
PRESIDENTIAL REFERENCES AND THE ADVISORY JURISDICTION OF THE SUPREME COURT: SCOPE, PRECEDENTS, AND CONSEQUENCES

Mr. P. S. Antony, Assistant Professor in Law, Bharata Mata School of Legal Studies,
Ernakulam, Kerala, India

Ms. Akshara B., Assistant Professor in Law, Bharata Mata School of Legal Studies,
Ernakulam, Kerala, India

ABSTRACT

The advisory jurisdiction of the Supreme Court of India, conferred under Article 143 of the Constitution, empowers the President to seek the Court's opinion on questions of law or fact of public importance. This unique provision distinguishes India's constitutional framework by formalizing a consultative relationship between the Executive and the Judiciary. This research paper explores the scope, precedents, and consequences of presidential references under Article 143, analysing how they have shaped constitutional interpretation and governance. The scope of Article 143 is broad, enabling the President to refer matters of significant legal or constitutional complexity. However, the advisory opinion rendered by the Supreme Court is not binding, although it carries considerable moral and persuasive authority. The paper discusses the evolution of this jurisdiction through landmark references, including the *In re Kerala Education Bill* (1958), *In re Berubari Union* (1960), *In re Special Courts Bill* (1979), *In re Ram Janmabhoomi-Babri Masjid* (1994), and *In re 2G Spectrum Case* (2012). These cases reflect the judiciary's cautious engagement in sensitive matters and its role in upholding constitutional principles. The presidential references under Article 143 have served as important instruments for constitutional interpretation and institutional coordination. However, their non-binding nature, coupled with the political contexts in which they are often invoked, necessitates careful judicial deliberation. Understanding the dynamics of this jurisdiction is essential for evaluating its impact on India's constitutional democracy and the evolving relationship between the Executive and the Judiciary.

Keywords: Advisory Jurisdiction, Supreme Court, Constitution, Executive, Judiciary, Presidential Reference

1. INTRODUCTION

1.1 Background

India's constitutional framework is built on a delicate balance between the legislature, the executive, and the judiciary. At the center of this framework is the President, the ceremonial head of the state, who also acts as a constitutional guardian. One of the most unique powers bestowed upon the President is enshrined in Article 143 of the Constitution of India, which allows the President to seek the advisory opinion of the Supreme Court on important questions of law or fact. This research paper discusses the constitutional provisions and the judicial precedents, and its broader implications for Indian federalism and democratic governance.

1.2 Objective of the Study

The primary objective of this paper is to explore the advisory jurisdiction of the Supreme Court under Article 143, focusing on its scope, landmark precedents, and long-term consequences. By analysing key cases and their outcomes, the paper aims to assess how this provision has influenced Indian constitutionalism.

1.3 Research Questions

- a) What is the scope and purpose of the advisory jurisdiction under Article 143?
- b) How landmark cases have shaped the application of this provision?
- c) What are the legal consequences of invoking this jurisdiction?

1.4 Methodology

The researchers uses doctrinal legal research, examining constitutional provisions, judicial pronouncements, and scholarly commentaries.

2. CONSTITUTIONAL FRAMEWORK AND SCOPE

2.1 Understanding Article 143 of the Indian Constitution

The advisory jurisdiction of the Supreme Court invoked through Presidential References, is governed by Article 143 of the Constitution. Under Article 143 of the Constitution of India,

the President is empowered to refer to the Supreme Court any matter of law or fact. The opinion of the Court may be sought in relation to issues that have arisen or are likely to arise. A Presidential Reference may be made in matters that are of public importance and where it is expedient to obtain the opinion of the Supreme Court. The Court may refuse to answer all or any of the queries raised in the Reference. A Presidential Reference thus requires that the opinion of the Court on the issue should not have been already obtained or decided by the Court.¹

Article 143 is part of the emergency powers and advisory functions of the President and reads as follows:

“If at any time it appears to the President that –

(a) a question of law or fact has arisen, or is likely to arise,

(b) the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question for the Advisory opinion of the Court and the Court may after such hearing as it thinks fit, report to the President its opinion thereon.

