

Presidential Reference

Mains Syllabus : GS II - Separation of powers between various organs dispute redressal mechanisms and institutions; Structure, organization and functioning of the Executive and the Judiciary.

Why in the News?

Recently President Droupadi Murmu has invoked the Supreme Court's advisory jurisdiction on whether timelines could be set for the President and Governors to act on Bills passed by state Assemblies.

What is the Presidential reference?

- **Article 143** - Under this Article, the President may refer a "question of law or fact" to the Supreme Court for its opinion.
- It is part of the Supreme Court's advisory jurisdiction, exclusively dedicated to the President of India.
- **Article 145(3)** - It requires any such reference to be heard by five judges, after which the SC returns the reference to the President with the majority opinion.
- **Non-Adversarial Nature** - It is consultative, not a dispute between parties — focused on advice rather than judgment.
- **Discretion of Supreme Court** - Under article 143(2) of Constitution of India, the Court is under an obligation to advise the President on issues relating to matters mentioned under the proviso of article 131.

Article 131 establishes the Supreme Court's original jurisdiction on legal disputes, particularly those between the Union government and states, or between states themselves.

- The Supreme Court may also decline to give opinion on the references.
- In Ayodhya case of 1992, Supreme Court declined to give an opinion, stating it was not a question of law.
- **No binding on President**- The advises given by the supreme courts is not binding on the President.
- **Advisory but Influential** - Though opinion is not legally binding but is treated with high moral and legal respect.
- **Exclusion of Settled Questions** - The President cannot refer matters that have been conclusively resolved by the Supreme Court in its adjudicatory role.

President's 14 Questions to Supreme Court

- What are the constitutional options before a Governor when a Bill is presented to him under Article 200?
- Is Governor bound by the aid & advice of the Council of Ministers while exercising the options available with him when a Bill is presented before him?
- Is Governor's constitutional discretion under Article 200 justiciable?
- Is Article 361 an absolute bar to the judicial review in relation to the actions of a Governor under Article 200?
- In the absence of a constitutionally prescribed time limit, and the manner of exercise of powers by the Governor, can timelines be imposed and the manner of exercise be prescribed through judicial orders?
- Is the exercise of constitutional discretion by President under Article 201 justiciable?
- In the absence of a constitutionally prescribed timeline and the manner of exercise of powers by the President, can timelines be imposed and the manner of exercise be prescribed through judicial orders?
- Is the President required to seek advice of the Supreme Court by way of a reference under Article 143 and take the opinion of the Supreme Court when the Governor reserves a Bill for the President's assent or otherwise?
- Are the decisions of the Governor and the President under Article 200 and Article 201, respectively, justiciable at a stage anterior into the law coming into force? Is it permissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?
- Can the exercise of constitutional powers and the orders of/by the President /Governor be substituted in any manner under Article 142?
- Is a law made by the State legislature a law in force without the assent of the Governor granted under Article 200?
- In view of the proviso to Article 145(3), is it not mandatory for any bench of Supreme Court to first decide whether the question before it involves substantial questions of law as to the interpretation of Constitution and to refer it to a bench of minimum five Judges?
- Are the powers of the Supreme Court under Article 142 limited to matters of procedural law or Article 142 extends to issuing directions which are contrary to or inconsistent with existing substantive or procedural provisions of the Constitution or law in force?
- Does the Constitution bar any other jurisdiction of the Supreme Court to resolve disputes between the Union Government and the State Governments except by way of a suit under Article 131 of the Constitution of India?

Origin of Article 143

- The concept of advisory jurisdiction in India arose from the Government of India Act, 1935.
- The Government of India Act, 1935 under section 213 stated that if the Governor- General thinks that a situation has arisen or may arise where a question of fact or question of law may come up, he may refer such a matter for advice to the federal court.
- The federal court was empowered to conduct proceeding on such matters as it deems fit, and furnish advice to the governor- general.

What were previous usages of presidential references?

- **First Usage** - In 1951, India's first President Rajendra Prasad made the first reference to the Supreme Court in relation to provisions of Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and Part C of the States (Laws) Act of 1950.
- The questions on which the opinion was sought related to delegation of legislative powers to the executive.
- **Rights of Minority Institutions** - In 1958, the Supreme Court answered a reference on certain provisions of Kerala Education Bill, 1957, particularly whether the provisions of the proposed law infringed upon the rights of minority institutions.
- **Berubari Union Case** - In 1961, the President sought advice on the implementation of an agreement made by India and Pakistan over transfer of a portion of Indian territory (Berubari Union) to then East Pakistan.
- **Interpretation of Article 289** - In 1963, the Supreme Court answered a reference on the scope and interpretation of Article 289 of the Constitution, relating to the immunity of states from Union taxation.
- **2G Case** - The President sought clarity on various matters such as permissible methods of allocating natural resources like spectrum and the extent of judicial review of policy decisions.

What are the significances of Presidential references?

- **Constitutional Clarity** - Helps the President seek the Supreme Court's opinion on complex legal or constitutional questions.
- **Prevents Legal Uncertainty** - Used to avoid constitutional crises or confusion in interpreting laws before implementation.
- **Strengthens Rule of Law** - Shows that the executive values and respects the judiciary's role in governance.
- **Bridges Executive and Judiciary** - Facilitates coordination between the Executive and the Judiciary within a democratic framework.
- **Guides Government Action** - Helps the government take constitutionally sound decisions, especially on sensitive national issues.
- **Protects Constitutional Morality** - Reinforces the President's role as a constitutional head, upholding neutrality and legality.

What are issues associated with the Presidential reference?

- **Use as Appellate Mechanism** - Often advisory jurisdiction of the Supreme Court is converted into appellate or review jurisdiction, where the court is made to advise on issues already decided by it.
- **Limitation on Supreme Court** - The court cannot check the validity and truthfulness of the facts so mentioned in the reference.
- The court under a reference application cannot go beyond the scope of issues referred to the court, i.e. the court cannot inquire about the matter which is not mentioned in the reference.
- **Politicization Risk** - The provision may be misused to legitimize political or controversial actions.
- The Ayodhya Reference (1993) attempted to involve judiciary in a religious/political matter.
- **Undermines Parliamentary Debate** - Overuse of Article 143 might bypass the Parliament, where public issues should ideally be debated and resolved democratically.

Conclusion

- A presidential reference under Article 143 is a constitutional mechanism for seeking the Supreme Court's advisory opinion on significant legal or factual questions.
- While it plays a crucial role in clarifying constitutional ambiguities, it cannot be used to circumvent or overturn the Court's settled judgments.
- The Supreme Court retains the discretion to accept or decline such references, and its opinions, while influential, are not binding in law.

Reference

[IndianExpress | President seeks advisory opinion from SC](#)