

1. Birthright Citizenship in US

Why Now?



The US Supreme Court will hear arguments over the legality of an executive order issued by President Donald Trump that seeks to end birthright citizenship. It is aimed at children born in the United States to undocumented immigrants and temporary visa holders. The outcome of the case could determine the future course of American citizenship law. The US Supreme Court has already issued nationwide injunctions staying the order.

What is Birthright Citizenship?

According to the 14th Amendment to the Constitution, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The provision has been widely interpreted to make citizens of anyone born on American soil, except for:

- The children of diplomats who have allegiance to another government.
- Enemies present in the US during hostile occupation.

The concept itself is centuries old and is based on the English common law principle of 'jus soli', or 'right of soil', granting automatic citizenship to anyone born within a country's boundaries regardless of the nationality of their parents.

Why does Trump want to end Birthright Citizenship?

On his first day of office, Trump signed an executive order denying citizenship to children of parents who were not themselves US citizens or lawful permanent residents. According to the order, this targeted people who were illegally or temporarily present in the country because they are not "subject to the jurisdiction" of the United States.

Is the US really the only country to practise Birthright Citizenship?

No. At least 37 other countries grant citizenship to anyone born on their soil, mostly in South America and the Caribbean. India does not practice unconditional birthright citizenship, nor do several European countries.

Relevance: GS Prelims & Mains Paper II; International Issues

Source: Indian Express

2. The 14 questions President Murmu has asked the SC

Introduction

14 QUESTIONS

**President Murmu asked Supreme Court
on timelines for clearing bills**



President Droupadi Murmu's letter to the Supreme Court states that Articles 200 and 201 of the Constitution "(do not) stipulate any time frame" for a Governor or the President to act on bills passed by state Assemblies, and that "the concept of deemed assent", as introduced in the apex court's landmark April 8 decision, "is alien to the constitutional scheme and fundamentally circumscribes the power of the President and the Governor".

Exercising powers vested upon her under Article 143(1), the President thus made a 14-point reference to the SC for its consideration and opinion. These 14 questions, published here ad verbatim, are as follows.

1. What are the constitutional options before a Governor when a Bill is presented to him under Article 200 of the Constitution of India?
2. Is the Governor bound by the aid & advice tendered by the Council of Ministers while exercising all the options available with him when a Bill is presented before him under Article 200 of the Constitution of India?
3. Is the exercise of constitutional discretion by the Governor under Article 200 of the Constitution of India justiciable?
4. Is Article 361 of the Constitution of India an absolute bar to the judicial review in relation to the actions of a Governor under Article 200 of the Constitution of India?
5. In the absence of a constitutionally prescribed time limit, and the manner of exercise of powers by the Governor, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of all powers under Article 200 of the Constitution of India by the Governor?
6. Is the exercise of constitutional discretion by the President under Article 201 of the Constitution of India justiciable?
7. In the absence of a constitutionally prescribed timeline and the manner of exercise of powers by the President, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of discretion by the President under Article 201 of the Constitution of India?
8. In light of the constitutional scheme governing the powers of the President, is the President required to seek advice of the Supreme Court by way of a reference under Article 143 of the Constitution of India and take the opinion of the Supreme Court when the Governor reserves a Bill for the President's assent or otherwise?

9.Are the decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, justiciable at a stage anterior into the law coming into force? Is it permissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?

10.Can the exercise of constitutional powers and the orders of/by the President / Governor be substituted in any manner under Article 142 of the Constitution of India?

11.Is a law made by the State legislature a law in force without the assent of the Governor granted under Article 200 of the Constitution of India?

12.In view of the proviso to Article 145(3) of the Constitution of India, is it not mandatory for any bench of this Hon'ble Court to first decide as to whether the question involved in the proceedings before it is of such a nature which involves substantial questions of law as to the interpretation of constitution and to refer it to a bench of minimum five Judges?

13.Do the powers of the Supreme Court under Article 142 of the Constitution of India limited to matters of procedural law or Article 142 of the Constitution of India extends to issuing directions /passing orders which are contrary to or inconsistent with existing substantive or procedural provisions of the Constitution or law in force?

14.Does the Constitution bar any other jurisdiction of the Supreme Court to resolve disputes between the Union Government and the State Governments except by way of a suit under Article 131 of the Constitution of India?

Relevance: GS Prelims & Mains Paper II; Governance

Source: Indian Express

3. After President Murmu seeks advisory opinion from SC, can court overturn its R N Ravi decision?

Introduction



President Droupadi Murmu has invoked the Supreme Court's advisory jurisdiction on whether timelines could be set for the President and Governors to act on Bills passed by state Assemblies.

Under Article 143(1) of the Constitution, the President may refer a "question of law or fact" to the Supreme Court for its opinion. The opinion, unlike a ruling, is not binding.

The reference was made on May 13, five weeks after the SC's April 8 ruling in which it fixed a three-month deadline for the President to clear Bills reserved for her consideration by the Governor.

That ruling, by a two-judge Bench headed by Justice J B Pardiwala, set aside Tamil Nadu Governor R N Ravi's decision to withhold assent to 10 pending Bills.

