

(a) In the first class, any question of law may be referred to the Supreme Court for its opinion if the President considers that the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court. It has been observed by the Supreme Court that Article 143 does not restrict the President to obtain opinion only on a pure question of law as the bare perusal of the Article shows that the President is authorised to refer to the court any question of law or fact. It is within the discretion of the court, subject to certain parameters to decide whether to refuse or to answer a question on reference. *Re Punjab Termination of Agreement Act, 2004*, AIR 2016 SC 5145 : (2017) 1 SCC 121.

It differs from a regular adjudication before the Supreme Court in this sense that there is no litigation between two parties in such a case and that the opinion given by the Supreme Court on such a reference is not binding upon the Government itself and further that the opinion is not executable as a judgment of the Supreme Court. The opinion is only advisory and the Government may take it into consideration in taking any action in the matter but it is not bound to act in conformity with the opinion so received. The chief utility of such an advisory judicial opinion is to enable the Government to secure an authoritative opinion either as to the validity of a legislative measure before it is enacted or as to some other matter which may not go to the courts in the ordinary course and yet the Government is anxious to have authoritative legal opinion before taking any action.

Up to 2015 there were *fifteen* cases of reference of this class made by the President.<sup>28</sup> It may be mentioned that though the opinion of the Supreme Court on such a reference may not be binding on the Government, the propositions of law declared by the Supreme Court even on such a reference are binding on the subordinate courts. In fact, the propositions laid down in the *Delhi Laws* case have been frequently referred to and followed since then by the subordinate courts. A decision of the Supreme Court on a question of law is binding on all courts and authorities and the President could refer a question of law only if the Supreme Court had not decided it. A decision of the Supreme Court which is neither without jurisdiction nor *per incuriam* nor in violation of the principle of natural justice or of any provision of the Constitution would be binding and operate as *res judicata* and such a decision would not be open to reconsideration in a reference under Article 143 as that would amount to the court sitting in appeal over its own decision.<sup>28A</sup> The Supreme Court is entitled to decline to answer a question posed to it under Article 143 if it is superfluous or unnecessary. The Supreme Court for the first time declined to answer a Reference i.e. Special Reference No. 1 of 1993. The court can pass interim orders in a pending reference.<sup>28B</sup> A Presidential reference was made in the backdrop of the decision rendered by the Supreme Court in *Centre for Public Interest Litigation* case, [AIR 2012 SC 10 : (2012) 3 SCC 1, popularly known as “2G Spectrum case”]; wherein eight questions were referred to the Hon’ble Supreme Court for its opinion/ advice, however the Hon’ble Supreme Court only considered five questions and declined to give its opinion on remaining three questions.<sup>28C</sup>

(b) The second class of cases belong to the disputes arising out of pre-Constitution treaties and agreements which are excluded by Article 131, proviso, from the Original Jurisdiction of the Supreme Court, as we have already seen. In other words, though such disputes cannot come to the Supreme Court as a litigation under its Original jurisdiction, the subject-matter of such disputes may be referred to by the President for the opinion of the Supreme Court in its advisory capacity.

In *Re the Kerala Education Bill, 1957* the Supreme Court (Seven Judges Bench) observed that the advisory Jurisdiction conferred by Article 143(1) is different from that conferred by Article 143(2) of the Constitution in that the latter made it