

Advisory Jurisdiction of the Supreme Court - Indian Polity

Jurisdiction of courts in India is an important topic in Indian polity and governance for the [IAS exam](#). In this article, you can read about the advisory jurisdiction of the Supreme Court in India.

Supreme Court Jurisdictions

The Supreme Court is the highest Court in India. The Court has been created under Part V, Chapter IV of the Constitution of India. After the adoption of the Constitution, it replaced the jurisdiction and the powers of the Federal Court of India in addition to getting some additional powers by virtue of what has been laid down in the Constitution. There are three categories in which the jurisdiction of the Supreme Court can be divided:

- [Original Jurisdiction](#)
- Appellate Jurisdiction
- Advisory Jurisdiction

Advisory Jurisdiction of the Supreme Court

The Supreme Court has advisory jurisdiction over matters that have been specifically referred to it by the President of India under Article 143 of the Constitution.

- There is no specific provision for such an advisory jurisdiction in the Constitution of the United States of America or that of Australia.
- In fact, the American Supreme Court has refused to entertain such pleas by the Executive, it stated that it will focus on more concrete matters concerning the law of the land.
- However, according to Section 60 of the Canadian Supreme Court Act, 1906, the Governor-General may refer important questions of law to the Supreme Court for its advisory opinion.
- A similar provision that empowered the Federal Court to give an advisory opinion on matters referred can be found in Section 213(1) of the [Government of India Act, 1935](#). The draft constitution later replaced the words “Governor-General” and “Federal Court” with “President” and “Supreme Court” respectively.

Cases under Advisory Jurisdiction

Re Delhi laws Act Case

The first case that came to the [Supreme Court](#) via this jurisdiction was the *Re Delhi laws Act Case*. In this case, the Court considered the validity of a statute with respect to delegated legislation. A bench of seven judges presided over the case but gave differing opinions. While all judges agreed that the legislature had the power to delegate some lawmaking to the executive, they differed on the extent to which such power may be delegated. In general, the bench expressed two views:

- The Parliament is free to delegate its legislative power to any extent subject to the limitation that it must not efface itself or abdicate its powers.
- The Parliament could not delegate to another agency its 'essential' legislative function, which meant the formulation of policy and enacting it into a binding rule of conduct.

Cauvery Dispute Tribunal Case

In the case of the *Cauvery Dispute Tribunal*, the Central Government appointed a Tribunal to look into the dispute regarding the Cauvery River between the states of Karnataka and Tamil Nadu.

- The Tribunal in one of its orders directed the State of Karnataka to release a certain amount of water to Tamil Nadu.
- The Karnataka Government refused to honour the decision of the Tribunal and promulgated an ordinance which empowered them to not implement the order of the Tribunal.
- The President, in order to resolve the dispute, sent a reference to the Supreme Court for its opinion on the matter.
- The Supreme Court held that the impugned ordinance was unconstitutional because it not only violated Inter-State Water Dispute Act, 1956 but was also against the principles of natural justice as the Karnataka Government became a judge in its own cause.

Ismail Farouqi v Union of India

In *Ismail Farouqi v Union of India*, a five-judge bench of the Supreme Court 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 and unnecessary and opposed to secularism and favoured one religious community over the other and therefore does not require to be answered.

- In *Special Reference No. of 2002*, the Apex Court held that it was well within its jurisdiction to answer and advise the President in a reference made under Article 143(1) if the questions referred are likely to arise in future or such questions are of public importance or there is no decision of the Supreme Court which has decided the question.

Some of the other important cases that were referred to the Supreme Court for its advisory opinion include *Re Kerala Education Bill*, *Re BeruBari*, *Re Sea Customs Act*, *Special court Reference case*, *Re Presidential Bill* and *Re Special Courts Bill*.

Conclusion

To conclude, the advisory jurisdiction of the Supreme Court in Article 143 empowers the President to make references to the Supreme Court on any matters but it cannot be said as the Jurisdiction of Supreme Court. The views taken by the Court are not binding on the President and it is not law within Article 141. It is on the court to examine whether it should be answered or not, if not then with valid reasons.