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Jurisdiction and Powers of Supreme Court

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ABSTRACT: The Supreme Court of India (IAST: भारत का सर्वोच्च न्यायालय) is the supreme judicial authority and the highest court of the Republic of India. It is the final court of appeal for all civil and criminal cases in. It also has the power of judicial review. The Supreme Court, which consists of the Chief Justice of India and a maximum of fellow 33 judges, has extensive powers in the form of original, appellate and advisory jurisdictions.^[6] As the apex constitutional court it takes up appeals primarily against verdicts of the High Courts of various states and tribunals. As an advisory court, it hears matters which are referred by the President of India. Under judicial review, the court can invalidate both normal laws as well as constitutional amendments that violate the Basic structure doctrine. It is required to safeguard the fundamental rights of citizens and settles legal disputes among the central government and various state governments. Its decisions are binding on other Indian courts as well as the union and state governments.^[7] As per the Article 142 of the Constitution, the court is conferred with the inherent jurisdiction to pass any order deemed necessary in the interest of complete justice which becomes binding on the President to enforce. The Supreme Court replaced the Judicial Committee of the Privy Council as the highest court of appeal since 28 January 1950. With the Indian Constitution granting it far-reaching authority to initiate actions, to exercise appellate authority over all other courts in the country and with the power to review constitutional amendments, India's Supreme Court is regarded as one of the most powerful supreme courts in the world.^{[8][9]}

KEYWORDS: jurisdiction , powers, supreme, court, chief justices, fundamental rights, court of appeal, republic of India, doctrine

I. INTRODUCTION

In 1861, the Indian High Courts Act 1861 was enacted to create high courts for various provinces and abolished Supreme Courts at Calcutta,¹ Madras and Bombay and also the sadar adalats in presidency towns in their respective regions. These new high courts had the distinction of being the highest courts for all cases till the creation of the Federal Court of India under the Government of India Act 1935.² The Federal Court had jurisdiction to solve disputes between provinces and federal states and hear appeals against judgement of the high courts. The first CJI of India was H. J. Kania.^[7]

The Supreme Court of India came into being on 28 January 1950.^[4] It replaced both the Federal Court of India and the Judicial Committee of the Privy Council which were then at the apex of the Indian court system. ³The first proceedings and inauguration, however, took place on 28 January 1950 at 9:45 am, when the judges took their seats. Which is thus regarded as the official date of establishment.^[10]

The Supreme Court initially had its seat at the Chamber of Princes in the parliament building where the previous Federal Court of India sat from 1937 to 1950. The first Chief Justice of India was H. J. Kania. In 1958,⁴ the Supreme Court moved to its present premises.^[4] Originally, the Constitution of India envisaged a supreme court with a chief justice and seven judges; leaving it to Parliament to increase this number. In formative years, the Supreme Court met from 10 to 12 in the morning and then 2 to 4 in the afternoon for 28 days in a month.⁵

The emblem of the Supreme Court represent the Lion capital of Ashoka at Sarnath, with a topmost wheel featuring 32 spokes.^[11]

The Supreme Court of India was constituted as per Chapter IV of the Part V of Constitution of India. The fourth Chapter of the Indian Constitution is " The Union Judiciary". Under this Chapter, the Supreme Court of India is vested with all Jurisdiction⁶. As per Article 124, The Supreme Court of India had been Constituted and Established. As per Article 129, the Supreme Court is to be the Court of Record. As per Article 131, the Original Jurisdiction of the

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Supreme Court is authorized. As per Articles 132, 133, 134 the Appellate Jurisdiction of the Supreme Court is authorized.⁷ Under Article 135, Federal Court's Power is given to the Supreme Court. Article 136 is dealing with the Special leave to Appeal to the Supreme Court. Review Power of the Supreme Court is explained in Article 137. Article 138 deals with the Enlargement of the jurisdiction of the Supreme Court. Article 139 deals with the Conferment on the Supreme Court of powers to issue certain writs. Ancillary powers of Supreme Court is given as per Article 140.^[12] The Law making power of the Supreme Court is given under Article 141 of the Constitution. The law declared by the Supreme Court is binding on all courts in the country.^[13]

