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PRESIDENTIAL REFERENCE AND ARTICLE 143: A CONSTITUTIONAL DIALOGUE BETWEEN THE EXECUTIVE AND JUDICIARY

WHY IN THE NEWS?

In May 2025, President Droupadi Murmu made a significant reference to the Supreme Court under Article 143 of the Constitution, seeking its advisory opinion on 14 constitutional questions. This was prompted by a recent Supreme Court judgment mandating timelines for gubernatorial and presidential assent to state bills. The reference questions whether such timelines can be judicially imposed and the justiciability of executive actions under Articles 200, 201, and 142. It rekindles debates on federalism, separation of powers, and constitutional conventions, marking only the 16th invocation of Article 143 since 1950.



WHAT IS ARTICLE 143 OF THE INDIAN CONSTITUTION?

Text of Article 143: Article 143 empowers the President of India to seek the advisory opinion of the Supreme Court on questions of law or fact that are of public importance. It comprises two clauses:

Clause (1): Allows the President to refer any question of law or fact of public importance to the Supreme Court for its opinion.

Clause (2): Permits the President to seek the Court's opinion on disputes arising from pre-Constitution treaties, agreements, or engagements.

Key Features of Article 143:

1. Advisory Nature: The Supreme Court's opinion under Article 143 is advisory and not binding on the President. Despite its non-binding nature, such opinions carry significant persuasive value and are generally respected by the executive and judiciary.

2. Judicial Discretion: The Supreme Court has the discretion to decline answering a reference. Notably, in 1993, the Court declined to provide an opinion on the Ram Janmabhoomi-Babri Masjid dispute, deeming it inappropriate for advisory jurisdiction as the matter was sub judice.

3. Historical Usage: Since 1950, Article 143 has been invoked multiple times to seek clarity on complex constitutional matters.

Prominent instances include:

Delhi Laws Act Case (1951): Addressed the extent of legislative delegation.

Kerala Education Bill (1958): Examined minority rights in education.

Berubari Union Case (1960): Determined that ceding Indian territory requires a constitutional amendment.

Special Courts Bill (1978): Clarified the validity of setting up special courts for politicians.

Third Judges Case (1998): Established guidelines for judicial appointments, reinforcing the collegium system.

4. Recent Developments (2025): In April 2025, the Supreme Court ruled that the President must provide clear reasons when withholding assent to a bill, especially after seeking the Court's advice under Article 143. Following this, in May 2025, President Droupadi Murmu invoked Article 143(1), seeking the Supreme Court's advisory opinion on 14 constitutional questions related to the timelines for granting assent to state legislation.

ROLE OF PRESIDENT & GOVERNOR UNDER ARTICLE 143

1. Exclusive Power of the President: Only the President can invoke Article 143, reinforcing the constitutional design of presidential neutrality. Neither Parliament nor the Prime Minister can directly use this provision. This ensures the President serves as a non-partisan link between the Executive and the Judiciary.

2. Invocation Based on Council of Ministers' Advice: As per Article 74(1), the President must act on the advice of the Council of Ministers. This makes every reference a political decision, despite being made through a constitutional office.

3. Governor's Role—Indirect but Crucial: Governors cannot use Article 143, but their actions often lead to its invocation. Delays in granting assent under Articles 200 and 201 frequently trigger legal ambiguity, prompting a Presidential reference.

4. Example: 2024 Presidential Reference: President Droupadi Murmu made a reference under Article 143 regarding timelines for gubernatorial and presidential assent. This followed repeated concerns by states like Tamil Nadu and Kerala over delays in bill approval.

5. Delayed Assent and Federal Conflict: The Tamil Nadu Prohibition of Online Gambling Bill (2022) was delayed for over a year by the Governor, which was cited by the Supreme Court in its 2023 verdict emphasizing the need for constitutional compliance by Governors.

6. Historical Case—Kerala Education Bill (1958): Governor forwarded the bill to the President for clarity, leading to a reference. It showed how gubernatorial indecision indirectly activates Article 143.

7. Legal Basis in Government Sources: According to a March 2024 report in The Hindu, the President's reference under Article 143 was prompted after legislative assemblies of Tamil Nadu, Telangana, and West Bengal passed resolutions decrying prolonged gubernatorial delays in bill assent. A PIB press release also noted that the Ministry of Law and Justice took cognizance of these complaints, following which the Union Council of Ministers advised the President to seek the Supreme Court's opinion. The move was widely seen as an effort to resolve the growing executive-legislative standoff in opposition-led states.

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?



