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Q6(b)

Examine the constitutional provisions and nature of advisory jurisdiction of Supreme Court of India. Evaluate your answer with relevant examples

UPSC Civil Services Mains 2025 · PSIR GS 1 · 15 marks · Federalism

Federalism: Constitutional provisions; changing nature of centre-state relations; integrationist tendencies and regional aspirations; inter-state disputes.

Core demand of the question

- **State Article 143:** advisory jurisdiction of the Supreme Court
- **Explain its nature:** opinion, not a binding decree between parties
- **Evaluate with examples:** Kerala Education Bill, Berubari, Cauvery, 2G, and the 1993 Ayodhya reference as relevant
- Keep constitutional provisions and evaluation together

Revision summary

Article 143 lets the President refer questions of public importance to the Supreme Court for an opinion.

Clause (1) is discretionary for the Court; clause (2) on certain treaty disputes requires a report.

The opinion is not an ordinary decree, though it is politically and legally weighty.

Kerala Education Bill and Berubari show the jurisdiction at its best as advance constitutional counsel.

The Ayodhya reference shows the Court may refuse a question that is better left to a pending suit; 2G shows how an invited opinion can bind the inviter politically.

Introduction

Article 143 of the Constitution allows the President to refer a question of law or fact of public importance to the Supreme Court for its opinion. This is the advisory jurisdiction, borrowed from the **Government of India Act** tradition and from other Commonwealth references. It is a constitutional conversation between the head of state and the Court, not a third type of lawsuit.

Body

Provisions and nature

Article 143(1) covers questions of law or fact that have arisen or are likely to arise, of such a nature and of such public importance that it is expedient to obtain the Court's opinion. **Article 143(2)** concerns disputes arising out of pre-constitutional treaties and similar instruments, where the Court shall report. Under 143(1) the Court has held that it may decline to answer, as it did in the **Ayodhya reference** (1993) on whether a temple existed, treating the question

as unsuited to a judicial opinion while a title suit lay elsewhere.

The opinion is not an ordinary **Article 141** decree, yet it is politically weighty. The President acts on Council advice, so the reference is an executive request. It can look like an attempt to outflank a state or a pending suit.

Examples and evaluation

Kerala Education Bill (1958) shaped **Article 30**. Berubari (1960) said cession of territory needs a constitutional amendment. **Cauvery (1991)** tested tribunals. The 2012 **2G** opinion bound the executive to a doctrine it had invited. The jurisdiction can prevent unconstitutional action in advance, but it thins fact-finding and can pull the Court onto the executive's timetable. It is valuable for genuine legal questions and risky as a political device. The power to decline, used in the **Ayodhya** reference (1993), is the safety catch.

Flow diagram

President -> Article 143
Article 143 -> Supreme Court opinion
Supreme Court opinion -> Answer: Berubari Kerala 2G
Supreme Court opinion -> Decline: Ayodhya 1993
Supreme Court opinion -> High authority not a decree

Conclusion

Article 143 creates an advisory, not adversarial, jurisdiction. Its nature is an opinion to the President, authoritative yet distinct from a binding judgment in a suit. Examples from education, territory, water, and spectrum show both constitutional service and political temptation. The evaluation is that the jurisdiction is a useful spare tool, not a substitute for legislation or for a proper trial of facts.

Facts & figures

Article 143(1)

Presidential reference on a question of law or fact of public importance; the Court may in some circumstances decline to answer.

Berubari, 1960

The Court advised that transferring territory to Pakistan required a constitutional amendment, not only an executive agreement.

Ayodhya reference, 1993

The Court declined to answer whether a temple existed at the disputed site, treating the matter as unfit for advisory opinion.