Under clause (2), if the President refers to the Supreme Court matters which are excluded from its jurisdiction under the proviso to Art. 131, the Court shall be bound to give its opinion thereon.

There are two clauses under Article 143:

- **Clause (1):** Allows the President to refer any matter of public importance or of legal complexity to the Supreme Court. The Court may then render its advisory opinion.
- **Clause (2):** Permits a Presidential reference in cases where two or more states are in a dispute, or where such a dispute requires a judicial resolution.

Importantly, the opinion given by the Supreme Court under Article 143 is advisory in nature and not binding. Nevertheless, it carries significant constitutional weight and is generally

¹Presidential Reference in the 2G Case, available at <https://prsindia.org> (last visited on May 20, 2025)

respected by the political executive.

2.2 Advisory Jurisdiction in Foreign Constitutions

In Canada, there is no rigid separation of powers.² Section 55 of the Canadian Supreme Court Act 1952, empowers the Governor- General in Council to refer to the Supreme Court for hearing and consideration “important questions of law or fact touching any matter” and the Governor- General is the final authority on the question whether a matter so referred is an ‘important question’. Section 56 of the Supreme Court Act 1952, also empower either House of the Dominion Parliament to refer any question to the Supreme Court for its advisory opinion.

In England, the reference is recognised in justiciable matters.³ Section 4 of the Judicial Committee Act, 1833, provides that His Majesty may referred to the Privy Council, “any such other matter whatsoever as His Majesty shall think fit”. Under this provision, the Crown have power to refer to the Judicial Committee any legal issue on which it desires advice and the Judicial Committee “*shall thereupon hear and consider the same and shall advice His Majesty there on*”. Use of this provision has been made mostly on issues outside the United Kingdom.

There is no provision similar to this in the Constitution of the United States of America or in the Australian Constitution. Accordingly, the American Supreme Court and the High Court of Australia have refused to give advisory opinions to the Executive⁴. The Supreme Court of India, like the Canadian Supreme Court and England, exercises the powers to give advisory opinion to the President⁵.

3. NATURE AND SCOPE OF ARTICLE 143

Art. 143 (1) adopts the provision of Section 213 (1) of the Government of India Act, 1935, to confer an advisory function upon the Supreme Court as was possessed by the federal court under the Act of 1935. The Supreme Court generally answers the questions of law or fact when raised by the parties, however, this Article confers a specific jurisdiction called the consultative or advisory jurisdiction, on the Supreme Court, to give its opinion on questions which are

² H. M. Seervai, *Constitutional Law of India* 2687 (Universal Law Publication, 4th edn., Vol 3)

³ Durga Das Basu, *Commentary on the Constitution of India* 6006 (Lexis Nexis, 8th edn., 2009)

⁴ Dr. J. N. Pandey, *Constitutional Law of India*, (Central Law Agency, 57th edn., 2020)

⁵ Ibid.

unconnected to some pending case⁶. The well renowned scholar D. D. Basu opined that, “I do not call it a ‘jurisdiction’ because jurisdiction of a court means, the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision.”⁷

Article 74(1) mandates the President to act in accordance with the aid and advise of his council of ministers. Therefore, though the reference may go in the name of the President, in reality, the reference is by the council of ministers. But the Supreme Court cannot verify or examine as to whether the reference is by the President himself or on the advise of the council of ministers in view of the constitutional bar contained in Article 74(2).⁸ But if the President consults the Supreme Court under Article 143 in the absence of an advise from the council of ministers, he will be committing a violation of the Constitution for which he may be impeached.⁹ In *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*¹⁰, it was held that, the use of the word “doubt” in reference is not required for maintainability thereof. Reference is not to be returned unanswered on ground of form or pattern alone. It requires appropriate analysis, understanding and appreciation of content or issue on which opinion of Supreme Court is sought by President, keeping in view constitutional responsibility, juridical propriety and judicial discretion. Reference should not be vague, general or undefined. It is only when questions become unspecific and incomprehensible that the risk of returning reference unanswered arises.¹¹

