases did not fix a time limit on the Governor to assent to the Bills, rather it directed him to act as per Art. 200 of the Constitution. This is a standard as it forbids indefinite or unexplained delay while leaving the limits of delay to be determined as the cases demand.

2.3. State of T.N. v. Governor of T.N. 2025: The Rule Phase

In State of T.N. v. Governor of T.N.[16], (2025), the dispute arose when Governor of Tamil Nadu, Sh. R.N. Ravi out of the twelve bills pending before him, several for over a year, reserved two bills for consideration of the President and withheld the assent for the remaining ten Bills and they were returned without any message as directed by the first proviso, without specifying the reasons for such withholding and without making recommendations as regards the desirability of introducing any amendments by the State legislature while reconsidering the Bills.

The SC held that as per Art. 200, the Governor has three options when a Bill passed by the State legislature is presented to him and that the concepts of pocket veto is not recognised within the constitutional scheme of India. The first proviso to Art. 200 ensures that the withholding of assent is not equivalent to a pocket veto and the phrase "as soon as possible" implies the urgency and prohibits the Governor from not acting on the Bills or exercising pocket veto over them.

The court fixed time-limits and laid down a determinable judicial standard to ensure the reasonable exercise of such power to curtail any arbitrary inaction and held that the failure to comply with these timelines would make the inaction of the Governors subject to judicial review by the courts. These time limits were as follows: if the bill is reserved upon aid and advice of the State Council of Ministers, the Governor must act within a period of one month;

[14] *State of Punjab v. Governor of Punjab*, (2024) 1 SCC 384.
[15] *State of Telangana v. Governor of Telangana*, (2024) 1 SCC 405.
[16] *State of Tamil Nadu v. Governor of Tamil Nadu*, (2025) 8 SCC 1.

if assent is withheld contrary to the same, he must return the Bill together with a message within three months; if the bill is reserved contrary to the advice he shall reserve within three months; and lastly, if the bill is presented to him after reconsideration in assent must be granted within one month.[17] Further, the court held that even if no time-limit is prescribed for the exercise of any power, it should be exercised within a reasonable time.

The Court concluded that the actions of the Governor, in displaying prolonged inaction over the Bills; simply withholding assent and returning the Bills without any message; and in reserving the Bills for the President's consideration were violative of the constitutional procedure. Therefore, exercising its power laid in Art. 142, the Court laid down the principle of deemed assent holding that all the ten pending Bills were deemed to have received the assent of the Governor.

A Governor has to perform his duties under Arts. 200 or 201 and if he does not do so, he must provide such reasons for the court's consideration. If the court is not satisfied, it can intervene and issue the writ of mandamus for appropriate action. While Art. 361 bars the judicial review of gubernatorial assent, in some cases concerning unconstitutionality, procedural inaction remains fully justiciable and subject to the writ of mandamus.

2.4. In Re: Governor and President: Assent, Withholding or Reservation of Bills, 2025: Restoration of Standard

The President of India invoked Art. 143 of the Constitution seeking the advisory opinion of the Supreme Court about the scope of powers of the President and the Governor under Arts. 200 and 201, judicially imposed timelines and the validity of the principle of 'deemed assent'. A five-judge bench of the Supreme Court gave its opinion in November 2025 in In Re: Governor and President: Assent, Withholding or Reservation of Bills.[18]

The court observed that, "Arts. 200 and 201 were framed so as to provide a sense of elasticity, for constitutional authorities to perform their functions, keeping in mind the diverse contexts and situations, and by consequence the need for balancing that might arise in the process of law-making in a federal and democratic country like ours. The imposition of timelines would

[17] Neha Sadawat, Timeline vs. Tussle: What Tamil Nadu v. Governor means for Federalism, (Nov 17, 2025) https://wbnujscls.wordpress.com/2025/11/17/timeline-vs-tussle-what-tamil-nadu-v-governor-means-for-federalism/

[18] *In Re: Governor and President: Assent, Withholding or Reservation of Bills*, (2026) 1 SCC 1

be strictly contrary to this elasticity that the Constitution so carefully preserves". Thus, the decision in State of T.N. v. Governor of T.N.[19], was struck down and the Court declared the timelines to be invalid holding that the phrase "as soon as possible" related to the Governor's power to withhold assent and it cannot be interpreted into strict timelines on the Governor for carrying out his functions under Article 200.

