

JUDICIAL OVERREACH

NEWS: President Droupadi Murmu has invoked Article 143(1) of the Constitution to seek the Supreme Court's advisory opinion on whether timelines can be set for the President and Governors to act on state bills.

- This move follows the Court's April 8 ruling in *State of Tamil Nadu vs The Governor of Tamil Nadu* case, mandating a three-month decision period, which has raised concerns over judicial overreach.

WHAT'S IN THE NEWS?

About Presidential Reference

- A Presidential Reference is a mechanism under Article 143 of the Indian Constitution.
- It empowers the President of India to seek the Supreme Court's advisory opinion on questions of law or fact that are of public importance.

Constitutional Basis

- Article 143(1) allows the President to refer any legal or factual question of public importance to the Supreme Court for opinion.
- Article 143(2): Also enables reference regarding disputes arising out of pre-Constitution treaties or agreements.
- Article 145 mandates that such a reference must be heard by a minimum bench of five judges.
- The opinion is advisory in nature – it is not binding on the President and does not carry precedential value.
 - However, it holds significant persuasive weight and is usually followed by both the executive and lower courts.

Historical Context

- The provision has its roots in the Government of India Act, 1935, which allowed the Governor-General to refer legal questions to the Federal Court.

- Article 143 retains this structure, embedding it in India's democratic and republican Constitution.

Key Past References

- Kerala Education Bill (1958): Balanced Fundamental Rights with Directive Principles; protected minority education rights under Article 30.
- Berubari case (1960): Ceding Indian territory requires a constitutional amendment under Article 368.
- Keshav Singh case (1965): Interpreted legislature's privileges.
- Third Judges Case (1998): Defined judicial collegium process.

Supreme Court's April Decision on the Role of President in Legislative Process

- Background of the Verdict: On April 8, 2025, the Supreme Court ruled that the President must decide within three months on Bills reserved for her consideration by Governors.
 - There is no Constitutional provision regarding the time limit for President's Consideration on State's Bill.
- Impact on Governor's Role : The verdict nullified Tamil Nadu Governor R N Ravi's decision to withhold assent to 10 Bills, reinforcing that indefinite delays in legislative assent are unconstitutional.
- Extension to Presidential Office: In a significant move, the SC extended the three-month timeline to the President, allowing states to seek a writ of mandamus if no decision is made, raising questions about judicial scrutiny of the President's discretionary powers.
- Reference under Article 143(1): The President referred 14 questions related to constitutional processes and discretionary roles, especially questioning whether timelines can be imposed in the absence of explicit constitutional provisions.

About Judicial Overreach

- It refers to the situation where the judiciary oversteps its constitutionally assigned boundaries, intruding into the domain of the legislature or executive.

- It occurs when courts issue rulings that amount to legislation, policy formulation, or administrative execution, areas reserved for the other two organs of the State.
- It is distinct from judicial activism, which operates within constitutional boundaries to fill governance gaps.

“Judicial Activism is legitimate; Judicial Overreach is an abuse of judicial power.” – Justice A.S. Anand

Judicial Activism vs Judicial Overreach

Aspect	Judicial Activism	Judicial Overreach
Definition	Legitimate exercise of judicial power to uphold rights, ensure accountability, or fill a legal vacuum within constitutional limits.	When judiciary crosses constitutional boundaries and intrudes into legislative or executive domains.
Nature of Action	Corrective and rights-expansive.	Invasive and substitutive of elected branches.
Constitutional Backing	Rooted in Articles 32, 226, and 141; aligned with the Constitution’s spirit.	Lacks explicit mandate; violates principles of separation of powers.
Examples	<ul style="list-style-type: none"> • <i>Vishaka v. State of Rajasthan (1997)</i> – SC framed guidelines for sexual harassment in absence of law. • <i>Hussainara</i> 	<ul style="list-style-type: none"> • <i>NJAC Case (2015)</i> – SC invalidated 99th Amendment passed by Parliament. • <i>TN Bills Verdict (2025)</i> – SC imposed timeline on

	<i>Khatoon</i> – Right to legal aid.	President's assent.
Judicial Commentary	Called a "spur and a catalyst" to responsive governance (Justice Bhagwati).	Called "judicial adventurism" when it substitutes legislature/executive (Justice A.S. Anand).

Causes of Judicial Overreach

- Legislative and Executive Inaction: When the executive or legislature fails to act, courts fill the policy void.
- Expanding Interpretation of Fundamental Rights, Especially Article 21: The judiciary has read a wide range of rights into Article 21, beyond its literal text.
- Rise and Liberal Use of Public Interest Litigation (PIL): PILs enabled courts to admit cases from third parties not directly affected, leading to broader activism.
- Self-Perception of Judiciary as the Sole Guardian of the Constitution: Some judgments reflect an implicit belief that only the judiciary can safeguard constitutional morality and governance.
 - In *Anoop Baranwal v. Union of India (2023)*, the SC created a new mechanism for appointing Election Commissioners, arguing it was acting in a "constitutional vacuum."
- Doctrine of Necessity and Judicial Innovation Turned into Norm: Temporary or emergency interventions become permanent legal norms
 - The collegium system for judicial appointments originated from judicial innovation and later became institutionalized by repeated judgments.
- Absence of Accountability Mechanisms for Judiciary: Although the judiciary is powerful and respected, "accountability mechanisms, particularly in disciplining judges, have not matched their power".

