CHAPTER III

JURISDICTION OF THE SUPREME COURT OF INDIA

Introductory

India may be described as a federation with parliamentary institutions. It is even considered by some a unitary state with subsidiary federal features, while others consider it a federal state with strong unitary features. It is more appropriate to call it a federal state with parliamentary institutions. But in the case of the judiciary in India the example of the United States and not that of England has been followed. It is very much reflected in the wide and varied jurisdiction, with which the Supreme Court of India has been vested. This was made clear during the debates on the Supreme Court in the Constituent Assembly. It was said that the Supreme Court in India was vested with wider jurisdiction and powers than any other Supreme Court in any other country. Alladi Krishnaswami Aiyar pointed out in the Constituent Assembly that a survey of the leading Constitutions would show that the Supreme Court of India, has wider jurisdiction than any other Superior Court in any part of the world.\(^1\)

The framers of the Indian Constitution vested the Supreme Court with a threefold jurisdiction, namely, original, appellate and advisory. They made the Supreme Court of India at once a

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1. Alladi Krishnaswami Aiyar, Constituent Assembly Debates, Vol. VIII 1949, p.546. The same view was expressed by M.C.Setalvad, the first Attorney General of India, the framers of the Indian Constitution vested the Supreme Court with threefold jurisdiction, namely, original, appellate and advisory. They made the Supreme Court of India at once a federal court and privy council.
Federal Court and a Privy Council.

The Supreme Court like its predecessor the Federal Court has exclusive original jurisdiction which is covered by Article 131 of the Constitution. This article empowers the Supreme Court to arbitrate in cases of dispute between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more States on the other; or between two or more States.

It also exercises original jurisdiction in cases under Public International Law and Private International Law. Further it has been empowered to issue writs to protect fundamental rights which are guaranteed by the Constitution. It is the protector and guardian of the Constitution and has the power to review the executive as well as legislative acts. In these matters the Supreme Court exercises original but not exclusive jurisdiction.

Besides being a Court of original jurisdiction, it is the highest appellate tribunal of the country. The Supreme Court of India enjoys a wider jurisdiction than that enjoyed by the Privy Council during the British regime. This jurisdiction extends both to civil and criminal cases, to constitutional matters and to

1. This jurisdiction is subject to certain limitations contained in the Proviso to Article 131 of the Constitution of India which reads: "the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

2. The appellate jurisdiction of the Supreme Court is embodied in three Articles, viz., 134, 135 and 136.
cases that come up from various tribunals in the country¹.

There is yet another function with which the Supreme Court has been vested under the Constitution. It is charged to render advice on matters that may be referred to it by the President of India². The debates in the Constituent Assembly give the impression, that the framers of the Constitution vested the Supreme Court with the function of giving advice in order to prevent unnecessary litigation.

Court of Record:

Besides clothing the Supreme Court with such extensive powers, the framers of the Constitution were eager to give the Court a status in conformity with the powers with which they vested it. The Ad Hoc Committee, set up by the Constituent Assembly to make recommendations concerning the jurisdiction of the Supreme Court had made no recommendation to make it a Court of Record. This proposal was accepted by the Constituent Assembly. The Supreme Court of India under the present Constitution was made a Court of Record and is vested with the power to punish for its contempt³.

What is a Court of Record was explained by Dr. Ambedkar in

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1. There are many tribunals in the country, to name a few, The Industrial Tribunal, The Election Tribunal, The Income Tax Tribunal, etc.

2. Article 143 of the Constitution.

3. Article 129 reads: 'The Supreme Court shall be a Court of Record and shall have all the powers of such a court including the power to punish for contempt of itself'.
the Constituent Assembly:

"............. a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record.' Then, the second part of Article 108(129) says that the court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law and as we have no such thing as Common Law in this country, we felt it better to state the whole position in the statute itself. That is why Article 108(129) has been introduced."¹

Though Article 129 of the Constitution clearly lays down that the Supreme Court has the power to punish for contempt of itself, it may be pointed out that this is an inherent power of a Court of Record². It is essential for the administration of justice and protection of the individual that the Court has the power to punish for acts of its contempt. In the words of Blackstone "This power is an inseparable attendant upon every superior tribunal."³ But what constitutes a contempt of Court, is nowhere defined in the Constitution. This point came into

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1. Constituent Assembly Debates, Vol. VIII, p. 382. The figures in brackets indicate the numbers of the corresponding Articles in the Constitution.

