CHAPTER - III

THE SUPREME COURT
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The Supreme Court of India stands at the apex of the judicial system of the Union of India. It came into existence in 1950 after the commencement of the Indian Constitution.

The Constitution of India, though, nowhere has used the term federation yet it provides for a federal structure. The existence of a supreme court in a federation is considered essential. In fact, the existence of a supreme court is one of the criteria of a federal state; that there should be an independent supreme court because the federal state may be said to be, "a political contrivance intended to reconcile national unity and power with the maintenance of state rights." However, there are always numerous and varied problems of legal nature inherent in regard to the division of powers between the centre and the constituent units in a federation. In order to prevent mutual

encroachment upon their respective jurisdictions and to reconcile the propensities of interference in the defined powers of the centre and the units, the need for an independent judicial organ as an arbiter becomes imperative.

The working of a written constitution with a federal set up further adds to the varied responsibilities of the highest judicial organ in a federation. The federal set up necessitates a division of governmental powers and, as such, there are bound to arise conflicts of jurisdiction between the central government and the governments of the units. In the disputes of this nature, the importance and position of the supreme court cannot be underestimated. Further, such an arrangement imposes on the supreme court the duty to uphold the letter as well as the spirit of the Constitution. That means that the Court in addition to the traditional function of dispensing justice, has to perform the role of the guardian of the Constitution as well. In India, the Constitution has conferred on the Supreme Court powers to enable it to discharge its responsibilities.

The genealogy of the present Supreme Court may be traced to the establishment of the Mayor's Courts in Calcutta under the Charters of 1727 and 1753. It may be noticed here that these Courts had jurisdiction over only the British subjects. Indians were not included in the
category of British subjects.

A Supreme Court of Judicature at Fort Williams in Bengal was established by the Crown under the Regulating Act of 1773. The jurisdiction of this Court extended to all British subjects residing in the provinces of Bengal, Bihar and Orissa. In addition, its jurisdiction extended to such persons who were employed either directly or indirectly in the service of the Company or His Majesty's subjects. The modern judicial system in India came into existence with the passing of the Indian High Courts Act of 1861 which established high courts in India. The courts thus established functioned as high courts and were not in the nature of the highest courts as appeals from their judgments could be made to the Privy Council in England. This became a plank in the programme of the Indian National Congress in its struggle for independence. Consequently, it made a demand for the establishment of a supreme court in India. The main reason for this demand was that an appeal to the Privy Council was very costly and the common man in India found it beyond his means. In addition to this, it also detracted from the self respect of the Indian people. This demand was partially conceded by the establishment of the Federal Court under the Government of India Act, 1935. The Federal Court of India started functioning from October 1, 1937.

The establishment of the Federal Court in India was
welcomed by the Indian people at once as a significant and much needed step in the history of administration of justice in India. The Federal Court was not a final court; it was only a superior court and not a supreme court, as appeals still lay to the Privy Council in England without its permission in certain cases. The appeals to the Privy Council ceased after the passing of the Privy Council (Abolition of Jurisdiction) Act, 1949, by the British Parliament.

It may be pointed out here that the Federal Court, the immediate predecessor to the Supreme Court of India, established judicial traditions which have greatly influenced the functioning of the Supreme Court.

The Constituent Assembly was well seized of the question of making the Supreme Court not only the highest but

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1. The appeals to the Privy Council could lie in cases involving interpretation of the Government of India Act, 1935 or any Order-in-Council made thereunder; those involving interpretation of an agreement made for the administration of federal laws within the territory of a state; and those relating to the extent of legislative and executive authority vested in the Federation by virtue of an instrument of accession executed by a State. Besides these, an appeal could also be made to the Privy Council with the permission of the Federal Court or His Majesty-in-Council.

2. Sir Maurice Gawyer, the first Chief Justice of the Federal Court, said, "... an all India Court which stands firm and aloof amid the ebb and flow of politics and political theories, the victory and defeat of political parties, the restless and eager questioning and the intellectual ferment of each successive generation, a court sympathetic to all but allied to none may play a great part in building up of a nation, by proclaiming and cherishing those things which lie at the root of all civilizations" Federal Court Reports, 1939, pp. 4-5.
also the most powerful and an independent court in the country¹ and it accordingly accorded this position to the Supreme Court in the Constitution.²

The Constituent Assembly was alive to the need to protect the Supreme Court from political influence and during the debate on the appointment of the judges of the Supreme Court³, it was pointed out that, "It is of highest importance that the judges of the Supreme Court should not be made to feel that their existence or their appointment is dependent upon political considerations or on the will of the political party. Therefore, it is essential that there should be sufficient safeguards against political influence being brought to bear on such appointments."⁴


2. Articles 124 to 147 of the Constitution deal with the Union Judiciary.

3. Article 124(2) which deals with the appointment of the judges of the Supreme Court, reads: "Every Judge of the Supreme Court shall be appointed by the President under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years:

Provided that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

...................."