Examples of Judicial Overreach

- Liquor Ban on Highways (2016): SC banned liquor sales within 500m of highways to reduce accidents.
- NJAC Case (2015): SC struck down the NJAC Act passed unanimously by Parliament.
 - It invalidated a constitutional amendment, undermining legislative authority over judicial appointments.
- Jolly LLB II Censorship (2017): Bombay HC formed a committee to censor the film for allegedly mocking courts.
 - It bypassed the statutory authority of the CBFC, intruding into an executive function.
- Firecracker Ban (2017–18): SC banned polluting crackers and later restricted sales to “green crackers.”
 - The ban lacked policy consultation and interfered in socio-economic matters governed by the executive.
- Anoop Baranwal v. UOI (2023): SC created a panel including the CJI to appoint Election Commissioners.
 - It assumed a legislative role by filling a “constitutional vacuum” instead of deferring to Parliament.
- BCCI Reforms – Lodha Committee: SC restructured BCCI governance and voting rights after a match-fixing scandal.
 - It interfered in a private sports body’s functioning, violating autonomy under the Societies Act.
- Venkatarama Devaru Case (1958): SC declared untouchability unconstitutional and interpreted Hindu scriptures.
 - It extended its role into theological interpretation, beyond its constitutional mandate.

Arguments in Favor of Judicial Intervention

- Acts as a Constitutional Guardian: The judiciary is duty-bound to protect the Constitution and fundamental rights under Articles 32 and 226.

- In *Kesavananda Bharati (1973)*, SC held that any constitutional amendment that violates the “basic structure” is invalid.
- This ensures Parliament does not become supreme over the Constitution.
- Corrects Executive and Legislative Inaction: When the executive fails to act or the legislature doesn’t pass necessary laws, the judiciary steps in to uphold justice.
- Upholds Rights of the Marginalized: Through Public Interest Litigation (PIL), the judiciary became the voice of the poor and voiceless.
 - *Hussainara Khatoon case (1979)* – SC secured legal aid for undertrial prisoners languishing in jails longer than their potential sentence.
 - This expanded access to justice and made rights enforcement more inclusive.
- Ensures Accountability of Other Organs: Judiciary often intervenes to check abuse of power or inaction by the executive or legislature.
 - In the *2G Spectrum case*, SC cancelled telecom licenses issued irregularly, upholding public interest and accountability.
- Progressive Interpretation of the Constitution: Courts have dynamically interpreted constitutional provisions to meet evolving societal needs.
 - In *Maneka Gandhi v. Union of India (1978)*, Article 21 was interpreted to include substantive due process, making procedure subject to fairness, justice, and reasonableness.
- Promotes Social Justice and Equity: Judicial intervention often furthers the Directive Principles of State Policy (DPSPs).
 - In environmental cases like *MC Mehta* and *Vellore Citizens Welfare Forum*, courts issued binding directives for pollution control.
 - It compensates for delays or failures in legislative enforcement of DPSPs.
- Prevents Breakdown of Constitutional Machinery: In times of institutional breakdown or threat to constitutional governance, judicial intervention preserves rule of law.

- Post-Emergency, judicial activism restored faith in the system through expanded PILs and rights jurisprudence.
- It acted as a buffer against authoritarianism.

Constitutional Provisions Related to Judicial Overreach

- Article 32 and Article 226 – Writ Jurisdiction: These empower the Supreme Court and High Courts to issue writs for enforcement of fundamental rights.
 - Overreach occurs when courts stretch these provisions to create new rights or enforce policy, bypassing the legislature.
- Article 141 – Law Declared by Supreme Court is Binding: The law laid down by the SC is binding on all courts.
 - While this reinforces judicial supremacy in interpretation, excessive use without self-restraint may lead to judicial legislation.
- Article 142 – Complete Justice: Allows the Supreme Court to pass any order necessary to do “complete justice”.
 - This article is often cited in cases of judicial overreach when SC uses it to fill legislative gaps or issue executive-like directions.

Criticisms of Judicial Overreach

- Violates the Principle of Separation of Powers: Judicial overreach disturbs the constitutional balance among the legislature, executive, and judiciary.
 - In *Anoop Baranwal v. Union of India (2023)*, SC created a new procedure for appointing Election Commissioners, encroaching on executive discretion under Article 324.
- Undermines Democratic Accountability: Judges are unelected and not answerable to the public, unlike legislators and ministers. When they frame policies or laws, it bypasses electoral scrutiny and democratic debate.
 - In the NJAC case, SC invalidated a law passed unanimously by Parliament, ignoring the democratic mandate.