Article 143 is not part of administration of justice. It is part of an advisory machinery designed to assist the President (the executive) in the discharge of his duties.¹² When the President consult the Supreme Court, he is seeking its advice and not an adjudication of a dispute between parties.¹³ Article 143 confers a power on the president, but does not impose an obligation on him to consult the Supreme Court. He may consult the Attorney- General one of whose functions is to advise the president when asked to do so. Therefore even if the President consult the Supreme Court, he is not bound to follow the advice tendered by the majority.¹⁴ The advice

⁶ Article 143: Supreme Court Advisory Jurisdiction, available at <https://www.scconline.com> (last visited on May 26, 2025)

⁷ Durga Das Basu, *Commentary on the Constitution of India* 6007 (Lexis Nexis, 8th edn., 2009)

⁸ *Supra* n.4

⁹ “Supreme Court’s Advisory Jurisdiction under Article 143”, 42 *JILI* 458 (2000).

¹⁰ (2012) 10 SCC 1

¹¹ *Supra* n.4

¹² H. M. Seervai, *Constitutional Law of India* 2688 (Universal Law Publication, 4th edn., Vol 3)

¹³ Durga Das Basu, *Commentary on the Constitution of India* 6007 (Lexis Nexis, 8th edn., 2009)

¹⁴ *Ibid.*

cannot operate as *res judicata* as *res judicata* operates on the parties to the dispute and there are no parties to a presidential reference to the Supreme Court and there is no dispute about legal rights between the president and any other person.¹⁵ In a President's Reference, it is not possible to hear all the interested parties, because, all the persons who would be affected by the Bill, if enacted, are not known.¹⁶ Article 143 does not deal with jurisdiction of the Supreme Court, but with the 'power' of the President. It does not refer to any adjudication at all, but with consultation. No judgment, decree, or order shall be passed by the Court in the matter. An opinion shall be formulated and submitted to the President in the form of a report under the advisory jurisdiction.¹⁷

3.1 Binding force of advisory opinions

Article 143 of the Constitution of India outlines the advisory jurisdiction of the Supreme Court, allowing the President of India to seek its opinion on important questions of law or fact. The scope of this article includes two types of references: under Article 143(1), the President may refer matters of public importance, and the Supreme Court may choose to give its opinion or decline. Under Article 143(2), if the matter relates to a dispute within the Court's original jurisdiction, such as a conflict between states, the Court is obliged to respond. The opinion given by the Supreme Court under this article is advisory in nature and not binding, although it is generally respected. This provision enables the Government to obtain legal clarity on complex constitutional issues without initiating formal litigation, thereby promoting smoother governance and reinforcing the collaborative role between the executive and the judiciary.

Advisory opinion involves no *lis*, binds nobody because it affects nobody's right and, therefore, lacks all characteristics of a judicial function. Although any opinion expressed by the Judges of the Supreme Court in an advisory opinion would have high persuasive authority, it is not law declared by the Supreme Court within the meaning of Article 141.¹⁸

On the question that whether opinion of Supreme Court under advisory jurisdiction will be binding on all the Courts in India under Article 141¹⁹, Chandrachud, C.J. though held that the question may have to be considered more fully on a future occasion, however opined that it

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid. p. 6008

¹⁸ Durga Das Basu, *Commentary on the Constitution of India* 6008 (Lexis Nexis, 8th edn., 2009)

¹⁹ H. M. Seervai, *Constitutional Law of India* 2685 (Universal Law Publication, 4th edn., Vol 3)

would be strange that a decision given by the Supreme Court on a question of law in a dispute between two private parties should be binding on all courts in the country, but the advisory opinion should bind no one at all²⁰. This issue was again raised in Cauvery Water Disputes Tribunal, Re²¹, wherein, it was opined that the advisory opinion is entitled to due weight and respect and normally it will be followed. Further, a 9-Judge Bench in the Ahmedabad St. Xavier's College Society v. State of Gujarat²², held that a report which may be made to the President in a reference under Article 143 is not binding on the Supreme Court in any subsequent matter wherein, in a concrete case the infringement of the rights under any analogous provision may be called in question, though it is entitled to great weight.²³

4. LANDMARK REFERENCES UNDER ARTICLE 143

The use of Article 143 has been relatively rare. These references reflect the President's role in seeking clarity on complex legal questions that bear significant national consequences. Over its 75-year history, the Court has handled 15 references under its advisory jurisdiction.