Further, it was held that since no deadlines are provided under Arts. 200 and 201, the expiry of the prescribed timelines too cannot amount to deemed assent. The concept of "deemed assent" presupposes that one constitutional authority, i.e. Court, could play a substitutional role for another constitutional functionary, i.e. Governor or President. Such takeover of the functions is contrary to both, the spirit of the Constitution and also the doctrine of separation of powers.

The Court also observed that performance of the Governor's functions under Article 200, is not justiciable and the Court cannot enter into a merits of the decision so taken by the Governor.[20] However, if there is indefinite or unexplained inaction, a limited mandamus can be issued directing the Governor to fulfil his obligations within a reasonable time without the Court's interference with the merits of the exercise of his discretion. The complexity of the Bill presented, emergent nature of the enactment, nature of consultative process undertaken, are few examples of the factors that the Court will consider while issuing a limited mandamus to take an appropriate step under Article 200. However, the Court will not issue an automatic direction to Governor to act in every case, rather it will be issued in appropriate cases.

Therefore, this limited direction issued by the Court serves as a form of institutional accountability. This is how the Supreme Court reserved a residual safeguard applying the same standard as it had done before in Punjab and Telangana cases earlier – a prohibition on indefinite and unexplained delay, without fixing a deadline.

2.5. Why the Supreme Court Reversed its Decision

The following reasons explain why the Indian Supreme Court overturned the rule regarding deadlines laid down by it:

- The principle of deemed assent laid down under Art. 142 did not just penalise delay,

[19] *State of Tamil Nadu v. Governor of Tamil Nadu*, (2025) 8 SCC 1.
[20] India Const., Art. 361.

the Court bypassed the Governor's inaction by imposing its own legislative conclusion. This inserted the judiciary as the fourth participant in the bill assent procedure alongside the Legislature, Governor and the President. This was an unreasonable violation of the principle of separation of powers, unlike anything attempted by the South African Constitutional Court, and therefore, drew criticism being an encroachment by the judiciary on the constitutional functions of the executive.

- The dispute was closely linked to Centre-State conflicts in India. The Governor are appointed by the President and therefore, viewed in States governed by parties opposed to the Union government as tools of control by the Centre over the States run by opposition parties. A judicial rule fixing deadlines for the Governor was interpreted as the Court taking the side of the State governments in this conflict.

- Art. 361 provides the Governor an immunity from judicial actions and the same has no equivalent for the President function of assent in South Africa. Therefore, any deadline enforced through a coercive order risked colliding with this immunity, an argument accepted in November 2025 judgment by the Supreme Court.

3. South Africa: A Standard that Keeps Producing Rules

3.1. Relevant Constitutional Provisions

Sec 172(1) of the Constitution of Republic of South Africa, 1996 states the powers of courts in constitutional matters. Under Sec 172(1)(b), the court can make any order that is "just and equitable" including an order limiting the retrospective effect of the declaration of invalidity, and an order suspending the declaration of invalidity for any period, and on any conditions, to allow the competent authority to correct the defect.[21] The phrase "just and equitable" allows a court to set time-limits on relevant government authorities. Therefore, the Constitution permits the courts to exercise their discretion to decide whether in a case, a deadline is warranted and how long it should be, rather than setting a fixed time limit like the April 2025 judgment tried to do. This is not a general power of the Supreme Court as inferred from Art. 142 of the Constitution of India, rather it is an express, constitutionally conferred remedial power.

[21] S. Afr. Const., 1996, Sec 172.