Further, in order to make the position of the Supreme Court strong and effective, commanding respect of all sections of society, the Constituent Assembly discussed the question of the qualifications for the appointment of the judges and embodied them in the Constitution. It also considered the question of the tenure of the judges and provided in the Constitution that the judges of the Supreme Court shall hold office till the age of sixty five years. It also discussed the related question of the manner of the removal of the judges and embodied a provision in the Constitution for their impeachment. It also provided a handsome remuneration for securing their independence.

Further, the judges of the Supreme Court are prohibited from

1. Article 124(3) provides: "A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and -

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist."

2. Article 124(2).

3. Article 124(4) reads: "A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity."

4. Article 125(1) provides for Salaries, etc., of Judges: "There shall be paid to the Judges of the Supreme Court such salaries as are specified in the Second Schedule."
practising after retirement.\(^1\)

All these provisions put together provide a large measure of independence to the Supreme Court.

The Supreme Court of India is a court of record\(^2\) and is empowered to punish contempt of itself.\(^3\) There are many kinds of contempt\(^4\) for example, 'insult to judges, attacks

\[1\] Article 124(7) reads: "No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India."

\[2\] The term 'Court of record' was explained by Ambedkar in 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....." C.A.D., Volume VIII, p. 382.

\[3\] Article 129 provides: "The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish contempt of itself."

\[4\] Halsbury defines contempt as consisting of words spoken or written which obstruct or tend to obstruct the administration of justice. Halsbury's Law of England, Volume 7, p. 286.

It needs to be mentioned here that the Constitutional provision does not say as what constitutes contempt of the court. It is the Supreme Court itself which determines what constitutes its contempt.

It has been held by the Supreme Court that in the exercise of his right of freedom of speech and expression, no body can be allowed to interfere with the due course of justice or to lower the prestige or authority of the Court.

There are many difficulties in defining the contempt of court and even now the categories of contempt are not closed.

The decisions of the Supreme Court in a number of contempt cases have clarified that an actual interference in the administration of justice is not necessary to constitute the contempt of the court, any publication or any act that is likely to or tends to undermine the proper administration of justice, is a contempt case. This is in effect, to secure the administration of justice without any extraneous considerations or constraints.
upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of Courts, witnesses or the parties, abusing the process of the Court, breach of duty by officers connected with the Courts and scandalising the judges of the Court. The Supreme Court can hold the executive as well as the subordinate courts for its contempt for defiance of its orders.

The power of the Supreme Court to punish contempt of itself is not meant to preclude a fair and a bona fide criticism of its judgments. This power is to be used sparingly and with great circumspection.

The judiciary guards its dignity and commands respect by the manner in which it functions, and by the qualities of fearlessness, impartiality and objectivity which it demonstrates in its judgments.

The law declared by the Supreme Court is binding on


2. Justice Madhoklar has observed that if the executive acts or gives directions ignoring the decision of a Court which is binding upon it then, "such a direction is a flagrant interference with the administration of justice by courts and is a clear contempt of court."


all the courts except the Supreme Court itself. Though the Supreme Court recognizes the principle of stare decisis as a matter of policy for, "definiteness and certainty of the legal position", which are, essential for the growth of rule of law; yet, it has also ruled that "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 interest of the public."¹

The Supreme Court has reversed its judgments in a number of cases particularly with regard to the interpretation of the power of amendment of Parliament.⁵

The Supreme Court has three categories of jurisdiction viz., original, appellate and advisory.

1. Article 141 reads: "The law declared by the Supreme Court shall be binding on all courts within the territory of India."

2. In Ganga Sugar Corporation v State of U.P., the Supreme Court observed that the rule of stare decisis is not a ritual of convenience but a rule with limited exceptions."⁴


4. Ibid.

Original Jurisdiction:

The original jurisdiction of the Supreme Court is embodied in Article 131 of the Constitution which empowers the Supreme Court to deal with the disputes between the Centre and the States and between the States.¹

In a written and a federal constitution, conflicts between the centre and the states are only natural to arise as a result of the passing of a legislation by the Centre or a State/States which may encroach upon the jurisdiction of the other as it may involve questions which are beyond the stipulated sphere of their powers. Hence, the necessity of entrusting the highest court in the country - the Supreme Court, the power to adjudicate in such matters.