1. In re: The Delhi Laws Act, 1912²⁴, the issue referred by the President to the seven-judge bench is to determine the extent to which the legislature is permitted to delegate its law-making powers. Although each of the seven judges delivered individual opinions, they concurred on the following points: (a) the legislature is not permitted to delegate its core responsibilities, such as formulating legal policy and enacting laws; (b) the legislature can delegate ancillary functions; (c) delegation by the legislature is necessary in a welfare state. The judges held differing views regarding the permissible scope of such delegation.
2. In re: Kerala Education Bill, 1957²⁵, the Bill had been reserved by the Governor for the President's consideration. The questions referred the following questions to the President: (a) whether the Bill conferred an unguided power on the state government to recognise new schools and open higher classes in any private school; (b) whether such

²⁰ In re Special Courts Bill, 1978, (1979) 1 SCC 380.

²¹ 1993 Supp (1) SCC 96 (2).

²² (1974) 1 SCC 717

²³ Article 143: Supreme Court Advisory Jurisdiction, available at <https://www.scconline.com> (last visited on May 29, 2025)

²⁴ In Re The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension) v. The Part C States (Laws) Act, 1950, 1951 AIR 332

²⁵ In Re: The Kerala Education Bill, 1957, [1959] 1 SCR 995

power could affect the right of minorities to establish and administer educational institutions of their choice, guaranteed under Article 30(1). The Apex Court opined that, *“the Bill, by making aided educational institutions subject to conditions for the grant of aid, offended Article 30(1). The Bill conferred an unguided power on the state government and such power could affect the right of minorities.”* Further the Court observed that, under Article 143, the President can refer a question of law that is likely to arise. It is for the President to determine which questions should be referred. The Court cannot go beyond the reference and discuss “doubts” not raised.²⁶

3. In Re: The Berubari case²⁷, The President’s question was, whether the implementation of an agreement between India and Pakistan relating to the territory of the Berubari Union, located in Jalpaiguri district of West Bengal, required any legislative action. The Supreme Court advises that, *“Reference by the President of India under Article 143(1) of the Constitution of India on the implementation of the Indo- Pakistan Agreement relating to Berubari Union and Exchange of Enclaves. The Parliament, acting under Article 368, may either pass a law amending Article 3 to include cases of cession of Indian Territory before passing a law under the amended Article 3 to implement the Agreement, or it may act to give effect to and implement the Agreement in question, covering both Berubari and the Enclaves.”*²⁸
4. In Re. The Bill To Amend S. 20 Of The Sea Customs Act²⁹, the questions was, whether the proposed Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944, was inconsistent with Article 289, which grants immunity to States from certain kinds of Union taxation. The Court held that, *“the immunity in Article 289(1) does not conflict with the power of the Union to control trade and commerce. The exception refers to direct taxes, such as those on property, and not to indirect taxes like duties of customs and excise. Therefore, the Bill was not inconsistent with Article 289.”*

²⁶ Article 143: Supreme Court Advisory Jurisdiction, available at <https://www.scconline.com> (last visited on May 29, 2025)

²⁷ In Re: The Berubari case, AIR 1960 SC 845.

²⁸ In Re: The Berubari Union and Exchange of Enclaves Reference Under Article 143(1) of The Constitution of India, available at <https://manupatracademy.com> (last visited on May 29, 2025)