2. Peacock C. J., observed in 'In re Abdoot': "There can be no doubt that every Court of Record has the power of summarily punishing for contempt." 8 W R Cr. 32 Cal, p. 33.

bold relief in one of the cases before the Orissa High Court in 1955. Since 'contempt' is not defined in the Constitution, the question as to what constitutes contempt is left to the Courts. The Supreme Court as well as State High Courts, mostly follow Common Law practice relating to contempt of court. In this connection the observation of Justice Bose in his judgment in Sukhdev Singh v Teja Singh C.J. deserve notice. Justice Bose quoting the observation of the Privy Council said "Every Court of Record is the 'sole and exclusive judge' of what amounts to a contempt of Court." It may broadly be defined as a disobedience to the Court, by acting in opposition to its authority, justice and dignity.

But what constitutes "contempt of court" has now been defined in the report of the Joint Committee of the Parliament on the "Contempt of Court" Bill, 1968. Following the well-known and familiar classification of contempts into "civil" and "criminal" contempts, the Committee has defined the terms in clause 2 as follows: "Civil contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court."

"Criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which (1) scandalises or tends to scandalise, or lowers or tends

2. A.I.R. 1954 S.C. 188.
to lower the authority of any court, or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding, or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner."  

However, the Supreme Court has given a wide, though cautious interpretation to the term 'contempt of Court', in the cases that have come up before it. For example, in Aswini Kumar Ghose v Arbinda Bose, a newspaper article while criticising a Supreme Court decision not only exhorted the Courts of law to function in divine detachment from extraneous considerations such as politics and policies, but also proceeded to attribute improper motives to the judges, Justice Mahajan who delivered the judgment observed that such an attempt had a "clear tendency to affect the dignity and prestige of this Court." He further pointed out that if an impression is created in the minds of the public that the judges in the highest court in the land act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined.

It has been held by the Supreme Court in many cases that to constitute 'contempt' it is not necessary that there must be actual interference in the administration of justice. Any act or publication that is likely to or tends in any way to undermine the

2. Cases of Contempt of Court have come up much more before the High Courts than before the Supreme Court.
proper administration of justice constitutes contempt. This view was affirmed in a well known case: Hira Lal Dixit v State of U.P.\(^1\)

In this case the appellant had filed an appeal to the Supreme Court. He was also a petitioner with many others, who had similar cause and had made applications to the Supreme Court under Article 32 for appropriate writs. During the days the appeal was being heard a leaflet printed in Hindi (purported to be written by the appellant) was distributed in the Court premises. It contained matter\(^2\), the object of which according to Justice Das, was clearly to affect the minds of the judges and to deflect them from the strict performance of their duties. Justice Das held that the "offending passage, time and place of its publication certainly tended to hinder or obstruct the due administration of justice and is a contempt of Court."\(^3\)

There were two important cases before the Supreme Court recently concerning the contempt of court. One was against the Minister of State for Finance, R.K. Khadilkar and the other was against the former Chief Minister of Kerala, E.M.S. Namboodiripad.

In the first case it was alleged by the petitioners that Khadilkar had committed contempt of Court by making a highly objectionable speech against the judgment of the Supreme Court in


2. "The public has full and firm faith in the Supreme Court, but sources that are in the know say that the Government acts with partiality in the matter of appointment of those Hon'able Judges as Ambassadors, Governors, High Commissioners etc., who give judgments against the Government, but this has so far not made any difference in the firmness and justice of Hon'ble Judges."

the Bank Nationalisation case at the Blitz National Forum meeting on February 13, 1970. They argued that it was calculated to undermine the public confidence the judiciary had enjoyed for the past several years. Khadilkar denied that he had committed any contempt of Court and filed an affidavit stating that the allegations were based on incorrect newspaper reports. The Chief Justice who presided over the Court refuted the contention of the petitioners that the public confidence in law courts is shaken by these flimsy criticisms. He said the Court's respects are maintained on a sound footing - and in a free country, where freedom of expression had been guaranteed by the Constitution, criticism of judgments without malice did not amount to contempt.1