- Leads to Policy Instability and Arbitrary Governance: Judicial pronouncements, especially in technical domains like economics or environment, may lack data-based policy grounding.
 - The SC's liquor ban near highways caused massive revenue losses and job losses without offering empirical evidence linking it directly to road safety.
- Weakens the Efficiency of Legislature and Executive: Over-judicialization makes the executive cautious and ineffective, fearing court intervention.
 - BCCI reforms imposed by SC disrupted the functioning of an autonomous sports body, despite it not being a public institution.
- Abuse of Contempt Powers to Enforce Overreach: SC noted instances like courts ordering clearing of public toilets, regulating monkeys, or even booking train seats under threat of contempt — clearly exceeding judicial domain.
- Judicial Interference in Governance Despite Legislative Action: Judicial overreach occurs when the judiciary disregards legislative actions and imposes its own directives, disrupting governance and popular mandate.
 - In the Delhi sealing drive, SC ordered sealing of shops, overriding a regularizing law and public protests, causing economic and political fallout.
- Creates Legal Uncertainty: Sudden judicial interventions can conflict with existing regulatory mechanisms, causing confusion.
 - In *Jolly LLB II*, Bombay HC formed a special screening committee, duplicating the statutory role of the CBFC.

Key Committee Recommendations on Judicial Overreach and Reform

- Law Commission of India (121st Report, 1987) – Judicial Accountability: Recommended a mechanism for evaluating judicial conduct and impeachment procedures for High Court and Supreme Court judges.
 - Suggested a National Judicial Council to handle complaints against judges.
 - Relevance: Strengthens checks and deters misuse of judicial

authority or arbitrary activism.

- National Commission to Review the Working of the Constitution (NCRWC), 2002: Called for restoring institutional balance and respecting separation of powers.
 - Recommended a Code of Conduct for judges, and restraint in judicial pronouncements involving policy.
 - Warned against the judiciary becoming a “super-legislature.”
 - Emphasised self-discipline over external control to avoid overreach.
- Second Administrative Reforms Commission (ARC), 2007: In its report on Ethics in Governance, highlighted the risks of judicial overreach.
 - Recommended clearer guidelines on PIL admissibility, and greater transparency in judicial appointments.
 - Favoured a National Judicial Commission to balance autonomy and accountability.
- Venkatachaliah Panel on Judicial Appointments: Proposed replacing the Collegium system with a National Judicial Commission for transparent and participatory appointments.
 - Argued that opaque appointments contribute to perception of unaccountable overreach.
- Punchhi Commission on Centre–State Relations (2010): Emphasised the need to protect federal balance and avoid judicial encroachment on Governor’s discretion and state autonomy.
 - Supported constitutional clarity on Articles 200 and 201 (governor’s assent) to prevent arbitrary judicial mandates.

Global Comparison on Judicial Advisory Powers and Overreach

- Canada: Canada’s Supreme Court can give advisory opinions on legal issues when referred by the federal or provincial

governments.

- This provision is similar to Article 143 of the Indian Constitution.
- The advisory opinion in Canada is not binding but holds constitutional significance and is often followed.
- United States: The U.S. Supreme Court does not issue advisory opinions.
 - It has consistently refused to provide legal advice to the executive, respecting a strict separation of powers.

Way Forward & Safeguards Against Judicial Overreach

- Respect for Separation of Powers: Judiciary must not create, amend, or implement laws under the guise of “complete justice.”
 - SC’s use of Article 142 to impose time limits on Governors and Presidents in the Tamil Nadu Bill case was strongly criticised as constitutional overreach .
- Use Larger Benches for Constitutional Questions: Important rulings on federal issues should be decided by Constitution Benches to avoid overreach.
- Limit Scope of Article 142: Article 142 should only ensure “complete justice,” not substitute executive action or create law.
 - VP Jagdeep Dhankhar called it a “nuclear missile” after SC used it to “deem” Tamil Nadu Bills passed without Presidential assent .
- Codify PIL Admissibility Standards: Stringent checks on PILs can prevent courts from entering policy terrain unnecessarily.
 - The Madras HC’s Aadhaar–social media linking case illustrates courts delving into tech policy without constitutional basis .
- Improve Legislative–Executive Delivery: When elected branches perform their roles effectively, the need for judicial intervention diminishes.
 - Cases like *Vishaka v. State of Rajasthan* arose due to legislative vacuum on workplace harassment laws .

- Judicial Accountability and Review: Create effective mechanisms (like an internal ethics code or performance review body) to ensure judicial conduct aligns with constitutional values.

Conclusion

Judicial overreach, while sometimes addressing governance gaps, risks undermining the separation of powers and democratic accountability. Strengthening legislative and executive efficiency, alongside judicial restraint and clearer constitutional boundaries, is essential to maintain a balanced democratic framework.

Source: https://www.business-standard.com/india-news/president-droupadi-murmu-supreme-court-overreach-bill-act-assent-governor-125051500293_1.html