²⁹ 1963 AIR 1760

5. In Special Reference No. 1 of 1964³⁰, Keshav Singh, a citizen, was arrested for contempt of the Uttar Pradesh Legislative Assembly for publishing a pamphlet critical of a Member of the Legislative Assembly (MLA). A two-judge Bench ordered that he be released on bail. The assembly found that Keshav Singh, his advocate and the two judges committed contempt of the assembly and passed a resolution requiring all of them to be produced before it. The High Court stayed the resolution. The question was whether Keshav Singh, his advocate and the two judges were guilty of contempt of the state legislature. The Court opined that, *“They were not guilty of contempt of the assembly. The assembly is not competent to take proceedings against judges in the exercise and enforcement of its powers, privileges and immunities. The High Court’s stay on the assembly’s resolution was justified. The Court reasoned that the language used in Article 226 confers wide powers on the High Court to issue directions, orders or writs for the enforcement of rights. Since Article 12 defines ‘State’ to include the legislature of states, the power conferred on the High Court under Article 226(1) can be exercised even against the legislature.”*
6. In Re: Presidential Poll³¹, the Supreme Court opined that, *“the Court accepts the statement of fact set out in the reference. The truth or otherwise of the facts cannot be enquired or gone into. Nor can the Court go into the question of bona fides or otherwise of the authority making the reference. The Court should be unwilling to accept a reference except for good reasons.”*
7. In Re: The Special Courts Bill, 1978³², the President raised a question regarding the constitutional validity of the Special Courts Bill, 1978 or any of its provisions. The Supreme Court opined that, *“Parliament has the power to make laws with respect to the establishment of Special Courts. The Court found no substance in the argument that Special Courts would damage or destroy the constitutional safeguards of judicial independence.”* Further the Apex Court expressed its view on scope of reference, that is, *“though it is always open to the Supreme Court to re-examine the question already decided by it and to overrule the earlier view, other courts in the territory of India ought*

³⁰ AIR 1965 SC 745

³¹ (1974) 2 SCC 33

³² AIR 1979 SC 478

to be bound by the view expressed by the Supreme Court even in the exercise of its advisory jurisdiction.”

8. In Re: The Jammu and Kashmir Grant of Permit for Resettlement In (Or Permanent Return To) The State Bill, 1980, the Supreme Court expressed its opinion that, *“under the provisions of Article 143, this court may, respectfully, decline to express its advisory opinion, if it is satisfied that it is not appropriate to do so ”having regard to the nature of the questions forwarded to it and having regard to other relevant facts and circumstances³³.”*
9. In the matter of Cauvery Water Disputes Tribunal³⁴, the President questioned the constitutional validity of Karnataka's Ordinance, later an Act, overriding the Cauvery Tribunal's interim order. The Supreme Court held that, *“the Act unconstitutional, stating the state lacked legislative competence. The Tribunal could grant interim relief as referred. A legislature cannot override Tribunal decisions affecting other parties.”* In this case the Court had declined to answer one of the questions, namely, whether the Tribunal could grant interim relief. In State of Tamilnadu Etc. v. State of Karnataka and Ors.³⁵, the Court had held that the Tribunal had the power to grant interim relief if it was part of the Union Government's reference to it. Therefore, answering this part of the Cauvery Water Disputes Tribunal reference would have meant the Court exercising appellate jurisdiction. Further Apex Court's observation on Article 143 is that, *“The President can refer a question of law only when the Supreme Court has not decided it.”*
10. **In Special Reference I of 1994³⁶**, The President queried whether a Hindu temple existed where the Babri Masjid stood. The Court declared Section 4(3) of the 1993 Ayodhya Act unconstitutional for halting all pending suits without offering an alternative resolution. As the suits were revived, *the Court deemed the Presidential reference unnecessary and chose not to answer it, stating it did not fulfill the criteria for an alternative dispute resolution mechanism under the Constitution.*

³³ In re: Special Reference No. 1 of 1964, 1965(1) S.C.R. 413, Dr. M. Ismail Faruqui & Ors. v. Union of India & Ors., 1994 (6) S.C.C. 360