In the second case it was alleged that E.M.S.Namboodiripad, had committed contempt of Court by making some derogatory remarks against the judges at a Press Conference, convened by him on November 19, 1967 when he was the Chief Minister. The Kerala High Court convicted him and the conviction of the High Court was challenged before the Supreme Court. The Supreme Court upheld the judgment of the Kerala High Court. The Chief Justice Hidayatullah observed that in the Press Conference Namboodiripad had attacked the judiciary directly "as an instrument of oppression," and that "judges were dominated by class hatred and class interest and class prejudices." He had also charged them with "instinctively favouring the rich against the poor." The Chief Justice refuted the contention of the defence counsel, V.K.Krishna Menon that whatever Namboodiripad had said at his Press Conference was an

exposition of Marxist philosophy and meant to educate the people for a change in society. The Chief Justice observed that in all the writings of Marx and Engles, there is not a mention of Judges. "Marx and Engles knew that administration of justice must change with laws and changes in society. There was thus no need to castigate the Judges as such beyond saying that the judicial system is the prop of the State." "To say that the Judges are products of their environment and they reflect the influences upon them of society in which they live" said the Chief Justice, "was highly improper. Judges do not consciously take a view against their conscience or their oaths Mr. Namboodiripad wishes to say that they do. In this he has been guilty of great calumny." He further added that "it is clear that it is an attack on the Judges which is calculated to raise in the minds of the people a general dissatisfaction with and distrust of all judicial decisions. It weakens the authority of the law and the Court. . . . . . Judged from the angle of Court, and administration of justice, there is not a semblance of doubt in our minds that Mr. E. M. S. Namboodiripad was guilty by contempt of Court."¹

The Supreme Court has also held the executive responsible for committing contempt of Court, if it gives any direction ignoring the decision of a Court which is binding on them. Justice Mudholkar is of the view that "such a direction is a flagrant interference with the administration of justice by courts and a

¹ The Tribune, August 1, 1970, 1:5.
clear contempt of court."¹

Besides the Executive, the subordinate Courts also commit offence if they disobey the orders of a Superior Court. The disobedience in such cases, the Court has held, must be intentional and that there is no room for inferring an intention to disobey².

The Supreme Court has thus varyingly interpreted the term contempt of Court but it has done so for maintaining the authority of law and thereby affording protection to public interest in the purity of administration of justice. It has gone to the extent of including the scandalising of the Court as contempt of Court following the British practice, but has not exercised this power blindly to afford protection to judges personally from imputation to which they may be exposed as individuals³. In such cases the Supreme Court has followed the precedent set up by the Judicial Committee of the Privy Council⁴ and has maintained a clear cut distinction between 'contempt' and 'libel'.

The Supreme Court, though sensitive towards questions of

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1. Diwakar v Hon'ble C.J Orissa, A.I.R. 1961 S.C. 1315 (1316). In this case a direction was given by the Under Secretary to the Board of Revenue in a State to the Magistrate to ignore the decision of the State High Court, even though that was binding on them.


4. McLeod v St. Aubyn, 1899 A.C. 549. In this case Lord Morris observed: "The power summarily to commit for contempt....is not to be used for vindication of the judge as a person. He must resort to action for libel or criminal information."
its contempt, nevertheless accepts apology which must be unqualified\(^1\).

The manner and extent of the exercise of this summary power by the Supreme Court is that of restraint and circumspection. Comparatively in the United States, there has been vehement criticism against the Judiciary for exercising this power with hyper-sensitivity. Fair and bona-fide criticism must be permitted. The path of criticism is a public way, provided the public abstains from imputing improper motives to those taking part in the administration of justice. Lord Atkin has rightly observed in this connection that "Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."\(^2\) This power is often liable to come in clash with the freedom of speech and expression especially with the coming up of more and more of social legislation that has to be interpreted by the Judges. Still the courts must exercise this power sparingly and wisely and with circumspection. Frequent and indiscriminate use of this power in anger or irritation, would adversely affect the dignity and status of this Court. Former Chief Justice Gajendragadkar commenting in, In re. Article 143 of the Constitution of India\(^3\), on contempt of Court warned the judges and also gave a piece of advice, which deserves notice

\(^1\) In Hira Lal Dixit v State of U.P., qualified apology was made which was rejected by the Supreme Court (A.I.R. 1954 S.C. 743).

\(^2\) Andre Paul v Attorney General of Trinidad and Tobago. A.I.R. 1936 P.C. 141 (146).

