THE ADVISORY JURISDICTION OF THE SUPREME COURT OF INDIA: A STUDY

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ABSTRACT

The Supreme Court of India is the highest court established by Part V, Chapter IV of the Indian Constitution. It was established to replace the Federal Court of India and the Judicial Committee of the Privy Council. Its jurisdiction is laid down under the Articles 124 to 147 of the Constitution, which can be classified as under: -

- *Original Jurisdiction*
- *Appellate Jurisdiction*
- *Advisory Jurisdiction.*

The problem dealt with in this paper revolves around the advisory jurisdiction of the Supreme Court, given under Article 143 of the Constitution.

The first reference under Article 143 was made in the **Delhi Laws case**[1]*. There have been only 12 references under Article 143 made by the President since independence.*

This paper would discuss about the reason for existence of advisory jurisdiction in India. It would then go on to analyze the text of the article 143 thoroughly to answer the research questions mentioned herein under. This would be substantiated with relevant case laws. The authors would finally assess the system of advisory jurisdiction.

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[1] In re Delhi Laws Act, (1951) SCR 747

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I. INTRODUCTION

The Supreme Court of India has been given advisory jurisdiction under which it **may** advice the President on the issues for which he seeks advicefor such issues being largely associated with public importance. This provision has been given under Article 143 of the Indian Constitution, which reads as under: -

(1) When it appears to the president that a question of law or fact has arisen, or is likely to arise, which 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 it to the Court for its consideration. The court then may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) A matter which is excluded from the Supreme Court's jurisdiction under Article 131 may be referred to it for opinion and the court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

The sub clause (1) of the said article reproduced Section 213 of the Government of India Act, 1935 (hereinafter referred to as G. I. Act, 1935)with some alteration, keeping the substance same. But sub clause (2) was newly added.

LEGISLATIVE HISTORY

The G.I. Act, 1935 was based on the Canadian model. Unlike India, Canada has no rigid separation of powers and the judicial powers are not vested in the Supreme Court of Canada.[2] Due to the lack of judicial powers vested in the Supreme Court, an Act of the Commonwealth which provided for the Governor General obtaining the advisory opinion of the Supreme Court was challenged as being invalid in the case of ***Attorney General for Ontario v. Attorney General for Canada***[3],but the court held the Act to be valid. To avoid such controversy in India, Section 213 of the G. I. Act, 1935 expressly conferred a power on the Governor General to consult the Federal Court on the questions of Law. The Article 143 adopted the provisions of Section 231 of the G. I. Act and conferred on the President the power to consult the Supreme Court, but with a difference that the President could consult even on the questions of fact.

[2] Volume 3,H. M. Seervai, Constitutional Law of India,p. 2687 [4th ed. 2015].
[3] (1912) A.C. 571

PROCEDURE

The use of the word 'may' in the clause (1) of Article 143 shows that the Supreme Court is not bowed to give advisory opinion in every reference necessarily made to it. The court may refuse to give is opinion for strong, compelling and good reasons.[4] On the other hand, the use of word 'shall' in sub clause (2) signifies that, whenever a matter excluded from the jurisdiction of the Supreme Court's jurisdiction under Article 131 may be referred to the court, it would be a binding on the court to give an advisory opinion in such case.

According to Article 145(3), the reference is to be heard by a bench of not less than five judges. After such a hearing, a report is to be made by the court in accordance with an opinion delivered in open court [Article 145 (4)] with the concurrence of majority of judges [Article 145 (5)]. A judge who does not concur has been given a liberty to deliver a dissenting opinion under Article 145 (4). Thus, the procedure in respect of the exercise of advisory jurisdiction has been approximated to a judicial hearing.

II. NATURE & SCOPE OF ARTICLE 143

NATURE: WHETHER JURISDICTION OF SUPREME COURT OR POWER OF PRESIDENT?

The difference between the adjudication of dispute by the Supreme Court and giving an opinion to the President needs to be emphasized to address this question. This difference can be deciphered by observing the difference in their proceedings, as follows: -

- *Control of proceedings:* In a legal proceeding between parties presented before the court, the court has substantial control of the proceedings. It may give the leave to amend the proceedings at any stage, new parties may be introduced, and existing parties may be subjected to removal. The Supreme Court is real head of the proceedings with control in entirety.