³⁴ AIR 1992 SC 522

³⁵ 1991 SCR (2) 501

³⁶ Dr. M. Ismail Faruqui Etc v. Union of India and Others, AIR 1995 SC 605A

11. **In Special Reference Case 1 of 1998**³⁷, the Court clarified that under Articles 217(1) and 222(1), consultation with the Chief Justice of India (CJI) implies consultation with a plurality of judges. The transfer of judges is subject to judicial review if proper consultation with the four senior-most Supreme Court judges, the Chief Justices of the concerned High Courts, or relevant senior judges is lacking. The Court recommended *expanding the Supreme Court Collegium to five senior-most judges. It also noted that the Union of India accepted the Second Judges case (1993) as binding and was not seeking its review or reconsideration.*
12. **In Special Reference Case 1 of 2001**³⁸, the President asked whether natural gas is a Union subject and if Gujarat had the legislative power to enact the Gujarat Gas Act, 2001. The Court held that natural gas, being a petroleum product, falls under Entry 53 of the Union List and must be regulated by the Union to ensure equitable distribution across states. Entry 25 of the State List applies only to manufactured gas and related industries. Since natural gas is not covered by this Entry, the Gujarat legislature lacked the competence to regulate it, rendering the relevant provisions of the 2001 Act unconstitutional and ultra vires.
13. **Special Reference No. 1 of 2002**³⁹, The President sought the Court's opinion on whether Article 174(1), which mandates that no more than six months shall lapse between sessions of a legislative assembly, applies when elections are delayed. The Court held that Article 174(1) pertains only to an existing, functional assembly and not a dissolved one. The Court clarified that, Articles 174(1) and 324 operate in different fields and one is not subject to the other. Article 174(1) does not provide any outer limit for holding elections for constituting a new legislative assembly. The Supreme Court made an observation on Article 143 that, *“the Supreme Court may provide an advisory opinion to the President if the questions referred are of public importance, are likely to arise in the future, or have not been previously decided by the Court. In exercising this jurisdiction, the Court is bound by the terms stated in the reference order and must accept the facts as presented. It is not permitted to investigate the truth of those facts,*

³⁷ In The Supreme Court Of India (In Re: Appointment & Transfer Of Judges) v. Civil Advisory Jurisdiction, Special Reference Case 1 of 1998

³⁸ Available at <http://judis.nic.in> (last visited on May 26, 2025)

³⁹ The president Referred questions to the Supreme Court, available at <https://www.scobserver.in> (last visited on May 26, 2025)

question the intentions of the referring authority, or examine any disputed factual matters within its advisory role⁴⁰. ”

14. In Re: Special Reference No.1 of 2012⁴¹ (2G Case), the President sought the Supreme Court’s opinion on whether auction is the only valid method for allocating natural resources, and raised additional questions about the legal and policy implications if auctions were deemed mandatory. The Court clarified that auctions are not the sole permissible method for the allocation of natural resources in all sectors or situations. It emphasized that while transparency and fairness are essential, the method of allocation can vary depending on the context. Given the Union Government’s assurance that it was not challenging the correctness of the 2G spectrum judgment, the Court declined to address the remaining questions.

In its observations on Article 143, the Supreme Court stated that while considering a Presidential Reference, it may examine and clarify principles from earlier judgments, including making modifications that do not alter the core legal reasoning i.e., ratio decidendi. Reviewing previous judgments for this purpose is valid and does not affect the legitimacy of the reference. Additionally, the filing or withdrawal of a review petition does not restrict the Court’s discretion to respond to the reference. The Constitution does not prohibit the Court from referring to past opinions to clarify or restate legal principles, provided existing decisions between specific parties remain unaffected.

15. In Re: The Punjab Termination of Agreement Act, 2004⁴², on 10 November 2016, a five-judge bench of the Supreme Court gave its opinion on the validity of the Punjab Termination of Agreement Act, 2004. The Act unilaterally ended the 1981 Agreement between Punjab, Haryana, and Rajasthan regarding the allocation of Ravi and Beas river waters. The Court held that the Act was invalid, as it interfered with the binding decision of an Inter-State Water Tribunal. It emphasized that a litigating party cannot act as a judge in its own cause or unilaterally nullify a binding court decree. Punjab, therefore, could not absolve itself of its legal obligations under the 1981 Agreement.

⁴⁰ **Special Reference No. 1 of 2002**

⁴¹ Available at api.sci.gov.in (last visited on May 28, 2025)

⁴² **Special Reference No. 1 Of 2004**

16. In May 2025, following the Supreme Court's judgment in *State of Tamil Nadu v. Governor of Tamil Nadu*⁴³, the President invoked Article 143 to seek the Court's advisory opinion on 14 important questions in regard to assent of state bills by a Governor and the President under Articles 200 and 201 of the Constitution of India. The first part of reference is a statement of legal facts and some prima facie assumptions which are shaped as concerns warranting the need of the Court's advisory jurisdiction. The second part lists the questions which the President has referred to the Supreme Court. These questions pertain to the powers and responsibilities of the President and Governors in granting assent to Bills passed by state legislatures, with a focus on addressing delays and the scope of their discretionary authority. The matter is currently pending.