Sec 167(4)(e) states that only the Constitutional Court can determine if the Parliament or the President has not fulfilled a constitutional duty. This provision expressly makes the inaction by the other organs of the government subject to the exclusive jurisdiction of the Constitutional Court of Republic of South Africa.[22] Also, Sec 237 provides that all constitutional obligations must be carried out diligently and without unnecessary delay.[23] Sec 38 provides that anyone who enjoys locus standi can approach a competent court alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.[24]

3.2. Government of the Republic of South Africa v Irene Grootboom: A Standard Without a Rule

In Government of the Republic of South Africa v Irene Grootboom,[25] the Court dealt with the state's obligations under section 26 of the Constitution, which gives everyone the right of access to adequate housing and section 28(1)(c), which affords children the right to shelter. Mrs Grootboom one of the 390 adults and 510 children living in appalling circumstances in Wallacedene. They illegally occupied nearby land reserved for low-cost housing but were forcibly evicted while their shacks and belongings were destroyed.

It was observed that the Constitution imposed a duty upon the State to act positively and ameliorate the plight of thousands of people living in deplorable conditions throughout the country and that the State must provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves.[26] It was held that the measures taken to realise the rights afforded by section 26 should be reasonable, and the State's housing programme, as was then existing failed this standard as it made no provision for those in desperate need, the strata within which the applicants plainly fell.

Rather than allowing the State to formulate a remedy at its own pace, the Court declared the existing programme constitutionally deficient and directed the State to develop and implement a programme for the aggrieved group. The court ordered the State to report back within a

[22] *Id.*, Sec 167(4)(e).
[23] *Id.*, Sec 237.
[24] S. Afr. Const., 1996, Sec 38.
[25] *Government of the Republic of South Africa v. Irene Grootboom*, 2000 SCC OnLine ZACC 20.
[26] Lienne Steyn, *Statutory Regulation of Forced Sale of the Home in South Africa*, 61–115 (LL.D. thesis, University of Pretoria 2012), https://repository.up.ac.za/server/api/core/bitstreams/70cbc2a3-e6c4-4d5e-9d5f-84ac9884161f/content.

defined period about the steps taken to remedy the deficiency and tasked the South African Human Rights Commission with monitoring the compliance and report back to the court if the implementation was unsatisfactory.[27]

This remedial mechanism employed by the Court is called a structural interdict, i.e., a declaration of unconstitutionality coupled with an ongoing, time-bound supervisory relationship between the Court and non-complying organ of the state, rather than a final order whose enforcement is left to the ordinary mechanism of contempt proceedings.

3.3. Minister of Health v Treatment Action Campaign: A Second Standard Without a Rule Attached

In Minister of Health v Treatment Action Campaign[28], the court was concerned with the State's inaction regarding the prevention of transmission of HIV from mother to child. Sec 27 of the Constitution recognises the right to access to healthcare services and creates a mandate upon the State to take reasonable measures within the available resources to progressively realize the same. The court held that sec 27 does not give rise to an independent minimum core entitlement that individuals can demand immediately regardless of resources. Instead, all that can be expected of the state was that it took all the steps to realise the right as are reasonable. The court held that the government's policy to withhold nevirapine (the medicine for HIV) outside the pilot sites was rigid, unreasonable and violative of Sec 27. This was because the safety and efficacy of nevirapine had been proved and the administration was relatively simple and within the available resources of the Government.[29]

The government argued that the order was against the principle of separation of powers because formulating a health policy was a matter for the executive and not the judiciary. The court rejected this argument holding that where the Constitution imposes positive obligations on the State that are not being observed, Courts are duty bound to ensure that constitutionally mandated conduct actually takes place by invoking its power under Sec 172(1)(b). Therefore, the courts have the constitutional duty to declare it invalid and provide effective relief.

The Court passed a mandatory order directing the government to remove the restrictions,

[27] S vd Berg, *A capabilities approach to remedies for systemic resource-related socio-economic rights violations in South Africa* 19 African Human Rights Law Journal 290-316 (2019).
[28] *Minister of Health v Treatment Action Campaign*, 2002 SCC OnLine ZACC 3.
[29] Id.

permit and facilitate the use of nevirapine at public hospitals and specifying time-bound obligations for extension of testing and counselling facilities. The court did not order the government to report back to the court trusting that the executive would respect and comply with its orders.[30] The Court said that a structural interdict should only be granted when there is a need to secure compliance with its order.[31]

Therefore, imposing deadlines was seen not as judicial overreach, but as a standard tool for the Court to deliver effective remedies for constitutional violations.