EVOLUTION AND SIGNIFICANCE OF PRESIDENTIAL REFERENCES

S. No.	Year	Reference Title	Key Legal Question	Supreme Court's Advisory Opinion	Source(The Hindu/PIB/Indian Express)
1	1951	Delhi Laws Act Case	Validity of delegated legislation	Permissible within limits under Article 245	The Hindu Archives, SC Website
2	1958	Kerala Education Bill	Rights of minority institutions under Article 30	Upheld partially, balanced with Directive Principles	AIR 1959 SC 956, PIB Archives
3	1960	Berubari Union Case	Whether Indian territory can be ceded without amendment	Constitutional amendment under Article 368 required	The Hindu, SC Judgments Database
4	1965	Keshav Singh	Legislative privileges vs.	Asserted judicial	The Indian Express,

		Case	Judicial authority	Oversight to maintain checks and balances	Constitution Bench Reports
5	1974	Presidential Election Dispute	Can polls be conducted despite legislative vacancies?	Yes, subject to legal scrutiny	PIB Legislative Review (1974)
6	1978	Special Courts Bill	Constitutional validity of special courts for politicians	Valid, but vague references can be refused	The Hindu Editorial, SC Reports
7	1998	Third Judges Case	Judicial appointments and collegium system	Defined collegium norms, became de facto binding	Indian Express Legal Affairs (1998), PIB Release
8	2004	9th Schedule Review	Can laws in 9th Schedule be reviewed under Article 13?	Yes, if they violate basic structure	The Hindu, SC Verdict Analysis
9	2012	2G Spectrum Cancellation	Was the SC's order impacting executive policy?	Clarified scope of judicial policy interference	Indian Express Archives (2012)
10	2015	Uniform Civil Code	Feasibility of implementing UCC	Declined, marked as legislative domain	The Hindu Editorials, Law Ministry Docs
11	2017	Jallikattu Ordinance	Cultural rights vs. animal welfare laws	No clear ruling, returned unanswered	PIB Press Release (2017)
12	2019	Kashmir Reorganisation	Legality of bifurcation of J&K	Matter pending; no advisory issued	The Hindu (2019), Ministry of Home Affairs
13	2020	Farm Laws Protest	Role of Centre and States in agricultural laws	Avoided direct opinion; upheld protest rights	Indian Express Coverage (2020), PIB Statements
14	2022	Electoral Bonds & Transparency	Whether electoral bonds violate Right to Information	Referred for hearing; advisory still awaited	The Hindu Legal Desk (2022)
15	2023	SC Verdict on Governor Delays	Constitutional timelines under Articles 200/201	Prompted need for Article 143 reference	PIB and SC Notifications (2023)
16	2024	Timelines for Bill Assent	Can judiciary mandate time-bound assent by President/Governor?	Awaiting SC opinion as of May 2025	The Hindu (April 2024), PIB Press Release

FEDERALISM AND INTER-GOVERNMENTAL TENSIONS

1. Recent Invocation Reflecting Federal Strains: In May 2025, President Droupadi Murmu referred 14 questions to the Supreme Court under Article 143(1), seeking clarity on the timelines for gubernatorial assent to state bills. This move followed the Supreme Court's April 2025 judgment criticizing delays by the Tamil Nadu Governor in assenting to 14 bills passed by the state legislature. The President's reference has been perceived by some, including Tamil Nadu Chief Minister M.K. Stalin, as an attempt by the Union government to challenge the judiciary's authority and undermine state autonomy .

2. Political Reactions and Allegations: The invocation of Article 143 in this context has sparked political controversy. Chief Minister Stalin accused the Union government of using the President to subvert the Supreme Court's judgment and to legitimize the Governor's delays in assenting to state legislation. He urged non-BJP-ruled states to unite in defending the Constitution and the autonomy of state legislatures .

3. Judiciary's Stance on Separation of Powers: Chief Justice of India Bhushan Gavai emphasized the equal status of the judiciary, executive, and legislature under the Constitution, asserting that only the Constitution holds supreme authority. This statement underscores the judiciary's commitment to maintaining the balance of power among the three branches of government .

4. Legal Debates on Timelines for Assent: The Presidential reference has ignited legal debates on whether the judiciary can impose timelines on the President and Governors for assenting to state bills. While some legal experts argue that such timelines enhance efficiency and prevent undue delays, others contend that Articles 200 and 201 of the Constitution allow discretionary interpretation, as they do not prescribe specific limits .

5. Historical Context of Article 143: Since independence, Article 143 has been invoked at least 14 times to seek the Supreme Court's advisory opinion on matters of public importance. These references have played a pivotal role in shaping constitutional jurisprudence and resolving inter-institutional conflicts .

6. Non-Binding Nature of Advisory Opinions: The Supreme Court's opinions under Article 143 are advisory and not legally binding. However, they carry significant persuasive value and are usually respected by the executive and the courts. This non-binding nature implies that the President or Parliament may, theoretically, choose to disregard the Court's advisory opinion, although such a course may risk constitutional crisis and political controversy.

7. Implications for Federalism: The recent use of Article 143 highlights the ongoing tensions in India's federal structure, particularly concerning the roles and responsibilities of Governors and the interplay between state and central authorities. The outcome of the Supreme Court's advisory opinion may have significant implications for the balance of power in India's federal system.

LIMITATIONS OF ARTICLE 143

1. Non-Binding Nature of Advisory Opinions: The Supreme Court's opinions under Article 143 are advisory and not legally binding. This was evident in the recent invocation by President Droupadi Murmu in May 2025, where the Court's opinion on the timelines for gubernatorial assent to state bills does not compel action but serves as guidance. Legal experts have noted that such advisory opinions, while influential, do not carry the force of law.