What is the SC's advisory jurisdiction?

A question under Article 143 may be referred if it "has arisen, or is likely to arise", and "which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court".

Article 145(3) requires any such reference to be heard by five judges, after which the SC returns the reference to the President with the majority opinion.

Under the Constitution, the President acts on the aid and advice of the Cabinet. The advisory jurisdiction allows her the means to seek independent advice to act on certain constitutional matters. It is a power that the President has invoked on at least 15 occasions since 1950.

Can the SC decline to answer a presidential reference?

Article 143(1) states the court "may, after such hearing as it thinks fit, report to the President its opinion thereon". The word 'may' indicates that it is the court's prerogative to answer the reference. The SC has so far returned at least two references without answering.

● In 1993, then President Shankar Dayal Sharma asked the SC "whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid...in the area on which the structure stood."

The SC unanimously refused to answer this as a civil suit on the dispute was already pending before the courts.

Justices Aftab Ahmed and S P Bhargava declined to answer also on the grounds that the reference was against secularism, and hence unconstitutional. The judges also expressed apprehension that the government could use the SC opinion as a springboard to politically negotiate the issue.

● The SC did not answer a 1982 reference made by President Giani Zail Singh on the constitutionality of a proposed law that sought to regulate the resettlement or permanent return of individuals (or their descendants) who had migrated to Pakistan between March 1, 1947 and May 14, 1954 to Jammu and Kashmir.

However, after the President's reference, the Bill was passed for a second time, and the Governor gave his assent. Petitions challenging the validity of the laws were also moved before the SC.

Since advisory jurisdiction is not binding as a precedent, even if the SC had held the law to be unconstitutional in the Article 143 reference, it would still have to decide its validity in the other batch. The SC's opinion would also be futile since the issue was no longer before the President.

Can the SC overturn its April 8 decision through the presidential reference?

In its 1991 opinion on the Cauvery Water Disputes Tribunal, the SC said that Article 143 is not a mechanism for the executive to seek review or reversal of established judicial decisions of the Supreme Court.

"When this Court in its adjudicatory jurisdiction pronounces its authoritative opinion on a question of law, it cannot be said that there is any doubt about the question of law or the same is res integra so as to require the President to know what the true position of law on the question is," the opinion said.

The SC also said it could not "countenance a situation" where a question in a reference "may be so construed as to invite our opinion" on a settled decision of the court.

"That would obviously be tantamount to our sitting in appeal on the said decision which it is impermissible for us to do even in adjudicatory jurisdiction. Nor is it competent for the President to invest us with an appellate jurisdiction over the said decision through a Reference under Article 143...", the court said.

The government can, however, file for a review of the April 8 ruling, and can move a curative petition in an attempt to reverse it.

Since the judgment was by a two-judge Bench, and similar cases from other states, including Kerala and Punjab, remain pending, it is possible that another Bench might refer it to a larger Constitution Bench.

Is the presidential reference only about the April 8 ruling?

The reference contains 14 questions of law, which are mostly drawn from the April 8 ruling, but are not limited to it. The last three questions raise larger issues on how the SC exercises discretionary powers provided by the Constitution.

- In Question 12 asks whether the SC must first determine if a case involves a "substantive question of law" or requires "interpretation of the Constitution" that only a larger Bench can hear. This question essentially asks whether smaller Benches can hear such important matters.

- In Question 13, the reference raises questions on the use of Article 142 of the Constitution, which is the discretionary "power to do complete justice".

- The last question asks the SC to define the contours of Centre-state disputes that can be heard by any court. Article 131 states that "subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute."

What is the broader context behind the presidential reference?

The issues in the R N Ravi case essentially arise out of the interplay of powers between the Centre and Opposition-ruled states. Governors, who are appointed by the Centre, are seen to be undercutting elected state governments by their refusal to clear Bills passed by the Assembly.

While the SC addressed this issue in its April 8 judgment, it extended its scrutiny to the powers of the President as well, and set a three-month timeline to clear Bills reserved for her consideration by the Governor. Governor Ravi, under fire from the SC for withholding assent, had referred 10 Bills to the President.

The SC in its ruling allowed states the right to seek a "writ of mandamus" from the SC against the President. This is essentially a right to knock on the doors of courts seeking a directive against the President if she does not decide on the Bills within the prescribed time limit.

The government used the ruling to argue that the judiciary was undermining Parliament or the people's mandate. Attorney General for India R Venkataramani said the President "was not heard" before the SC passed directives for her office to follow.

Vice President Jagdeep Dhankhar criticised the ruling. He has raised the issue of "Parliamentary supremacy" on several occasions, and called for limited judicial review and greater adherence to the separation of powers.

That said, such tussles between Parliament and the judiciary are as old as the Constitution itself.

In the first three decades after Independence, courts and the government sparred on the interpretation of the right to property, leading to constitutional amendments and adverse court orders. Eventually, in the landmark 1973 Kesavananda Bharati ruling, the court allowed land reforms, watering down the fundamental right to property, but severely restricted Parliament's powers to tinker with any other fundamental right.

Relevance: GS Prelims & Mains Paper II; Governance

Source: Indian Express

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