3.4. Economic Freedom Fighters v Speaker of the National Assembly: A Sixty Day Rule in an Accountability Standard

In Economic Freedom Fighters v. Speaker of the National Assembly[32], a decision was made to upgrade security at the President's residence. However, after several complaints about alleged misuse of public funds the Public Protector investigated and found that President Jacob Zuma had unreasonably benefited from security upgrades to his private residence in Nkandla by building various other amenities that had no relation whatsoever to security. Therefore, she ordered that the President to calculate the costs of the unrelated constructions with the aid of the South African Police Service and National Treasury, and compensate the State accordingly.

Both the President and the National Assembly assumed that Public Protector's remedial action was not binding and the National Assembly adopted a resolution acquitting the President of wrongdoing. Thereafter, legal proceedings were initiated against the Speaker of the National Assembly, the President, and the Minister of Police to seek a declaration that they had violated their constitutional duties.

The Court held that the Public Protector's power to take appropriate remedial action was legally binding and that the President and the National Assembly had no legal authority to treat the same as invalid or ineffective, unless it had been set aside by the judiciary. Therefore, the National Assembly's resolution was found to be violative of the Constitution and unlawful. Also, it was observed that by not complying with the order of the Public Protector, the President

[30] Christopher Mbazira, *Grootboom: A paradigm of individual remedies versus reasonable programmes*, 26 SAPL 60-80 (2011).
[31] Kent Roach, Geoff Budlender, *MANDATORY RELIEF AND SUPERVISORY JURISDICTION: WHEN IS IT APPROPRIATE, JUST AND EQUITABLE?,* https://casac.org.za/wp-content/uploads/2011/01/Budlender-and-Roach-Mandatory-Relief-and-Supervisory-Jurisdiction.pdf
[32] *Economic Freedom Fighters v. Speaker of the National Assembly*, 2016 SCC OnLine ZACC 26.

had failed to "uphold, defend and respect" the Constitution. Finally, the Court ordered the National Treasury to determine the fair costs for the non-security upgrades that the President had to pay personally and submit the report about the same within a period of sixty days. Further, the Court granted the President forty-five days to pay the amount once it approved the financial assessment by the Treasury.

4. Comparative Analysis: The Divergence Between the Two Approaches

The above discussion establishes a significant contrast between the approaches of both the countries. While India experimented and eventually abandoned the concept of judicially fixed deadlines; South Africa has treated them as an ordinary remedial practice for a long period of time without any issue. The following section will elaborate upon the differences between the two jurisdictions' approaches.

4.1. Constitutional Difference – Art. 142 v Sec 172(1)(b)

Under Art. 142 of the Indian Constitution, the Supreme Court is empowered to pass such a decree or order "as is necessary for doing complete justice in any cause or matter pending before it".[33] The provision has been frequently invoked by the Supreme Court over the years. But Art 142, on its face, is a power exercised in relation to a cause or matter pending before the Court. It is a provision intended to resolve a dispute at hand, not towards formulation of rules that govern the future conduct of constitutional office-holders who are not and can never be[34] parties before the Court.

When the Court in State of Tamil Nadu v Governor of Tamil Nadu[35], used Art. 142 to fix deadlines for gubernatorial action, it was not intended to only apply upon the bills pending before the Governor of Tamil Nadu, it overextended a dispute resolution power to create rules, a power that is generally associated with legislature. As correctly objected by the Court in its opinion to the Presidential Reference, Art. 142 does complete justice between parties to a pending cause. It does not authorise the Court to impose general time-limits that the Constitution itself does not contain.[36]