II.DISCUSSION

The building is shaped to symbolize scales of justice with its centre-beam being the Central Wing of the building, consisting of the Chief Justice's court, the largest of the courtrooms, with two court halls on either side.⁸ The Right Wing of the structure has the Bar, consisting of rooms, the offices of the Attorney General of India and other law officers and the library of the court. The Left Wing has the offices of the court. In all, there are 15 courtrooms in the various wings of the building.^{[7][4]} The foundation stone of the Supreme Court's building was laid on 29 October 1954 by Rajendra Prasad, the first President of India. The main block of the building has been built on a triangular plot of 17 acres and has been designed in an Indo-British style by the chief architect Ganesh Bhikaji Deolalikar,⁹ the first Indian to head the Central Public Works Department. It has a 27.6 m (90 ft 7 in) high dome and a spacious colonnaded verandah. The court moved into the building in 1958. In 1979, two new wings – the East Wing and the West Wing – were added to the complex. 1994 saw the last extension.^[4] On 20 February 1980, a black bronze sculpture of 210 cm (6 ft 11 in) height was installed in the lawn of the Supreme Court. It portrays Mother India in the form of the figure of a lady, sheltering the young Republic of India represented by the symbol of a child, who is upholding the laws of land symbolically shown in the form of an open book. On the book, a balance beam is shown, which represents dispensation of equal justice to all.¹⁰ The sculpture was made by the renowned artist Chintamani Kar. The sculpture is just behind the statue of Mahatma Gandhi. The registry of the Supreme Court is headed by the Secretary-General who is currently assisted by 10 registrars,¹¹ several additional and deputy registrars,^[14] etc. Article 146 of the Constitution deals with the appointments of officers and servants of the Supreme Court registry.^{[15][16]}

III.RESULTS

Initially, the Constitution of India provided for a Supreme Court with a chief justice and 7 judges. In the early years, a full bench of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and cases began to accumulate, Parliament increased the number of judges¹² (including the Chief Justice) from the original 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986, 31 in 2009, to 34 in 2015. As the number of the judges has increased, they sit in smaller benches of two or three (referred to as a division bench)^[18]—coming together in larger benches of five or more (referred to as a constitution bench) when required to settle fundamental questions of law.¹³ A bench may refer a case before it to a larger bench, should the need arise.^[19]

The largest-ever bench at the Supreme Court of India has been constituted in 1973 in *Kesavananda Bharati v. State of Kerala*.¹⁴ A bench of 13 judges was set up to decide whether Parliament had the unfettered right to amend the Constitution, which eventually gave rise to the Basic Structure doctrine. The Constitution seeks to ensure the independence of Supreme Court judges in various ways. Per Article 50 of directive principles of state policy, the state shall take steps to separate the judiciary from the executive. Independence of the judiciary, the supremacy of the constitution and rule of law are the features of the basic structure of the Constitution.¹⁵

The Supreme Court and high courts are empowered to frame suo moto cases without receiving the formal petitions/complaints on any suspected injustice including actions/acts indulging in contempt of court and contempt of the Constitution by the executive, legislators, citizens, etc.^[29] It is considered one of the most independent courts in the whole South East Asia.¹⁶

The main purpose of the Supreme Court is to decide constitutional issues.^[30] It is the duty of the judiciary to frame suo moto cases or to probe the cases/petitions at the earliest against the executive or legislature when laws are implemented

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violating the basic foundation and basic structure of the Constitution as the Article 38 (1) of directive principles ensures that the state/judiciary shall strive to promote the welfare of the people by securing a social order in which social, economic and political justice is animated/informed in all institutions of life.^[17]

B. R. Ambedkar clarified as given below in the Constituent Assembly debates on Article 38 (1) highlighting its inevitable implementation. As per the constitution, as held by the court in the Three Judges Cases – (1982, 1993, 1998), a judge is appointed to the Supreme Court by the president on the recommendation of the collegium — a closed group of the Chief Justice of India, the four most senior judges of the court and the senior-most judge hailing from the high court of a prospective appointee.^[18] This has resulted in a Memorandum of Procedure being followed, for the appointments.

