

## Examrace

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## Power of President to Consult Supreme Court

### Article 143 (Advisory Jurisdiction)

The use of word 'may' in clause (i) of Article 143 indicates that the Supreme Court is not bound to answer a reference made to it by the President. Even in the matters arising out of clause (2), the court may be justified in returning the reference unanswered for a valid reason. But under clause (2), if the President refers to the Supreme Court matters which are excluded from its jurisdiction under the provision to Art 131, the court shall be bound to give its opinion thereon.

Strictly speaking, the advisory opinion of the Supreme Court under this Article is not binding on the President, though the President normally honours it. But as per the opinion of the Supreme Court in-In Presidential Reference, AIR 1995 SC 115, the court can also sometimes take the undertaking through the Attorney General that the President will honour it. However, the views expressed by it in exercise of its advisory jurisdiction are binding on all courts in the territory of India.

In a landmark judgement in Ismail Faruqui Vs Union of India, AIR (1994) 6SCC360, related to Ayodhya Dispute and advisory opinion, the five judge bench held that the Presidential reference seeking the Supreme Court's opinion on whether a temple originally existed at the site where the Babri Masjid subsequently stood was superfluous, unnecessary and opposed to secularism and followed one religious community and therefore does not required to be answered.

The Central Government on 22<sup>nd</sup> July 2004 filed a Presidential Reference under Article 143 in the Supreme Court in the matter of construction of the Sutlej-Yamuna Link Canal, seeking the court's opinion on the Punjab Government's enactment of Punjab Termination of Agreements Act, 2004. The Act terminates all inter-state treaties/tribunal awards which are yet to be given effect.

Constitutional Provisions: As per Article 143, if at any time it appears to the President that:

1. a question of law or fact has arisen or is likely to arise
2. 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.