\(^3\) A.I.R. 1965 S.C. 745.
and deserves to be considered by the judges as a guideline for themselves. He opines: "Wise Judges should never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach and by their restraint, dignity and decorum which they observe in their judicial conduct."

Supreme Court: Not Bound by its own Decisions: Reversal of Decisions:

The Supreme Court being the highest Court in the country is not bound by its own decisions. Article 141 of the Constitution lays down: "The law declared by the Supreme Court, shall be binding on all Courts within the territory of India." The words "all courts" are interpreted to include all courts other than the Supreme Court itself. The doctrine of 'Stare decisis' or precedent is thus imported and incorporated into the Constitution but it has application to courts other than the Supreme Court.

The doctrine of 'stare decisis' seeks to provide consistency, certainty and uniformity in the sphere of law, so that "men may trade and arrange their affairs with confidence." Reufrat C.J. in

1. The doctrine of Stare Decisis had its origin in England. Stare Decisis means that the former decision or precedent is abided by where the same points of law come in litigation, to keep the scale of justice even and steady and not liable to waiver with every judge's opinion (Jowitt's Dictionary of English Law, 1959, Vol. 2, p. 1672.)

2. This doctrine found statutory recognition in the Government of India Act 1935 also. Section 212 of the Act provided: "The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding and shall be followed by all courts in British India."
Woods Manufacturing Company Ltd. v The King held that "without this uniform and consistent adherence, the administration of justice becomes disordered, the law becomes uncertain and the confidence of public in it is ruined." It is in view of these advantages that this doctrine was strictly adhered to even by the House of Lords till 1966 when the prevalent view in England was that it was beyond the reach of the House of Lords to rectify its mistakes by overruling its former judgments and that this would be done only by the Parliament. Lately however, demand for a shift in this rigid attitude had been occasionally made. It would "be a great mistake" opined Lord Denning, "to cling too closely to particular precedent at the expense of fundamental principle", principle that leads to "consistency and fairness" as compared to the precedent which leads to "absurdity or injustice."

Again in 1966, Lord Reid and Lord Upjohn in their dissenting

1. 1951 D.L.R. 475.

2. Before the close of the 19th century, there was divergence of judicial opinion on the rule that, should the House be bound by its own decisions or not. Lord Chancellor Brougham in Birtwhistle v Vardill, (7 Cl. & F. 895 at 922) and Lord St. Leonards, L.C., in Bright v Huttan, (1852) 3 H.L.C. 389, strongly opposed this rule. It was only in 1898, in London Street Tramways Co. v London County Council, (1898) A.C. 375, that the rule came to be finally settled. The following exceptions, however, have always been recognised by the House. The rule did not apply to:-

(i) Peerage cases (Viscountess Rhondda's Claims (1922) 2 A.C.
(ii) Nor to decisions which had been given in ignorance of a Statute (Cookney v Anderson, (1863) De. G.K. & Sm. 365).


opinions observed that it would be 'pedantic' and 'unreasonable' to apply the rule that the House must not reverse or depart from a previous decision on the ground that the facts in the two cases were indistinguishable.  

It was in the Practice Statement Case in 1966 that the Lords for the first time made the historic departure and acceded to the long due reform by pronouncing that they proposed "to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so." The advantage of the overthrow of the London Street Tramways Rule, as Dias has pointed out is that 'running repairs can be now effected without resort to the legislative factory.' It is true because the view that only Parliament could help in the matter of reversal is set at rest and to quote The Times, the doctrine has gone out 'by the will of the Law Lords'.

The Supreme Court of India, however, does not allow itself strictly to follow this doctrine. It accepts it, merely as a principle of policy for as Justice Das observes, "definiteness and certainty of the legal position are essential conditions for the growth of rule of law." At the same time it agrees with what

1. Chancery Lane Safe Deposit Offices Co. Ltd. v Inland Revenue Commissioner, L. R. (1966) A.C. 85. Lord Reid had argued the same earlier also but on different grounds in Scruttons Ltd. v Midland Silicons Ltd., (1962) A.C. 446.
Justice Luston has said in Hertz v Woodsman\(^1\) that "The rule of stare-decisis though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the Court, which again is called upon to consider a question once decided."