[4] In re Special Reference No. 1 of 2012, JT 2012 (9) SC 457: (2012) 10 SCC 1.

On the contrary, in case of presidential reference under Article143, the president has substantial control of the proceedings and Supreme Court is just an apparent body.

- *Facts and issues:* In a legal proceeding, issues must be framed by the court, and the court is to examine the correctness of facts and if the facts are disputed, evidence is invited to prove the correct facts.

  Whereas, under article 143, the President may formulate such questions of law as he thinks fit for consulting the Supreme Court and as regards to the facts, the court must proceed on the facts as stated in the President's referencethe facts may be incorrect by omission or may even be untrue, but Supreme Court must take the reference as it is. As Sarkar J. observed in ***Re Reference under Art. 143*, Constitution of India**[5]:

  > *"We must however answer the question on the facts as stated in the order of the reference and have no concern with what may be the correct facts."*

- *Precedential value:* The judgment given in legal proceeding operates as *res judicata* and equally operates binding precedent if it lays down rules of law.

  While on the other hand, the advisory opinion of the Supreme Court will have no more than that of the opinions of law officers[6]. Thus, a very important question raised here would be the Supreme Judicial body opinion should be binding on the president or not.

Here, under Article 143, the Court neither pronounces the sentence of law nor does it award a remedy as the reference made to it is not related to any dispute. So, the provisions of Article 143 can't be considered as the jurisdiction of Supreme Court as **Black's Law Dictionary**[7] defines jurisdiction as "The power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of the law, or to award the remedies provided by law, upon a state of facts, proved or ad- mitted, referred to the tribunal for decision, and authorized by law to be the subject of investigation or action by that tribunal, and in favor of or against persons (or a res) who present themselves, or who are brought, before the court in some manner sanctioned by law as proper and sufficient."

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[5] (65) A.SC., at 808.
[6] In re Levy of Estate Duty, (1994) F.C.R. 317, at 320.
[7] Black's Law Dictionary, What is jurisdiction? The Law Dictionary, [Nov. 17, 2017, 8:57 AM], http://thelawdictionary.org/jurisdiction/

Therefore, the authors would like to submit that, Article 143 is not a part of the administration of justice, rather it just provides for advice to the executive for the purpose of assisting the President to discharge his duties efficiently. When the President consults the Supreme Court, he is seeking its advice and not an adjudication of a dispute between parties and he cannot be bound by the advisory opinion, nor does the opinion have precedential value. Supreme Court's duty is just to guide the president, neither he can decide upon the matter nor can he take up any similar disputed question in consideration. This makes the provision of Article 143 to be the power of President, rather than jurisdiction of Supreme Court.

SCOPE: CAN THE PAST DECISIONS BE RECONSIDERED?

The advisory opinion of the Supreme Court may be sought on the matters of public importance or when the court has not decided on such matter earlier. But, the court cannot be asked to reconsider its earlier decision by referring under Article 143(1) of the constitution of India. The president can refer only such matters as have not been decided by the court earlier. So, a question which is decided earlier by the court cannot be sought advice under Article 143 of the Indian Constitution thus the question of reconsidering the decision comes to an end. Here, the court has taken the stand that, under the Constitution, the court enjoys no appellate jurisdiction over itself, and that the court cannot convert its advisory jurisdiction into an appellate one.

In ***Re Cauvery Water Dispute Tribunal's case***[8]**,** the main question referred to the Court was whether the Tribunal established under the Inter-State Water Disputes Act,1956 has power to grant interim relief to the parties of the disputes. In this case the Court held that Tribunal has power to grant interim relief, however, the Court refused to express any definitive opinion on the point as to whether the opinion given by the Supreme Court on a reference under Article 143 is binding on all courts or not for two reasons: (i) the specific question did not form part of Presidential Reference in the instant case; and (ii) any opinion expressed by the Court in the instant case would again be only advisory in nature.[9]

Thus, the court left the matter with following observations and conclusions: -

[8]The Matter of Cauvery Water Dispute Tribunal, Re, AIR 1992 SC 522, at 523, 554.