These cases under Article 143 highlights the Supreme Court's vital advisory role in clarifying constitutional principles and guiding governance.

5. ADVISORY JURISDICTION: CONSEQUENCES IN LEGAL PERSPECTIVE

The mechanism under Article 143, unique to India's constitutional scheme, enables the Executive to obtain judicial guidance without initiating formal litigation. The advisory jurisdiction serves as a tool for constitutional dialogue and interpretation, distinct from the Court's adjudicatory powers.

a) Authoritative Clarification of Constitutional Questions

Article 143 enables the President to seek the Supreme Court's opinion on questions of law or fact of public importance. The Court's advisory jurisdiction facilitates authoritative interpretation of constitutional provisions, aiding coherent and consistent application.⁴⁴

b) Persuasive, Not Binding Precedent

Opinions rendered under Article 143 do not constitute binding precedents under Article 141 but possess persuasive authority and are generally accorded due respect by constitutional

⁴³ WP (Civil) No. 1239/2023

⁴⁴ Durga Das Basu, *Commentary on the Constitution of India* 6008 (Lexis Nexis, 8th edn., 2009)

functionaries.⁴⁵

c) Promotion of Cooperative Federalism

The mechanism serves as a constitutional bridge between the Executive and Judiciary, ensuring institutional harmony and resolution of inter-governmental disputes, particularly concerning Centre-State relations.⁴⁶

d) Limitations of Jurisdiction

In exercising advisory jurisdiction, the Court refrains from adjudicating disputed facts, assessing motives of the referring authority, or rendering findings affecting inter parties' rights.⁴⁷

The advisory jurisdiction under Article 143 reinforces constitutionalism by enabling judicial scrutiny of significant legal questions without binding effect. While not enforceable as precedent, such opinions influence governance, promote federal balance, and uphold the constitutional framework, provided they do not encroach upon adjudicatory functions or political questions beyond judicial competence.

6. CONCLUSION

The advisory jurisdiction of the Supreme Court of India under Article 143 of the Constitution represents a unique constitutional device, enabling the Executive to obtain the opinion of the judiciary on significant questions of law or fact of public importance. This consultative mechanism, though non-binding, functions as an essential instrument in maintaining constitutional equilibrium, facilitating informed decision-making by the President, and promoting the rule of law.

The scope of Article 143 extends to both actual and hypothetical questions, provided they bear public importance or are likely to arise in the future. Judicial opinions rendered under this Article, while not enforceable as law under Article 141, hold considerable persuasive authority and are often treated with constitutional reverence. Landmark cases such as *In re Berubari*

⁴⁵ H. M. Seervai, *Constitutional Law of India* 2683 (Universal Law Publication, 4th edn., Vol 3)

⁴⁶ Available at interstatecouncil.gov.in ((last visited on May 28, 2025))

⁴⁷ *Supra* n.42

Union, Special Reference No. 1 of 1998 (Judges Appointments), In re 2G Spectrum Allocation, and Punjab Termination of Agreement Act illustrate the dynamic and evolving role of this jurisdiction.

Comparative constitutional analysis reveals that few jurisdictions, including Canada and South Africa, incorporate similar advisory powers. However, the Indian Supreme Court's engagement under Article 143 has been more substantive, shaping constitutional doctrine while respecting the boundaries of judicial propriety.

In conclusion, Presidential References under Article 143 represent a unique and essential feature of India's constitutional machinery. While advisory opinions are not binding, they hold immense moral and constitutional authority. The mechanism facilitates institutional dialogue and pre-emptive clarification of constitutional doubts, but care must be taken to avoid politicisation. With proper safeguards and clarity, this tool can continue to promote cooperative federalism and constitutional stability.