It follows from the above that the Supreme Court, unequivocally reserves the right to revise its own judgments. Upholding this right, Justice Das observed in the Bengal Immunity Case\(^2\), "there is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interests of the public." Gajendragadkar, C.J., also observed in Keshav Mills Co., Ltd. v I.T. Commissioner\(^3\), that "the power of revision is an inherent power of this Court." In the Bengal Immunity case, it was for the first time that the Supreme Court overruled its former pronouncement made in State of Bombay v United Motors (India) Ltd.\(^4\) and upheld in many subsequent cases.

In State of Bombay v United Motors Ltd.\(^4\), interpreting Article 286 of the Constitution, the Supreme Court held by a majority of four to one that Article 286(1) (a) read with the explanation thereto and construed in the light of Articles 301 and 304, prohibited the taxation of sales or purchases involving

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1. 218 U.S. 205.
inter-state elements by all states except the state in which the goods were actually delivered for the purpose of consumption therein and clause (2) of Article 286, did not affect the power of the State in which delivery of the goods was so made as to take the sales or purchases of the kind mentioned in the explanation, the effect of which was to convert such inter-state transactions into intra-state transactions and to take them out of the operation of clause (2) of Article 286.

This view was upheld in Travancore Cochin case\(^1\) and in Hira Lal Mehta v State of M.P.\(^2\) In West Bengal Immunity case\(^3\), however, the Supreme Court by a majority of four to three, reversed its earlier view. It held that a state was not empowered to tax out of State dealers for goods delivered in the state for consumption therein. It was observed in this case that if there is an erroneous decision on a Constitutional question and that decision has imposed illegal tax burden on the public or has created public inconvenience, it becomes all the more imperative on the part of the judges to rectify the judgment for it is by no means easy to amend the Constitution. Justice Das emphasised the need to look to the public interest than to mere certainty of law. "Stare-decisis", he said "is not an inflexible rule of law and can not be permitted to perpetuate our errors to the detriment of the general welfare of the public or considerable section

\(^1\) 1954 S.C.R. 53.
\(^2\) 1954 S.C.R. 112.
\(^3\) A.I.R. 1955 S.C. 661.
In Dwarkadas Srinivas v Sholapur Sp. Wg. Co.\(^2\), again the case was argued for revision. The Supreme Court refused to revise its earlier decision, unless the previous decision appeared to be obviously erroneous.

Again in Keshav Mills Co., Ltd. v I.T. Commissioner\(^3\), the Supreme Court refused to revise its earlier decision just on 'reasonable grounds'.

Thus it is evident that the Supreme Court has been quite reluctant in revising its decisions. It is for the second time only that it has overruled itself recently in Golak Nath v The State\(^4\). The Supreme Court in its pronouncement in 1951 in Shankri Prasad v Union of India\(^5\), in which the First Amendment was challenged, held that a Constitutional amendment was not a law made in exercise of the legislative powers of the Parliament, but of its constituent power. Consequently Constitutional amendment was not subject to Article 13(2), which provides, that "the State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of this contravention, be void."

This point of view was further upheld in Sajjan Singh v State of Rajasthan\(^6\) in which case the validity of the Seventeenth Amendment

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was questioned. The doctrine of 'stare decisis' was applied in this case. The decision however, was not unanimous, it was by a majority of three to two.

In Golak Nath v State of Punjab, the Court departed from its earlier decision. In the present case the point whether or not Parliament could amend Fundamental Rights was substantially discussed and the majority found the decision of the Court in the earlier cases to be erroneous. The doctrine of 'stare decisis' was rejected in regard to such constitutional matters and the Court held by a majority of six to five that the Parliament makes the amendment by legislative process subject to certain restrictions and that amendment so made being 'Law' is subject to Article 13(2). It thus reversed its earlier judgment. It rejected the contention of the Union Government that it could not reverse its decision, for that amounted to law making which was beyond its jurisdiction. The Court reiterated that "while ordinarily it would be reluctant to reverse its previous decision, it is its duty in the constitutional field to correct itself as early as possible, for otherwise the future progress of the country and the happiness of the people will be at stake."

The Court however, rejected the plea for retrospective effect of its judgment. Subha Rao C.J., on the other hand applied the doctrine of "prospective overruling" by which he pointed out "past

1. Justice Hidayatullah and Justice Mudholkar dissented in this case.
3. Ibid (Per Chief Justice Subba Rao).
will be preserved and the future protected."

