

Presidential Reference to Supreme Court

Mains: *GS II - Structure, Organization and Functioning of the Executive and the Judiciary*

Why in News?

Recently, a five-judge Bench of the Supreme Court on November 20, 2025 answered the 16th Presidential Reference under Article 143.

What is presidential reference to the Supreme Court?

- **Article 143** - It empowers the President of India to seek the SC's advisory opinion on any question of law or fact that is of public importance and is likely to arise or has already arisen.
- This provision establishes the SC's advisory jurisdiction, which is exclusive to the President.
- **Article 143 (1)** - The President may refer any question of law or fact of public importance which has arisen or which is likely to arise.
- Here, the Supreme Court may tender or may refuse to tender its opinion to the president.
 - **For example**, the Supreme Court has declined to provide its opinion in 1993 with respect to the Ram Janmabhoomi case.
- **Article 143(2)** - It allows the President to refer disputes arising from out of any pre-constitution treaty, agreement, covenant, or other similar instruments.
- The SC must tender its opinion to the President.
- **Nature of the Advise** - In both the cases, the opinion expressed by the SC is only advisory and not a judicial pronouncement.
- It is not binding on the president and He/she may follow or may not follow the opinion.
- **Article 145 (3)** - It requires such references to be heard by a bench of at least five judges.
- **Historical Context** - Advisory jurisdiction under Article 143 is derived from the Government of India Act, 1935, which allowed the Governor-General to refer legal questions to the federal court.
- **International practices** - The Canadian Constitution allows its SC to provide legal opinions.
- The US SC refrains from giving advisory opinions to uphold a strict separation of powers.
- **Past Instances of Such References** - There have been about 15 Presidential references to the Supreme Court under Article 143.

What is the recent presidential reference related to?

- **Presidential reference** – The Reference was made under Article 143 of the Constitution after President Droupadi Murmu submitted 14 questions following the Court's April 2025 judgment.
- **April 2025 judgement** – The ruling, delivered in a case brought by the Tamil Nadu government, held that Governor R.N. Ravi's delay in assenting to ten re-passed State Bills was illegal.
- In this judgment, the apex court, for the first time, imposed judicially enforceable timelines on both Governors and the President.
- The Reference seek clarity on whether courts can direct constitutional authorities on how and when to act.

What was the observations and advices of the Supreme Court?

- **Not bound by timeline** – The five-judge Constitution bench of the Supreme Court on clarified that governors and President are not bound by judicially prescribed timelines in the discharge of functions.
- Imposing timelines on the President and Governors to deal with all Bills pending with them for assent through judicial orders would be akin to taking a “one-size-fits-all” approach.
- Especially in the absence of any constitutionally prescribed schedule or manner of exercise of powers by Governors or the President under Articles 200 and 201.
- **Nature of bills** – The court rationalised that some Bills may deal with complex issues and require longer consideration.
- At the expiry of this one-size-fits-all timeline, it creates a right for judicial redressal, prima facie rendering the act of the Governor or President suspect upon the expiry of such timeline.
- **President's discretion** – The Reference Bench said the President need not consult the Supreme Court on every State Bill referred to her by Governors for consideration.
- It would be left to the discretion of the President to take the advice of the Supreme Court under Article 143.
- **Limitations of the courts** – The Bench clarified that the courts had no power to review the merits of Bills.
- It is impermissible for the courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law.
- The people's will expressed through the legislative branch is only definitive and conclusive upon receiving the assent of the Governor or the President, as the case may be.
- **Against spirit of the constitution** – The usurpation of the gubernatorial function of the Governor, and similarly of the President's functions, is antithetical not only to the spirit of the Constitution, but also specifically, the doctrine of separation of powers – which is a part of the basic structure of the Constitution.
- **Inaction by President/ Governors** – The court clarified that the President and Governors cannot resort to prolonged and evasive inaction, by sitting endlessly on State Bills awaiting their approval.
- This would amount to a deliberate attempt to thwart the people's will expressed

through the proposed welfare laws passed by State legislatures.

- **Scope of Article 200** - It clarified that a Governor has actually three options before him under Article 200:
 - To grant assent to the Bill,
 - Reserve it for the consideration of the President, or
 - Withhold assent and return the Bill to the State legislature with comments if it is not a Money Bill.
- A Governor cannot stall a Bill without returning it to the State Assembly along with his reasons for doing so.
- **Undermining federalism** - It would be against the principle of federalism and a derogation of the powers of the State legislatures to permit the Governor to withhold a Bill without following the dialogic process.
- Dialogic process is a part of the system of checks and balances and federal system that our Constitution envisages.
- **Governor's discretion** - The court opined that a Governor was not bound by the aid and advice of the Council of Ministers while exercising his function under Article 200.
- He had discretion to choose any of the 3 options -
 - To give assent for a bill or,
 - Reserve a Bill for the consideration of the President or
 - Withhold assent or return the proposed law to the State legislature with comments.
- **Chances for issuing mandamus** - In glaring circumstances of inaction that is prolonged, unexplained, and indefinite, the Court can issue a limited mandamus for the Governor to discharge his function within a reasonable time period.
- Immunity to Governor - The restricted review of the Governor's inaction would not entail subjecting him personally to judicial proceedings.
- The Governor enjoyed absolute personal immunity from court proceedings under Article 361 of the Constitution.

What are reasons mentioned by the court for answering the presidential reference?

- **Constitutional duty** - Endowed with the institutional capacity and the constitutional duty to answer references that will ensure that the Constitution is nurtured and worked for the benefit of the people.
- **Constitutional dialogue** - The exercise of this advisory function is a constitutional dialogue between the Executive and the Judiciary.
- **Ensuring smooth function** - An authoritative opinion mandated since the law on the functions of Governor and President under Article 200 and Article 201, cannot be left in a state of confusion, as it would impede smooth functioning of the Constitution.
- **President's satisfaction** - There exists substantial satisfaction of President, that these are questions of law that have arisen, or are likely to arise, which are of public importance, which necessitate that an opinion be sought from this court.
- **Institutional responsibility** - It is an institutional responsibility, to tender its opinion on this functional reference sought by the highest constitutional functionary of the country.
- **Responsibility of the court** - The court cannot shirk away from its responsibility to iron out constitutional creases, to authoritatively clarify the roles of constitutional

institutions, when doubts as to their roles and powers are raised.

- **Duty of the court** – This court is empowered, and entrusted under Article 143, with the duty to answer such questions in service of the Constitution, and the people that have so adopted it.
- **Integrity** – Judicial propriety, and institutional integrity requires that this Court answer the questions referred to it in the present proceedings.
- **A big jump in logic** — There is no reasonable connection between not disclosing the judgment and assuming bad intention.
- Such an accusation is not appropriate for the Court to even consider, especially because it is made against the President, who is the highest constitutional authority
- **Irrelevance of the questions** – Earlier, someone could challenge (object to) a *reference* made to the Supreme Court by saying it was done with bad intention (malafide).
- But now, after the Supreme Court’s decision in the Natural Resources Allocation case, such a challenge is no longer allowed.
- Therefore, questioning the honesty or intention behind making the reference is not relevant or permitted anymore.

References

1. [The Hindu| Presidential reference](#)
2. [The Indian Express| SC answers Presidential reference](#)