

Role and Contribution of the Supreme Court of India

Introduction

The Supreme Court of India is the supreme judicial body of India and the highest court of India under the constitution. It is the most senior constitutional court, and has the power of judicial review. The Chief Justice of India is the head and chief judge of the Supreme Court and the court consists of a maximum of 34 judges and it has extensive powers in the form of original, appellate and advisory jurisdictions.

The Supreme Court in India was established through an enactment passed in pre-independent India, with the introduction of the Regulating Act, 1773. The 1st Supreme Court started its function as a court of record at Calcutta, and the 1st Chief Justice Sir Elijah Impey was appointed. The court was established to resolve the disputes in Bengal, Orissa, and Patna. Consequently, in 1800 and 1834, the King George-III established the other two Supreme Courts in Bombay and Madras.

Supreme Court is a protector of Constitution. India is a federal State having a single and unified judicial system with three-tier structure, i.e., Supreme Court, High Courts and Subordinate Courts.

The Indian Constitution under Article 124(1) states that there shall be a Supreme Court of India consisting of a Chief Justice of India (CJI) and 34 judges, including the CJI. The Jurisdiction of the Supreme Court of India can broadly be categorised into original jurisdiction, appellate jurisdiction and advisory jurisdiction.

Supreme Court of India

Supreme Court at the apex of the Indian Judiciary is the highest authority to uphold the Constitution of India, to protect the rights and liberties of the citizens, and to uphold the values of rule of law. Hence, it is known as the *Guardian of our Constitution*.

The Indian Constitution provides for a provision of the Supreme Court under Part V (The Union) and Chapter 6 titled 'The Union Judiciary'. The Constitution of India has provided an independent judiciary with a hierarchical setup containing High Courts and Subordinate Courts under it.

Role and Powers of the Supreme Court

1. Power to punish for contempt (civil or criminal) of court with simple imprisonment for 6 months or fine up to Rs. 2000. Civil contempt means wilful disobedience to any judgment. Criminal contempt means doing any act which lowers the authority of the court or causing interference in judicial proceedings.

2. Judicial review to examine the constitutionality of legislative enactments and executive orders. The grounds of review is limited by Parliamentary legislation or rules made by the Supreme Court.
3. Deciding authority regarding the election of President and Vice President.
4. Enquiring authority in the conduct and behaviour of UPSC members. 5. Withdraw cases pending before High Courts and dispose of them itself.
5. Appointment of ad hoc judges- Article 127 states that if at any time there is lack of quorum of Judges of Supreme Court, the CJI may with the previous consent of the President and Chief Justice of High Court, concerning request in writing the attendance of Judge of High Court duly qualified to be appointed as Judge of the Supreme Court.
6. Appointment of retired judges of the Supreme Court or High Court - Article 128 states that the CJI at any time with the previous consent of the President and the person to be so appointed can appoint any person who had previously held the office of a Judge of SC.
7. Appointment of acting Chief Justice- Article 126 states that when the office of CJI is vacant or when the Chief Justice is by reason of absence or otherwise unable to perform duties of the office, the

President in such case can appoint Judge of the court to discharge the duties of the office.

8. Revisory Jurisdiction- The Supreme Court under Article 137 is empowered to review any judgment or order made by it with a view to removing any mistake or error that might have crept in the judgement or order.
9. Supreme Court as a Court of Record- The Supreme Court is a court of record as its decisions are of evidentiary value and cannot be questioned in any court.

Importance of the Supreme Court in India

In the Constitution of India, part 5, chapter 6 deals with the power, function, appointment, retirement, jurisdiction, etc. from Article 124 to Article 147 of the Supreme Court. The followings are the importance of the establishment of the Supreme Court:

- 1) The Supreme Court is the highest appeal court that is also known as the apex court of India and even the last resort, where the citizens of India can seek justice if they are not satisfied with the judgment of the High court.
- 2) The citizens of India, as per Article 32 of the Constitution, can even directly sort for remedy through writs if their fundamental rights are violated.

- 3) The Supreme Court has Judicial Review power that is being vested through Article 13 of the Constitution, which means the Supreme Court has the power to strike down any legislation and executive action if such acts are found to be inconsistent with the Constitution of India.

The following are the Supreme Court functions:

- 1) The SC gives the final verdict against an appeal from the other subsidiary courts i.e., High courts.
- 2) It acts as an institution where issues from the different governmental bodies, central government, and the state government matters are resolved.
- 3) As per Article 141 of the Constitution, laws passed by the SC, apply to all courts within the Indian Territory.
- 4) In some matters, the Supreme Court also acts on its own and can pass suo moto.

The Supreme Court has the following powers that are jurisdiction:

- 1) **Original Jurisdiction:** The following are the original jurisdiction of the SC:

- 2) As per article 131 of the Constitution, the SC functions as original jurisdiction over matters where the disputes are either between the Central government and the state government or between two or more state governments.
- 3) As per article 139 of the Constitution, the SC have the power to issue writs, order, or direction.
- 4) As per section 32 of the Constitution, the SC also has the authority to enforce Fundamental Rights.
- 5) As per Article 139A of the Constitution, the SC on its discretion or at the advice of the Attorney General of India can take up the cases during the pendency of the matter from the high courts if the same issue is to be disposed of by the SC that is related to the question of law. And it can also transfer the pending cases, appeal or other proceedings to give justice from one HC to another HC.
- 6) **Appellate Jurisdiction:** As per article 132, 133, 134 of the Constitution, the SC has appellate jurisdiction in matters that are related to civil, criminal, or Constitution. Also, as per article 136, the SC has the power to issue special leave that is being by any tribunal courts in India but this does not apply to Army courts.