[9]Dr. Justice Vineet Kothari, Re Cauvery Water Dispute Tribunal's Case 1992, Presidential Reference under Article 143 of the Constitution: Current issues and perspective, [Nov. 17, 2017, 9:05 AM], http://hcraj.nic.in/Paper-Speech/presidentialreference.pdf

- *Importance of Advisory opinion:* "It has been held adjudicative that the advisory opinion is entitled to due weight and respect and normally it will be and should be followed. We feel that the said view which holds the field today may usefully continue to do so till a more opportune time."
- *Reconsideration of earlier decision:* "Nor is it competent for the president to invest us with an appellate jurisdiction over the said decision through a Reference under Article 143 of the Constitution.

The court has reasoned that when it's adjudicatory jurisdiction, it has pronounced an authoritative opinion on a question of law, there neither remains any doubt about the question of law nor does it remain *res integra*(new/ untouched matter)to require the president to know what the true position of law on the question is. The court can review its earlier decision only under Article 137.

It may be summed up that, the jurisdiction under Article 143 does not provide for reconsideration of the court's earlier decisions, this jurisdiction is provided only under Article 137. The Supreme Court has also supported this view in the ***Cauvery Dispute Case***[10]where the court observed that, the advisory jurisdiction is distinct from the adjudicatory jurisdiction, and that it cannot be converted to appellate jurisdiction or review jurisdiction of Supreme Court.

III. NATURE & SCOPE OF ADVICE/ REPORT PRESENTED BY THE SUPREME COURT

NATURE: WHETHER THE ADVICE IS A DECISION AND HENCE BINDING ON THE LOWER COURTS?

This question was first examined in the case of ***In re Kerala Education Bill, 1957***[11]**,** where the court observed that, such an opinion is not technically binding on the courts, and the court giving the opinion may itself, in contested legislation be asked to reconsider it. Therefore, although any opinion expressed by the judges of the Supreme Court in an advisory opinion would have high

[10]Supra note. 9.
[11]Kerala Education Bill, 1957, Re, AIR 1958 S.C. 956 at 1013-18.

persuasive authority, it is not the law declared by the Supreme Court within the meaning of Article 141.

This issue was further dealt with in detail in the case of ***In re The Special Courts Bill 1978***[12]**,** where,in 1977, the newly installed Janata Government decided to try certain persons holding high political offices during the emergency and to expedite their trial, it decided to set up special courts. The Special Courts Bill was referred to the Court for advice on its constitutionality. The Court was posed with five questions to answer, one of which was that, whether the "law laid down by the Supreme Court in opinions" is "the law laid down by the Supreme Court" under Article 141?

Here, Chandrachud, C.J. said that the question needed a thorough consideration on a future occasion. Although he was aware of the fact that it was not law within Article 141, but he supported the need for future consideration by the following observations:

> "It would be strange that a decision given by this court on a question of law in a dispute between two parties should be binding on all courts in the country, but the advisory opinion should bind no one at all, even if as in the instant case, it is given after issuing notice to all interested parties, after hearing everyone concerned who desired to be heard, and after a full consideration of the questions raised in the Reference."[13]

This can also be supported by the views of the court from other countries, like America and Australia. These countries follow rigid policy of separation of power but have declined to vest advisory opinion because of two reasons: first, giving advisory opinion sought by the executive is not a judicial, but an executive function, and second, the power of sovereign authority to decide controversies between its subjects does not begin until some tribunal which has power to give a binding and authoritative decision is called upon to take action.[14] The courts in these countries are of the opinion that, a court exercising judicial power will not decide abstract or hypothetical questions[15], here the opinion invited is said to be hypothetical since it is to advice about something which is not done yet but is to be done, and it is abstract as it doesn't affect any body's right.