[33] India Const., Art. 142.
[34] *Id.*, Art 361.
[35] *Government of the Republic of South Africa v. Irene Grootboom, 2000 SCC OnLine ZACC 20.*
[36] *Minister of Health v Treatment Action Campaign, 2002 SCC OnLine ZACC 3.*

In contrast, Sec 172(1)(b) expressly allows the courts to suspend a declaration of invalidity "for any period of time and on any conditions".[37] The language used implies the fixing of deadlines as a part of ordinary remedial power. Sec 172(1)(b) was incorporated into the Constitution of Republic of South Africa in 1996 with the purpose of equipping the courts to manage transition from an apartheid era legal order that was fundamentally inconsistent with the new constitution to one fully aligned with it. The framers of the Constitution recognized that immediate invalidation of conflicting laws and actions in many cases cause more harm than violation of a constitutional provision.[38] To manage these transitions safely, they built structural tools such as suspensions, conditional orders and deadlines directly into the remedial provision. The structural interdict is not just a tool for an arbitrary judicial extension, but facilitates in the predictable implementation of the provision itself.

4.2. Structural Difference – Federalism v Centre-State Conflict

In the Indian Constitutional scheme, a Governor is not just a ceremonial or administrative head of the State, he plays a significant role in the governance. He is appointed by the President and exercises discretionary functions within the State whose elected government may belong to a different or adversarial political party. The Tamil Nadu dispute arose precisely within this situation. The Governor was seen as using his power under Art. 200 to obstruct the legislative functions of the elected state government with which the Union government was in political conflict. This perception was so strong that the Vice-President criticised the exercise of powers under Art.142 by the Supreme Court describing it as a "nuclear missile against democratic forces…" and accused the judiciary of acting as a "super Parliament".[39]

Judicially imposed deadlines on Governor's powers, therefore, did not present itself as a neutral procedural safeguard, but as a partisan tool that is capable of either checking or advancing specific Centre-State agendas. Operating within such a complex political environment makes it inevitable that the apex court's remedial action will be seen as an unnecessary intrusion in political process by both, the political parties and the judiciary.

In contrast, South Africa's system of structural interdicts is based on a fundamentally different

[37] S. Afr. Const., 1996, Sec 172(1)(b).
[38] Kent Roach, *Supra* note 31.
[39] What Is Article 142? Why VP Jagdeep Dhankhar Called It a "Nuclear Missile," *The Times of India*, Apr. 18, 2025, https://timesofindia.indiatimes.com/india/what-is-article-142-why-vp-jagdeep-dhankhar-called-it-a-nuclear-missile/articleshow/120403873.cms.

institutional setup. Landmark decisions like Grootboom and Treatment Action Campaign addressed the broad failures of the state in the fulfilment of positive socio-economic duties (housing and public healthcare, respectively), where the opposing party was the national executive, rather than opposing entities locked in a centre-state rivalry over a constitutional actor's powers.[40] Even the Nkandla case, which is somewhat similar to the Indian situation, as it targeted the head of State directly, arose from the enforcement powers of an independent institution, the Public Protector, rather than a direct conflict between different levels of government regarding the status of bills.[41]

While South Africa's provinces possess constitutionally protected legislative powers, and provincial-national relations are not free of tension, the country's Constitution does not feature an office analogous to the Indian Governor, a Union appointed figure embedded within and exercising veto power over a State's legislative process. Without this particular structural conflict, South Africa avoided the primary source of political turmoil that fuelled the India's struggles judicially imposed deadlines.

4.3. Enforcement Mechanism Difference – Rule v Standard

A rule sets the conduct required in advance, trading contextual flexibility for precision, leaving only factual issues for determination by the courts. A standard relies on a broad principle, such as a prolonged, unexplained and indefinite action, which must be evaluated on a case-by-case basis, trading predictability for flexibility and situational sensitivity.[42]

The Tamil Nadu case fixed a rigid rule by imposing a strict, uniform time limit regardless of a Bill's complexity, merits of Governor's objections or the prevailing political situation. When such rules are imposed on constitutional offices, the result is considerable institutional cost as they curtail the judicial discretion required to distinguish a genuine constitutional deliberation from blatant obstruction which leads to the objection that was raised by the Union's counsel during the reference proceedings, i.e., when fixed deadlines are applied in all cases, the exercise of discretion as vested by the Constitution operates like a mechanical administrative duty.[43]