The disputes under the original jurisdiction of the Supreme Court must be of a legal nature, i.e. the disputes which involve the questions of law or fact. Issues of political nature cannot be brought before the Court under its original jurisdiction.

¹. Article 131 provides: "Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute -
   (a) between the Government of India and one or more States; or
   (b) between the Government of India and any State or States on one side and one or more States on the other; or
   (c) between two or more States. if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.........."
The original jurisdiction of the Supreme Court is limited in that it does not extend to any treaty, agreement, covenant, engagement, sanad or other similar instruments which had been entered into or executed before the commencement of the Constitution. Also, that these continue to operate even after the commencement of the Constitution if it is provided therein that the said jurisdiction of the Supreme Court shall not extend to such disputes.\(^1\)

There are also other articles of the Constitution for example, Articles 3, 257(4), 262, 263, 280 and 290 which in one way or the other circumscribe the original jurisdiction of the Supreme Court.\(^2\) Again, the opening words of

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1. **Proviso to Article 131.**

The Supreme Court has dismissed a number of cases in the light of the limitations imposed on its original jurisdiction by the **Proviso to Article 131** and Article 383(1) of the Constitution.


2. **Article 3** makes the Parliament the exclusive authority in regard to the formation of new states and alteration of areas, boundaries or names of existing states.

*Article 257(4)* empowers the Chief Justice of India to appoint an arbitrator to determine the cases of a default of an agreement between the Government of India and a State or States, and, to determine the sum to be paid by the former to the latter;

Contd....
Article 131: 'subject to the provisions of this Constitution ..., clearly imply a limitation on the jurisdiction of the Supreme Court.

Not many cases have come before the Supreme Court under its original jurisdiction. When the Supreme Court became a successor to the Federal Court, a case was pending before the Federal Court which ipso facto was taken over by the Supreme Court and decided by it in 1951.\(^1\) Another case was brought before the Supreme Court under its original jurisdiction in 1961.\(^2\) The Government of West Bengal challenged the validity of the Coal Bearing Areas (Acquisition and Development) Act, 1957, on the contention that the said Act was beyond the competence of Parliament in authorising the Union Government to acquire land and rights in and over

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Article 262(2) empowers the Parliament to provide by law that neither the Supreme Court nor any other Court shall exercise jurisdiction with respect to the use, distribution or control of waters of any inter-state river in any inter-state valley;

Article 263 empowers the President to establish an Inter State Council to inquire into and advice upon disputes which may have arisen between the States;

Article 280 empowers the President to constitute a Finance Commission; and under Article 290 it is the arbitrator appointed by the Chief Justice and not the Supreme Court who makes adjustments in respect of certain expenses and pensions.

land belonging to the State of West Bengal. In this case the Supreme Court ruled that "State of West Bengal is not a sovereign authority such as to disentitle the Union Government to exercise its legislative authority under Entry 42, List III of the Constitution."

Under the writ jurisdiction, the Supreme Court can issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of fundamental rights. The writ jurisdiction of the Court is enlarged under Article 139 as under the said article the Parliament may by law confer on the Court the power to issue these writs for any other purpose in addition to the purpose of the enforcement of fundamental rights embodied in Part III

1. Entry 42, List III of the Constitution provides for 'Acquisition and Requisition of Property'.

2. The writ of habeas corpus is issued where a person is detained unlawfully or where the grounds of detention are challenged or where the constitutionality of the law under which a person is detained, is challenged. The writ of mandamus is of remedial nature and is a command of the Court addressed to any person, corporation or any inferior court of jurisdiction, ordering them to do something therein specified which pertains to their office and which the Court holds to be in consonance with justice. The writ of prohibition is judicial in nature. It may be said to be a power to 'compel courts entrusted with judicial duties to keep within the limits of their jurisdiction. The writ of quo warranto can be issued against a person who has usurped a public office and who is not entitled to hold it. The writ of certiorari is to be issued to lower courts when these have acted without or in excess of their jurisdiction.

3. Article 32(2).
of the Constitution

Appellate Jurisdiction:

The appellate jurisdiction of the Supreme Court extends to constitutional, civil, criminal and all other matters which the Court may permit by its power of granting special leave to appeal.