Thus, it is clear that the advice given by the court under article 143 cannot be treated as a binding on the lower courts. But the courts in India as well as in America and Australia think that this makes the

[12]The Special Courts Bill, 1978, Re, (1979) 1 S.C.C. 380.
[13](1979) 1 S.C.C. 380, at 519.
[14]Huddart, Parker Pty. Ltd. v. Moorehead, (1908-09) 8 C.L.R. 330, at 357.
[15]Judiciary and Navigation Acts, 1921, Re, 29 C.L.R. 257.

efforts take by the Supreme Court to give advice go futile, which is one of the reason for non-incorporation of the concept of advisory jurisdiction in America and Australia.

SCOPE: CAN A QUESTION BE EVALUATED BEYOND WHAT IS PRESCRIBED BY THE PRESIDENT?

The President refers matter to the Supreme Court and seeks its advisory opinion. It is not necessary for the President to raise questions which are in relation to the entries in List I and III. A similar query was raised in the case of ***Keshav Singh***[16] against the validity of the reference. It was argued that the questions referred to the court did not relate to entry in List I and III and as such did not concern with any of the person, duties and functions conferred on the President. The opinion may be sought upon the expediency of the situation requiring such opinion of the Supreme Court on constitutional issues or doubts as to question of law or question of fact, whether existing in present or likely to arise in future, which may arise because of certain enactments of the Parliament already passed or likely to be passed or because of some judgment of constitutional courts or otherwise.[17]

The Supreme Court has to confine itself to the questions raised to it by the president; it cannot travel beyond the reference which is made.

The circumstances that the president has referred only some questions regarding the validity of a bill or an act and not others which also appear to arise, is no good reason for declining to entertain the reference.[18] ***In re Kerala Education Bill***[19], the President sought the opinion of the Supreme Court on the Constitutional validity of certain provisions of the Kerala Education Bill which had been reserved by the Governor for the opinion of President. The public in Kerala was largely agitated; the reference of the president saved the present government from embarrassment and also deleted the lacunae which the Court pointed out in its opinion.

In this case in the advisory opinion the court laid down two significant points which highlighted the scope of Article 143(1). It was argued that the questions which were raised about the validity of some other provisions of the bill also arose, but the important point which is to be referred here is

[16]Special Ref. No. 1 of 1964, AIR 1965 SC 745.

[17]Dr. Justice Vineet Kothari, Re Keshav Singh's case in 1965, Presidential Reference Under Article 143 Of The Constitution: Current Issue And Perspective [Nov. 17, 2017, 9:38 AM], http://hcraj.nic.in/Paper-Speech/presidentialreference.pdf

[18]Kerala Education Bill, 1957, Re, A.I.R. 1958 S.C. 956.

[19]Id.

those issues were not referred by the president to the Court, hence, the reference was an incomplete one and the court shouldn't entertain such a reference. The court rejected the argument stating that

> "*it is for the president to determine what questions should be referred and if he doesn't entertain any serious doubt on other provisions it is not for any party to say that doubts arise also out of them*"

and thus, the court concluded by saying that the court cannot go beyond the reference and discuss those problems.

The circumstances that the president has not thought fit to refer other questions regarding constitutional validity of other provisions of the bill cannot be a good or cogent reason for declining to entertain this reference and answer the questions touching matters over which the President does entertain some doubts.***In re presidential poll***[20], held that the court is bound by the recitals in the order of reference under Article 143(1). The truth or otherwise of the facts cannot be enquired or gone into nor can the court go into the bona fides or otherwise of the Authority making the reference. This court cannot go into disputed question of fact in its advisory jurisdiction under Article 143(1).

Thus, the Authors submit that it is beyond the power of the Supreme Court to go beyond the raised reference however connected the matters can be. If a particular reference has been made with regard to the matter, then the Court cannot go beyond to exercise its jurisdiction in going beyond the issues referred.

IV. BINDING FORCE OF THE POWER/ JURISDICTION VESTED UNDER ARTICLE 143

IS THE PRESIDENT BOUND BY THE ADVICE?

If we strictly denote the law and its understanding, the advisory opinion of the Supreme Court under this article is not binding on the president, though the president honors it and appreciates it. As per the opinion of the Supreme Court in presidential reference, the court can sometimes take the undertaking of the Attorney General that the president will honor it. In a landmark judgment in

[20]Presidential Poll, Re, (1974) 2 S.C.C. 33.