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[40] *Government of the Republic of South Africa v. Irene Grootboom, 2000 SCC OnLine ZACC 20 and Minister of Health v Treatment Action Campaign, 2002 SCC OnLine ZACC 3.*
[41] *Economic Freedom Fighters v. Speaker of the National Assembly*, 2016 SCC OnLine ZACC 26.
[42] Kaplow, *Supra* note 1.
[43] Supreme Court to Hear Presidential Reference Starting Monday, *News on AIR*, Aug. 16, 2025, https://newsonair.gov.in/supreme-court-to-hear-presidential-reference-starting-monday/.

Consequently, the opinion of the Supreme Court answering the Presidential reference restructured the doctrine as a standard, permitting judicial intervention only against "prolonged, unexplained and indefinite inaction". However, even then the remedy is limited to compelling a decision rather than dictating the outcome. While this approach prevents the possibility of judicial overreach, it does so at the cost of legal certainty, leaving future litigants and constitutional actors to deal with a standard that can only be clarified through further litigation.

South Africa's structural interdict jurisprudence on the other hand, strikes a strategic balance between rules and standards. Unlike the rigid rules that were adopted and later modified by Indian Supreme Court, the Constitutional Court of South Africa has avoided setting uniform timelines for all state obligations. It has also avoided unclear standards that demand improvisations for every new dispute. Instead, the report-back mechanism (structural interdicts), as evident from both Grootboom and Treatment Action campaign cases, establishes a structured, iterative process where the court sets an initial deadline in light of the specific organ of the state and constitutional obligation before it, receives a compliance report and subsequently adjusts or extends the supervision as required. While the deadline is tailored like a standard, once established, it is enforceable just like a rule. Moreover, the process of setting and if necessary, revising such deadlines is embedded within the remedy itself rather than being left to be restructured by subsequent litigation.

5. Conclusion

Executive inaction is not just a problem of administrative delay. It is the constitutional phenomenon capable of reshaping distribution of powers. The silence of a constitutional authority like the Governor or the President can suspend legislation, disable institutions, impair rights and undermine democratic accountability. The question is not whether courts should impose deadlines, but how they should do so without unnecessarily intruding upon the powers and functions of the executive.

In India, the Supreme Court fixed a rule, by imposing deadlines on the exercise of gubernatorial assent but overturned it quickly because of the principle of 'deemed assent' that treated the bill as approved if the Governor refused to perform his functions. This approach was seen as the Court taking over the Governor's powers. In South Africa, the Constitution itself allows courts to set deadlines, with automatic consequences if they are not met. The courts combine reasonable time review, express constitutional obligations, broad remedial authority and

structural supervision. This system allows a flexible standard to successfully produce strict and reliable rules. Later, India returned to a standard that is vague as it focuses on whether a delay is "prolonged, indefinite and unexplained", which gives the Governor plenty of room to manoeuvre.

While the South African model appears to be more successful in application, its direct transplant in India faces two primary obstacles:

a) The legitimacy of the South African approach is based upon the constitutional mandate of Sec 172(1)(b) that clearly provides an express mandate for this type of conditional and supervised relief which Art. 142 lacks. A court lacking a similar legal basis risks the same objection as the Indian Supreme Court eventually acknowledged, i.e., creating a remedy not permitted by the constitution.

b) The South African cases examined in this paper, mostly occurred outside the specific federal structure and a volatile Centre-State framework as in India. It is uncertain whether an Indian court can apply a structural interdict against the Governor with the same institutional ease that the Constitutional Court of South Africa has used against the national executive.

Therefore, while this supervisory model could theoretically be a reasonable option, applying it in India would require either a clearer legal foundation than Art. 142 currently offers or some level of easing of tensions in Centre-State relations. However, the existing dispute shows no indication that this underlying friction is going to ease anytime soon.