The Supreme Court being the final interpreter of the Constitution, is empowered to deal with appeals involving Constitutional matters.

1. Article 139 provides: "Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeaus corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in Clause(2) of Article 32."

2. Appellate jurisdiction means the power of the Court to hear and decide appeals from the decision of the lower courts.

3. Article 132.
4. Article 133.
5. Article 134.
6. Article 136.
7. Article 132(1) reads: "An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution."

Clause(2) is omitted by the Constitution (Forty-fourth) Amendment Act, 1976, Section 17.

Article 132(3) provides: "Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided."

Explanation to the said Article is provided in the Constitution itself: "For the purpose of this article, Contd......"
The Supreme Court is also the highest appellate court in Civil matters. The appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to Civil matters is provided for in the Constitution. In this context, the conditions for an appeal to the Supreme Court are that the appeal should be from any judgment, decree or final order of a High Court and that the matter is civil and the High Court should be in the territory of India. These are

Footnote 7 continued from page 49

the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case."

Note: Article 131A which was inserted by the Constitution (Forty-second) Amendment Act, 1976 which provided for the exclusive jurisdiction of the Supreme Court in regard to questions as to the Constitutional validity of Central Laws, has been omitted by the Constitution (Forty-third) Amendment Act, 1977.

1. Article 133 provides: "An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India, if the High Court certifies under Article 131A -

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause(1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of the Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court."
the two preconditions for giving the certificate of appeal by the High Court to the Supreme Court. The High Court can give the certificate for appeal if the case involves a substantial question of law of general importance and the question needs to be decided by the Supreme Court. The Supreme Court, however, has discretion to scrutinize the certificates issued by the High Court.

In Express Newspapers Ltd. case, the Supreme Court revoked the certificate granted by the Madras High Court on the ground that no substantial question of law was involved.

The appellate jurisdiction of the Supreme Court in criminal matters is embodied in Article 134 of the Constitution.

Different viewpoints were expressed in the Constituent Assembly on the question of the extent of the powers of the Supreme Court in regard to its appellate jurisdiction in criminal matters.

The Supreme Court is empowered to hear an appeal from


2. Ibid.

3. Pandit Thakur Das Bhargava commented that "If we want to do justice to the people we must make it a rule that in all questions of death an appeal as of right should be given to persons sentenced to death." C. A. D., Volume VIII, p. 599. See also C.A.D., Vol. VII, pp. 604 and 650.
the judgment of a High Court if a High Court has reversed an order of acquittal of an accused person and sentenced him to death; or has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or certifies that the case is a fit one for appeal to the Supreme Court, subject to such provisions contained in the Rules made by the Supreme Court regarding the above mentioned matters under Article 145 and to such conditions as the High Court may establish or require.

The Parliament is empowered to confer on the Supreme Court further powers to entertain and hear appeals from a High Court, subject to such limitations and conditions as

1. Article 134(1)(a).
2. Article 134(1)(b).
3. Article 134(1)(c).
4. Article 134(2) provides: "Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Under Article 138 of the Constitution, Parliament is empowered to enlarge the jurisdiction of the Supreme Court with respect to any of the matters in the Union List. The jurisdiction and powers of the Supreme Court can be further extended to a matter which the Government of India and the Government of any State agree by a special agreement, and consequently the Parliament confers such a jurisdiction and powers on the said matter on the Supreme Court.
The functioning of the Supreme Court in its criminal appellate jurisdiction has generated a feeling of discontent amongst a section of judicial opinion. But the stand of the Supreme Court is that it is neither a court of criminal appeals nor a court of justice but is just a court of law and as such is only concerned with the application of law.

This view of the Supreme Court of its own position has not been well received and in fact has invited much criticism. As a result, Parliament has taken note of these two views and has passed a law that an accused person has a right to appeal to the Supreme Court in criminal matters.

Special Leave to Appeal: The Supreme Court is empowered to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India, under Article 136 of the Constitution. This is a

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2. A bill to this effect was passed in March, 1970.
3. The Supreme Court has the right to hear appeals from tribunals as well. It is to be noted that only such tribunals fall within this definition which are assigned certain judicial functions and an appeal from a tribunal cannot be made to the Supreme Court if the Tribunal discharges purely administrative or executive duties. Further, the Tribunal should have been set up by the State.
discretionary power of the Court and cannot be claimed as of right. It needs to be pointed out that the Supreme Court is not empowered to grant special leave of appeal against the judgment of any military court or tribunal constituted by or under any law relating to the Armed Forces. The Supreme Court must satisfy itself that two conditions are fulfilled before Article 136 is invoked. The two conditions are, namely, that the issue of an appeal should be of a judicial or a quasi-judicial nature; and secondly, the appeal is against the decision of a court or tribunal.