Thus, so far the Supreme Court has exercised its discretionary power of revision with great care and wisdom. It has not shown any disrespect to the doctrine of 'stare decisis' but has followed a flexible attitude in the matter like the High Court of Australia\(^2\), and the Supreme Court of the United States. In the United States there are many advocates of the doctrine of 'stare decisis' to whom it is "a strong tie which the future has to the past"\(^3\), but this doctrine has not been accepted as a rule of 'res/judicata' or a

1. Chief Justice Subba Rao observed that "Our Constitution does not express or by necessary implication speak against the doctrine of 'Prospective Overruling'. Indeed Article 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice." For a detailed discussion on the doctrine of 'Prospective Overruling' see Pam Rajput's article: "The Doctrines of Stare Decisis, Prospective Overruling and Acquiescence in Jurisprudence: A Critique" Supreme Court Journal (1968) II, pp.51-68.

2. Chief Justice Griffith of the High Court of Australia, observed in the well known case: Amalgamated Society of Engineers v Adelaide Steamship Co., Ltd., that "it is impossible to maintain an abstract position that the Court is either legally or technically bound by its previous decisions. Indeed, it may in a proper case, be its duty to disregard them. But the rule should be applied with great caution and only when the previous decision is manifestly wrong, otherwise there would be grave danger of want of continuity in the interpretation of law." (1920) 28 C.L.R. 129.

3. "Perhaps no Court may strike the vitals of society with a deeper wound" observes Justice Mills, "than a capricious departure in this Court from one of its established adjudications." Tribble v Taul, (1928) 23 Ky. 304. Justice Black also supporting this doctrine remarked that "if each set of new judges shall consider themselves at liberty to overthrow the decisions of their predecessors, our system of jurisprudence would be most fickle, uncertain and vicious that the world ever saw...To avoid this great calamity, I know of no resource but of stare decisis." Hole v Rittenhouse, Pa (1866) 2, Phila, 411-417-18.
'universal inexorable command.' In this connection Justice Miller observes that "with as full respect for the authority of former decisions as belongs, from teaching and habit, to judges trained in common law system of jurisprudence, we think there may be questions touching the powers of the legislative bodies which can never be closed by the decisions of a Court." Again it has been observed in Smith v Turner: "It is always open to discussion when it is supposed to have been found in error and that its judicial authority hereafter depends altogether upon the force of the reasoning by which it is supported."

The Supreme Court of the United States has however, resorted to frequent reversal and it has been a cause of concern and has evoked protests. This practice is criticised for its tendency to bring adjudication to the same class "as a restricted railroad ticket, good for this day and train only." The Supreme Court of India as compared to its counterpart in the United States, has exercised this power with restraint and prudence. So far it has overruled its own decision only twice.

However, it may be said that the doctrine of 'stare decisis' is a useful doctrine, but it would be unfair at the same time to compromise with injustice, just for the sake of certainty. No one denies the value of certainty, equally no one should uphold the certainty of injustice. Where the earlier decision of the Court is

2. Washington University v Rouse, 8 Wall 439, 444.
3. 7 Howard, 283 (1849).
clearly erroneous especially in constitutional matters, it is in fact the duty of the Court to correct itself as early as possible. The judges should remember in such cases caution sounded by Cardozo that "certainty is not the only good, that we can bring it at too high a price, that there is danger in perpetual acquiescence."¹

Further law must be stable, as Dean Pound points out, but it can not be static. It is to be interpreted according to the circumstances and changing needs of the society. And then "We should never had steam engines", opines Jerome Frank "If men had been content with dream engines, Airplanes were not invented by the believers in wishing rugs."² It is about time to abandon judicial somnambulism, for there is need of wakeful walking which is the wise mode of locomotion in the congested traffic of modern community³.

Again it is undeniable that judges are also human beings and that they are susceptible to whims and prejudices of their age, may be to a lesser degree than common men and since whims and prejudices change with the change of time and circumstances, judges are also influenced by this change which in turn influences their judgments. In view of the above it is desirable that the judges should have the option of reversing or changing their decisions. But this power

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3. Ibid.