Ismail Faruqui vs. Union of India[21], which was in relation to Ayodhya dispute and the advisory opinion, in which the president seeks Supreme Court's opinion whether a temple which originally existed at the site where Babri Masjid subsequently stood was superfluous and opposed to secularism. In this case it was held by the Supreme Court that the Supreme Court can decline giving its opinion under Article 143 in cases it does not consider proper or not amenable to such exercise by giving and showcasing proper reason for such denial.

The Central Government on 22nd 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. The views expressed by its advisory jurisdiction are binding on all the territories of India.

The marginal note of Article 143 talks about the power of president to consult the Supreme Court. The word consult itself shows that the president is not bound by the opinion of the Court. President is not bound to give effect to its opinion. Another reason which can be effectively applied to the reasoning is that the opinion of the Supreme Court cannot be enforced or executed and thus it is not binding on the president.

Under Article 142, clause (1) which deals with the enforcements of the decree of the Court, clause (1) states that only decrees or order of the Supreme Court can be enforced, and opinion is neither a decree nor an order which can be enforced. This is the legal and constitutional position. The Supreme Court in ***Special Reference***[22], at the record of outset of the Attorney General observed that the Union of India shall accept and treat as binding the answers of this court. Regarding this statement, a nine-judge reference bench submitted that when the constitutional position is that the president is not bound by the opinion, no concession can be given to the contrary. Late Mr. Seervai who appeared for U.P Vidhan Sabha in ***Special reference***[23] argued that no party is bound by the opinion of the court under presidential reference under article 143(1).

The opinion is not law declared under Article 141 of the constitution and thus cannot be bound on the president. Thus, the authors submit that the opinion is not a law defined object which can

[21]Special Reference No. 1/93 in Ramjanmbhoomi, M. Ismail Faruqui v. Union of India, A.I.R. 1995 S.C. 605.

[22]Reference on the principles and procedure regarding the appointment of supreme and high court judges in 1998, A.I.R. 1999 S.C. 1.

[23] No.1 of 1964.

enforced or executed and therefore. The president is not bound by the opinion of the court given for reference under Article 143(1).

IS SUPREME COURTBOUND TO GIVE AN OPINION?

The Supreme Court is given advisory jurisdiction under article 143(1), according to this clause, when it appears to the president that a question of law of fact has arisen or is more likely to arise, which is of the nature of public importance; that it is expedient to obtain the opinion of the Supreme Court on it, the president may refer it to the court for its opinion. This is the part of the president. The court then 'may' after such hearing as it thinks fit may report to the president its opinion thereon.

Till today, during the last 50 years since the constitution came into force, several references have been referred to the Supreme Court for its opinion under Article 143(1) but none under article 143(2). Of the twelve matters which have been for reference, in nine of them the Supreme Court has already given their opinion and two of them are pending.

The issue whether the Supreme Court is bound to answer all references was made by **Shri. H. V. Kamath** on the floor of constituent assembly when article 119 of the draft constitution in correspondence to article 143 of the present constitution came up for consideration.[24]

Das C.J in ***Kerala Education Bill***[25], mentioned that it is obligatory for the Supreme Court to respond and give its opinion on any matter which is raised under Article 143(2) of the Constitution, but under Article 143(1) it is the discretion of the court and for good and valid reason may deny giving its opinion. But a differing opinion was given by Justice Chandrachud in ***Special Courts bill***[26], he believed the mere phraseology of the Article 143(1) and Article 143(2), the use of word 'may' in clause 1 and use of word 'shall' in clause 2 doesn't make the supreme court bound to give opinion on the reference. Even under clause 2 the court can refuse the reference under justified grounds. In a same case, Chief Justice Gajendragadkar, rejected the opinion of the Chandrachud and held that the Supreme Court can refuse the matter under Article 143(1) but not deny giving opinion under article 143(2).

[24]Vol VIII ,Constituent Assembly Debates, 387 (1999).
[25]Supra note 12.
[26]The Special Courts Bill, 1978, Re, (1979) 1 S.C.C. 380

The Supreme Court, through reference is required to give its opinion in matters which are arising regarding dispute on any treaty convention, entered into before the commencement of the Constitution, that is to say, the Supreme Court is under an obligation to answer the questions put to it, under Article 143(2).