Judges used to be appointed by the president on the advice of the union cabinet. After 1993 (the Second Judges' Case), no minister, or even the executive collectively, can suggest any names to the president,^{[33][34]} who ultimately decides on appointing them from a list of names recommended only by the collegium of the judiciary. Simultaneously, as held in that judgment, the executive was given the power to reject a recommended name.^[19]

The collegium system has come under a fair amount of criticism.^[20] In 2015, Parliament passed a law to replace the collegium with a National Judicial Appointments Commission (NJAC). This was struck down as unconstitutional by the Supreme Court, in the Fourth Judges' Case, as the new system would undermine the independence of the judiciary.^[13] Putting the old system of the collegium back, the court invited suggestions, even from the general public, on how to improve the collegium system, broadly along the lines of – setting up an eligibility criteria for appointments, a permanent secretariat to help the collegium sift through material on potential candidates, infusing more transparency into the selection process, grievance redressal and any other suggestion not in these four categories, like transfer of judges.^[16] This resulted in the court asking the government and the collegium to finalize the memorandum of procedure incorporating the above.^[18]

In 2009 the recommendation for the appointment of a judge of a high court made by the collegium of that court, had come to be challenged in the Supreme Court. The court held that who could become a judge was a matter of fact, and any person had a right to question it. But who should become a judge was a matter of opinion and could not be questioned. As long as an effective consultation took place within a collegium in arriving at that opinion, the content or material placed before it to form the opinion could not be called for scrutiny in court.^[20]

IV. CONCLUSIONS

The Supreme Court decided to follow a new roster system from 5 February 2016 for allocation of matters to judges. Under the new roster system, the CJI will hear all special leave petitions (SLPs), and matters related to public interest, social justice, elections, arbitration, and criminal matters, among others. The other collegium/senior judges to hear matters related to labour disputes, taxation matters, compensation matters, consumer protection matters, maritime law matters, mortgage matters, personal law matters, family law matters, land acquisition matters, service matters, company matters etc.^[18] The independence of the judiciary was severely curtailed^[61] during the Indian Emergency (1975–1977) of Indira Gandhi. The constitutional rights of imprisoned persons were restricted under preventive detention laws passed by Parliament. In the case of Shiva Kant Shukla (Additional District Magistrate of Jabalpur v. Shiv Kant Shukla), popularly known as the Habeas Corpus case, a bench of five senior-most judges of the Supreme Court ruled in favour of the state's right to unrestricted powers of detention during the emergency. Justices A.N. Ray, P. N. Bhagwati, Y. V. Chandrachud, and M.H. Beg, stated in the majority decision.^[20]

(under the declaration of emergency) no person has any locus to move any writ petition under Art. 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention.^[20]

The only dissenting opinion was from Justice H. R. Khanna, who stated:

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detention without trial is an anathema to all those who love personal liberty... A dissent is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed.¹³

It is believed that before delivering his dissenting opinion, Justice Khanna had mentioned to his sister: "I have prepared my judgment, which is going to cost me the Chief Justice-ship of India."¹⁶ In January 1977, Justice Khanna was superseded despite being the most senior judge at the time and thereby the government broke the convention of appointing only the seniormost judge to the position of Chief Justice of India. Justice Khanna remains a legendary figure among the legal fraternity in India for this decision.¹⁸

The New York Times wrote of this opinion: "The submission of an independent judiciary to absolutist government is virtually the last step in the destruction of a democratic society; and the Indian supreme court's decision appears close to utter surrender."¹⁹

During the emergency period, the government also passed the 39th amendment, which sought to limit judicial review for the election of the prime minister; only a body constituted by parliament could review this election.¹⁸ Subsequently, Parliament, with most opposition members in jail during the emergency, passed the 42nd Amendment which prevented any court from reviewing any amendment to the constitution with the exception of procedural issues concerning ratification. A few years after the emergency, however, the Supreme Court rejected the absoluteness of the 42nd amendment and reaffirmed its power of judicial review in *Minerva Mills v. Union of India* (1980).¹⁹

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