Ramalingam is also of the view that the doctrine of stare decisis is nothing but "judicial Somnambulism" which tends to make the Supreme Court a "judicial zombie" without soul or character. (The Supreme Court of India and the Doctrine Stare Decisis, Supreme Court Journal, 1956, p. 10).
should not be exercised unfettered. The Court should not reverse its earlier decision just because one view appears to be preferable to the other\(^1\) or more reasonable than the other\(^2\). Justice Das has rightly observed that "the power to review must be exercised with due care and caution and only for advancing the public-well being."\(^3\)

The Supreme Court is the highest tribunal, it is the repository of the faith and confidence of the people and to maintain its privilege and integrity it must not entertain any doubt. Consequently, the power of revision must be resorted to only under compelling circumstances\(^4\).

**Successor to the Federal Court and the Privy Council:**

From the above discussion it becomes obvious that the Supreme Court of India is successor both to the Federal Court and the Privy Council. It has inherited all the powers vested in the Federal Court and the Privy Council. The Federal Court had both original and appellate jurisdiction. Under Section 204, of the Government of India Act, 1935, it was vested with original jurisdiction to hear cases of disputes between any two or more of the following parties, that is to say, the Dominion, any of the Provinces or any of the Acceding States.

It had appellate jurisdiction in every case which was decided

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1. Justice Venkatarama Ayyar has observed that the "Supreme Court can not differ from a previous decision because a view contrary to the one taken there is appears to be preferable."


by the High Court of a Province and if it was certified by it that
the case involved a substantial question of law under the Government
of India Act 1935. Further the Act empowered the Federal Court to
give advisory opinion to the Governor-General on reference to it.

The Federal Court, however, was not the ultimate Court. Appeals
lay from the Federal Court to the Privy Council, which was the
final interpreter of the Indian law, whether constitutional or
ordinary law. The Supreme Court on its inception succeeded not only
to the original, appellate and advisory jurisdiction of the Federal
Court, but with the passage of the Abolition of the Privy Council
Act of 1949, became the highest judicial tribunal, subject to the
provisions of the Constitution of India.

It may further be pointed out that now the decisions of the
Privy Council have only persuasive value and the Supreme Court is
not bound by its decisions. It has rendered many contrary judgments
to those given by the Privy Council. In State of Bihar v Abdul
Majid, it set aside the view held by the Privy Council in High

1. Section 205 and 206 of the Government of India Act 1935, provid-
ed for appellate jurisdiction of the Federal Court.
3. It may be pointed out here that till late even after Canada had
achieved independence appeals lay from its Supreme Court to the
Privy Council in England. Only recently the jurisdiction of the
Privy Council has been abolished. And in Australia appeals can
still be made to the Privy Council from the High Court. Appeals
are made especially in cases of clash between the legislation
enacted by the Parliament and the State Legislatures. The
appeal can however, be made only with the permission of the High
Court which is rarely granted.
Commissioner v Lall\textsuperscript{1} that a civil servant can not recover arrears of his pay, neither could he sue the Crown, nor he had any legal claim to the same.

All other Courts including the High Courts are however, still bound by the decisions of the Privy Council, if the Supreme Court has not ruled otherwise\textsuperscript{2}. A law declared by the Supreme Court is binding on all Courts within the territory of India\textsuperscript{3}.

**Conclusion:**

It is evident thus that the Supreme Court is an inheritor of the Federal Court and the Privy Council. It has both original and appellate jurisdiction. Like the Federal Court, the Supreme Court has also advisory function to perform. Again being the highest Court of the land and being a Court of record it has the power to punish for contempt of Court, which the Court has varingly interpreted. It is however, a moot point whether the executive shall be charged with committing contempt of Court if it does not enforce the verdict of the Court.

Further to provide uniformity of law in the country and to give final word to the provisions of the Constitution, the Constitution makes the law declared by the Supreme Court as binding on all the Courts. The Supreme Court itself, however, is not bound by its own decisions. Nevertheless the Court has accepted the doctrine of stare decisis though not as a rule of res judicata.

\begin{enumerate}
\item A.I.R. 1948 P.C. 121.
\item Article 141 of the Constitution.
\end{enumerate}
Like the Supreme Court of the United States it reserves the right to reverse its earlier decision if found erroneous, especially in the field of constitutional law. But as is seen, the Court has exercised its power of overruling with great caution and the emphasis is on public interest. It is thus not a 'judicial zombie' without soul or character. It is the final interpreter of the law of the land.