- 7) **Advisory Jurisdiction:** As per article 143 of the Constitution, the SC can advise the President of India that is related to the question of law, and the nature of the matter is associated with the public importance. And the President can also seek opinion in the matters that are related to Article 131 of the Constitution.

- 8) **Review Jurisdiction:** As per article 137 of the Constitution, the SC has the power to review any laws that are being passed by the legislature.

Writ Jurisdiction

The Supreme Court is empowered to issue writs, including habeas corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of the fundamental rights of an aggrieved citizen.

In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can go directly to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The High Courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

Power of Judicial Review

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments.

On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.

Important Judgements of By Supreme Court

A. Kesavananda Bharati v. State of Kerala (1973) -

‘basic structure’ doctrine

Main theme: Propagating the ‘basic structure’ doctrine as a safeguard against the usurpation of the Constitution.

- It was unique for the reason that it brought a shift in the balance of democratic power. Earlier judgements had taken a stand that Parliament could amend even the fundamental rights through a proper legislative process.
- But the present case held that Parliament can not amend or alter the fundamental structure a ‘**Basic Structure**’ of the constitution.

- Besides, Kesavananda Case was significant in that the Supreme Court ascribed to itself the function of preserving the integrity of the Indian Constitution.
- The **‘basic structure’ doctrine** formulated by the court represented the pinnacle of judicial creativity and set a benchmark for other constitutional courts around the world.
- The doctrine ruled that even a constitutional amendment could be invalidated if it impaired the essential features—the basic structure—of the Constitution.

2. Maneka Gandhi v. Union of India (1978)

Main theme: Expanding the **meaning of the ‘right to life’** under the Constitution of India

- The right to life and personal liberty under Article 21 reads: ‘No person shall be deprived of his life or personal liberty except according to **procedure established by law**’.
- In other words, courts were not allowed to question any law—no matter how arbitrary or oppressive—as violating the right to life or personal liberty if the law had been suitably passed and enacted.
- However, by vesting in itself the **power of substantive review under Article 21**, the court transformed itself from being merely a supervisor, to being a watchdog of the Constitution.

- The Supreme Court's judgement in the Maneka Gandhi case effectively meant that '**procedure established by law**' under Article 21 would have the same effect as the expression '**due process of law**'.
- In a subsequent decision, the Supreme Court stated that Article 21 would read as: 'No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.'

3. Mohammed Ahmed Khan v. Shah Bano Begum (1985)

Main theme: Questioning the sanctity of **personal religious laws** and bringing the debate on a **Uniform Civil Code** to the forefront of the national discourse.

- In April 1985, the Supreme Court delivered a judgement on the maintenance a divorced Muslim woman would be entitled to receive from her former husband in the case of Mohammed **Ahmed Khan v. Shah Bano Begum (Shah Bano)**.
- It is seen as one of the milestones in Muslim women's fight for rights in India and the battle against the set Muslim personal law. It laid the ground for thousands of women to make legitimate claims which they were not allowed before.
- While the Supreme Court upheld the right to alimony in the case, the judgment set off a political battle as well as a controversy about the extent to which courts can interfere in Muslim personal law.

4. Lily Thomas v. Union of India (2013)

Main Theme: Struck down as unconstitutional **Section 8(4) of the Representation of the People Act (RPA)-1951** that allowed convicted lawmakers a three-month period for filing appeals to the higher court and to get a stay on the conviction and sentence.

- **Section 8 of the RPA** deals with disqualification on conviction for certain offences: A person convicted of any offence and sentenced to imprisonment for varying terms under Sections 8 (1) (2) and (3) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release.
 - But **Section 8 (4) of the RP Act** gives protection to MPs and MLAs as they can continue in office even after conviction if an appeal is filed within three months.
- The Supreme Court held that chargesheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before.
- The Bench found it unconstitutional that convicted persons could be **disqualified from contesting elections** but could continue to be Members of Parliament and State Legislatures once elected.

5. Navtej Singh Johar vs. Union Of India (2018)

Main Theme: Decriminalised homosexuality by **striking off parts of Section 377 of the Indian Penal Code (IPC)**

- In **Navtej Singh Johar v. Union of India** case, the Supreme Court of India unanimously held that **Section 377** of the Indian Penal Code 1860 (IPC), which criminalized ‘carnal intercourse against the order of nature’, was **unconstitutional** in so far as it criminalized consensual sexual conduct between adults of the same sex.
- The petition, challenged Section 377 on the ground that it was vague and it violated the constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination guaranteed under Articles 14, 15, 19 and 21 of the Constitution.
- The Court relied upon the judgement in the case of **K.S. Puttaswamy v. Union of India**, which held that denying the LGBT community its right to privacy on the ground that they form a minority of the population would be violative of their fundamental rights, and that sexual orientation forms an inherent part of self-identity and denying the same would be violative of the right to life.

Conclusion

In this chapter, I have attempted to explain the role of the Supreme Court/judiciary in our democratic structure. In spite of the tensions that arose from time to time between the judiciary and the executive and the legislature, the prestige of the judiciary has increased considerably. At the same time, there are many more expectations from the judiciary. Ordinary citizens also wonder how it is possible for many people to get easy acquittals and how witnesses change

their testimonies to suit the wealthy and the mighty. These are some issues about which our judiciary is concerned too.

Judiciary in India is also known for its independence. Through various decisions, the judiciary has given new interpretations to the Constitution and protected the rights of citizens.

However, The Supreme Court is the highest appealing body in our jurisdiction. With its establishment, justice is being proclaimed by the citizens of India. The powers that are vested upon the Supreme Court are to ensure the fair trial in matters that are about the Constitution of India; hence it also protects the world's largest democratic state.

Sanjay Sarraf