But the Supreme Court is not bound to give its opinion on matters which are of political significance. In matters which are of political significance the Supreme Court can reject to give its reference. Such a situation may perhaps arise if purely socio-economic or political questions having no constitutional significance are referred to the court.

It is to use such contingency that the article uses the word 'may' and enables the Supreme Court to refuse to answer questions if it is satisfied that it should not express its opinion having regard to the questions and other relevant facts and circumstances.

The Supreme Court is not bound to give its opinion if the matter has been referred by the President. This can be justified by the wordings of Article 143 (1) which uses the word 'may'. This means that it is the choice and decision of the Supreme Court whether to provide its opinion or not. The Supreme Court is not bowed to give advisory opinion in every reference made to it.[27] The Supreme Court may refuse to give its advisory opinion for strong, compelling and good reasons.[28]

Thus, the Authors submit that the supreme court is bound to give its opinion only when the matter has come for reference by the president Under Article 143 clause 2 of the Constitution and when the matter has been referred to the Supreme Court under clause 1 of the Constitution then it is at the discretion of the Court whether to answer or not. It can with good and sufficient reasons deny giving its opinion on the reference.

V. EVALUATION OF THE SYSTEM OF ADVISORY OPINION

The practice of invoking advisory judicial opinions is not universally approved. A serious objection raised against it is that opinions are sought on hypothetical questions, in the absence of concrete factual situations, without there being a real controversy in existence, and that it is inexpedient and

[27]M.P.Jain,Indian Constitutional Law, 255 (7th ed. 2014)

[28]In re Special Reference No.1 of 2012, (2012) 10 S.C.C. 352.

inconvenient for the courts to express their opinions in the absence of factual situation within which a rule is to operate.

Many legal questions can properly be appreciated in the context of concrete factual situations; since a reference to the court seeking its advice does not present actual facts, the courts is unable to see the problem in the background of an actual controversy between the litigants. The court depends upon assumptions and its advisory opinions are, therefore, nothing more than 'speculative' opinions on hypothetical questions.[29]

It is not possible for the judiciary to lay down a principle adequately and safely without understanding its relation to concrete facts to which it may be applied. The great weakness of a decision without a true case is that, being rendered in vacuo; it is divorced from the real life of actual facts. Advisory opinions may thus move in an unreal atmosphere. The interests of future litigants may also be prejudiced by the court laying down principles in the abstract.[30] It may be inconvenient for them to agitate the matter later when an actual controversy arises. It is also argued that when an actual controversy comes before a court along with the full facts, the court has a maneuverability and a flexibility of approach in deciding the issues raised but the same flexibility of approach is not available to the court when cut and dry questions are put to it for advice, for then it has to move within the framework of the questions, and its freedom of approach to legal issues is cabined and restricted by the way the questions are framed and to safeguard itself from being misunderstood in future, the court may have to hedge its answers with all kinds of 'buts', 'ifs', 'provided'.

On the other hand, there are quite a few advantages of advisory jurisdiction: it can provide guidance to the government on questions of its legal powers and may promptly remove any cloud of uncertainty in the public mind, regarding the validity of any legislation or governmental action. An advance judicial opinion regarding the validity of a legislative measure may avoid inconvenience which may otherwise arise by its being declared invalid later. [31] Also, to depend solely on a real controversy for deciding a constitutional issue means that the court's jurisdiction depends on the

[29]Att. Gen for Ontario v. Hamilton Street Rly., 1903 (EARL HALSBURY, J.).
[30]Att. Gen. for Br. Col v. Att gen for Canada, 1914.
[31]Bowie and Friedrich, Studies in Federalism, 107-111 (1954).

whims of private litigants, and vital questions of constitutional law may remain clouded and unanswered by the Highest Court for long till a suitable case arises and reaches the court.

The ordinary court procedure is time-consuming and expensive as the case must pass through several courts before reaching the highest court and for all this period a cloud of uncertainty would hang around the law, and the ultimate decision may very much depend on how and when a question is raised.