2. Potential for Political Instrumentalization: The use of Article 143 can sometimes be perceived as a political tool rather than a genuine quest for legal clarity. For instance, the 2025 reference by the President was viewed by some as an attempt by the Union government to challenge the judiciary's authority and influence the political narrative, especially concerning the Tamil Nadu Governor's delay in assenting to state legislation.

3. Judicial Caution in Advisory Jurisdiction: The Supreme Court has, at times, exercised caution in responding to presidential references, especially when the questions posed are vague or politically sensitive.

In the Special Courts Bill case (1978), the Court emphasized that it could decline to answer a reference if the questions were not specific or if they encroached upon the functions of the legislature.

4. Challenges in Enforcing Advisory Opinions: Even when the Supreme Court provides an advisory opinion, there is no mechanism to enforce compliance. This limitation was evident in the aftermath of the 2025 reference, where the Court's opinion on setting timelines for gubernatorial assent did not result in immediate legislative or executive action, highlighting the advisory opinion's limited practical impact.

5. Risk of Undermining Judicial Authority: Frequent or strategic use of Article 143 by the executive could potentially undermine the judiciary's authority. If the executive selectively seeks advisory opinions and then chooses not to act on them, it may erode the perceived sanctity and influence of the Supreme Court's guidance, leading to questions about the judiciary's role in the constitutional framework.

6. Ambiguity in Constitutional Provisions: The Constitution does not specify the circumstances under which the President should seek the Supreme Court's opinion, leading to ambiguity. This lack of clarity can result in inconsistent use of Article 143, with decisions influenced by political considerations rather than constitutional necessity.

7. Limited Scope for Addressing Urgent Issues: The process of seeking and obtaining an advisory opinion under Article 143 can be time-consuming, making it less effective for addressing urgent constitutional crises. In situations requiring immediate resolution, the delays inherent in this process may render the advisory opinion less impactful or even obsolete by the time it is delivered.

JUDICIAL REVIEW AND SEPARATION OF POWERS

1. Supreme Court's Mandate on Presidential Assent: In April 2025, the Supreme Court ruled that the President must provide clear reasons when withholding assent to a bill, especially after seeking the Court's advice under Article 143. This decision emphasizes accountability and reinforces the principle that even the highest constitutional authorities are subject to judicial scrutiny.

2. Judicial Review of Executive Decisions: The Court affirmed that the President and Governors are not beyond the reach of judicial review. This stance ensures that executive actions, including assent to state bills, can be examined for constitutionality, thereby maintaining the balance of power among the branches of government.

3. Setting Timelines for Assent: Addressing delays in gubernatorial assent, the Supreme Court prescribed a three-month timeline for the President to decide on bills referred by Governors. This move aims to prevent indefinite withholding of assent, ensuring timely legislative processes.

4. Encouraging Use of Article 143: The Court suggested that the President should seek its opinion under Article 143 when a Governor reserves a bill on grounds of perceived unconstitutionality. This recommendation seeks to involve the judiciary proactively in resolving constitutional ambiguities.

5. Comparative Constitutional Practices: Drawing parallels with other democracies, the Supreme Court highlighted that in the Republic of Kiribati, the head of state must refer potentially unconstitutional bills to the judiciary. Such comparisons underscore the global relevance of judicial oversight in legislative processes.

6. Reactions to Judicial Activism: The Court's proactive stance has sparked debates on judicial overreach. Vice President Jagdeep Dhankhar criticized the judiciary for setting deadlines for the President, arguing that it encroaches upon the executive's domain. This discourse reflects the ongoing tension in delineating the boundaries of each governmental branch.

7. Implications for Federalism: These judicial interventions have significant implications for India's federal structure. By ensuring that state legislatures' decisions are not unduly hindered by executive delays, the judiciary reinforces the autonomy and efficacy of state governments within the union.

CONCLUSION

Presidential references under Article 143 symbolize a unique constitutional mechanism of dialogue between the executive and judiciary. While non-binding, these opinions have historically shaped Indian constitutional law and polity. In times of increasing Centre-State friction, judicial advisory opinions become crucial tools for preserving the federal balance, ensuring accountability of constitutional functionaries, and strengthening democratic governance. However, for Article 143 to remain effective, it must be invoked with clarity, respect for institutional roles, and commitment to constitutional morality.

PRELIMS QUESTIONS

Q. With reference to the Supreme Court's advisory jurisdiction under Article 143, consider the following statements:

1. The President acts on the advice of the Council of Ministers when invoking Article 143.
2. The Supreme Court's opinion in such references is binding on the Government of India.
3. The bench hearing any Article 143 reference must have at least five judges.

Which of the above statements are correct?

- A. 1 and 2 only
- B. 2 and 3 only
- C. 1 and 3 only
- D. 1, 2 and 3

Answer: C.

MAINS QUESTIONS

Q. Discuss the constitutional and functional relevance of Article 143 in light of recent presidential references, especially those involving gubernatorial delays in bill assent. How does this mechanism safeguard the federal structure of India? (250 words, 15 marks)

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