All these arguments for and against advisory opinion however lead to one conclusion: it is advisable that the highest court has advisory jurisdiction, but it should be invoked only sparingly and not frequently and only in such cases where factual situations are ripe or where legal issues are capable of being formulated precisely and can be considered by the Court without much of a factual data, and political questions should not be referred to the court for advice.

Most of the above objections are diluted by the safeguards subject to which only the Supreme Court in India may be consulted.

1. It has an option to give or no to give its opinion on issues referred to it; therefore, it can withhold its opinion inter alia if it feels that the reference suffers from prematurity or from lack of facts.
2. Judicial procedure is used in hearing the reference and opinion is delivered in open court so that the reasons on which it is based are subject to public scrutiny.
3. Questions on which opinion is sought have to be framed by the executive, for the court to give its opinion on problems of law or fact presented to it by the executive in the reference.

Further much depends as to how in practice the technique is used and here the Indian experience cannot be said to be discouraging so far. On the whole the institutions of Advisory Jurisdiction an opinion has functioned well in India and has proved to be creative in value so as far as the constitutional interpretation is concerned. It has been widely used wisely and sparingly so far as is evident from the fact that over a period of 50 years only twelve references have been made to the Supreme court of which the Court refused to entertain only one reference viz. in the matter of Ram JanmaBhoomi.

The reference procedure has been used in India So far only when substantial constitutional issues have been involved. Abstract and hypothetical questions have not been generally been referred. References have been made only when issues have become clarified and crystallized by public discussion and were mature enough for judicial opinion.

Only in one or two references so far has the court complained that it was handicapped by a lack of sufficient factual data to enable it to give its opinion. As for example, in re Levy or Estate duty, certain questions regarding future legislations on levy of estate duty were referred to the federal court of opinion, but no draft bill was submitted. So, in answering the questions, the Judges had to make certain assumptions and reservations and they had no clear appreciation of the content in which the legal issues posed were to operate. In fact, one of the judges hearing the reference even refused to give his opinion because the reference was enveloped in a thick fog of hypothesis and uncertainties. However, the two other judges did give their opinion on reference.

In the Kerala bill case also, the court point out that the questions referred had not arisen out of actual application of any specified section of the bill to the facts of any particular case and so the questions were necessarily abstract or hypothetical in nature. In this case though facts were absent, yet it differed from the estate duty case in so far as a bill enacted by the state legislature was before the Court and, so it did not have the function in a complete vacuum.

The controversy was set in legalistic and constitutional terms and the reference did not raise any political issue although the motivation behind the reference might have been political. On the whole, however, the full matter may be said to be precursor of healthy conventions in the area of federalism insofar as even when the center could have vetoed the bill, it didn't do so without seeking an opinion of a forum whose objectivity and impartiality none could challenge.

CONCLUSION

Apart from the original and appellate jurisdiction, the Supreme Court is also provided with advisory jurisdiction. This jurisdiction is provided under the Article 143 of the constitution. There have been many questions about the nature and scope of this article arising out of its text, which the authors

would try to answer in the final paper. The authors would like to point out here, that although only some cases have been referred under this article, but it still holds its importance as it provides guidance to the government on question of its legal powers and functions while simultaneously assuring the public as to the constitutionality of a legislation being enacted or the power being pursued. It was additionally held by the Supreme Court that the references made under this Article are not the "law pronounced by the Supreme Court" under Article 141 of the Constitution. So it isn't binding on mediocre courts, despite the fact that have high convincing worth.Every coin has two sides with pros and cons. The advisory jurisdiction of the Indian Supreme Court is not just a constitutional framework to reach to a solution to problems and answering a question regarding question of law and fact but also a permissible legal method to seek authentic legal opinion from the Apex Court of the Land

After analyzing the text of Article 143 and certain case laws this article talks about the power conferred on the President rather than the jurisdiction of Supreme Court, and since this concerns with the executive mechanism and not administration of Justice, the advisory opinion would only be treated as the opinion of judicial officers and would not serve as a binding force on lower courts nor would it serve as a binding on the president.