It may be noted here that the Supreme Court has exercised this power under Article 136 with circumspection but recently it has shown a tendency to use this power more liberally than heretofore.

Advisory Function:

The Supreme Court is vested with a distinctive and exclusive function of giving advisory opinion as and when a reference is made by the President to the Supreme Court to give its opinion on a matter which in his opinion involves a

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1. Article 136(2) provides: "Nothing in Clause(1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

question of law or fact and is a matter of public importance.
The Constitution is silent whether or not the advisory opinion of the Supreme Court is binding on the President though by implication he may be said to be free to consider even a minority opinion.

In regard to the function of the Supreme Court to give advisory opinion, a doubt has arisen whether or not it is obligatory on the Supreme Court to give such an opinion. In Clause(1) of Article 143 the expression used is 'may' whereas Clause(2) of the same Article uses the expression 'shall'. Though, the Supreme Court in its various decisions has held that the two terms 'may' and 'shall' are interchangeable, yet, the use of the two expressions in regard to Article 143(1) and Article 143(2) seems to be intentional on the part of the framers of the Constitution.

1. Article 143 provides: "(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to Article 131 refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon."
Thus, it may be said that the Supreme Court has a discretion in regard to Article 143(1) in tendering its advisory opinion on a matter referred to it under the said Article, whereas, it becomes an obligation on the part of the Court in matters referred to it under Article 143(2). In this context, Chief Justice Das observed, "While under Clause (2) of Article 143 it is obligatory on the Supreme Court to entertain a reference..... the Court has under Clause(1), a discretion in the matter and may in a proper case and for good reasons decline to express opinion...."  

The same view was expressed by Chief Justice Gajendragadkar a few years later. He opined that it is not obligatory for the Supreme Court to give its advisory opinion in every case. The Supreme Court he observed may respectfully refuse to express its advisory opinion if it is satisfied that it should not express its opinion having regard to the nature of the questions forwarded to it.  

So far ten references have been made by the President to the Supreme Court and it has given its advisory opinion

on eight references. The court has yet to give its advisory opinion on the remaining references.

Judicial Review: The principle of judicial review that is the power of the Court to declare the constitutionality or otherwise of the acts passed by the legislature, is embodied in the Constitution. The Supreme Court has the power to declare laws passed by Parliament and acts of the Executive which offend the provisions of the Constitution, as unconstitutional. For example, Article 13 of the

1. The references made to the Supreme Court are as follows -

   (i) In re Delhi Laws Act, 1912, A.I.R. 1951, S.C. 332;
   (iv) In re Sea Customs Act, 1878, A.I.R. 1963, S.C. 1760;

2. The latest references made to the Supreme Court by the President under Article 143 are in respect of Jammu and Kashmir Resettlement Act and the issue of disciplinary action against a member of Punjab Public Service Commission who is alleged to have slapped the Chairman of the Commission.


Constitution provides that laws (both pre and post Constitution) enacted by the Parliament which are inconsistent with Part III of the Constitution shall be declared void. Further, the power of the Supreme Court to issue writs for the enforcement of fundamental rights strengthens its power of judicial review.

However, it may be stated here that the comprehensive nature of the Constitution of India imposes certain limitations and restricts the scope of judicial review. This becomes clear in the case of A. K. Gopalan v State of Madras in which it was held that "Our Constitution unlike the English Constitution recognises the Court's supremacy over the legislative authority, but such supremacy is a very limited one, for it is confined to the field where the legislative power is circumscribed by limitations put upon it by the Constitution itself. Within this restricted field the court may on a scrutiny of the law made by the legislature, declare it void if it is found to have transgressed the constitutional limitations. But our Constitution, unlike the American Constitution, does not

1. Article 13, sub-clauses (1) and (2).

2. Article 32(2) reads: "The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by this Part."

recognise the absolute supremacy of the court over the legislative authority in all respects. For, outside the restricted field of constitutional limitations or Parliament and State legislatures are supreme in their respective legislative fields and in that wider field there is no scope for the courts in India to play the role of the Supreme Court of the United States. It is well for us to constantly remember this basic limitation on our powers. ¹

The power of judicial review has been used quite frequently by the Supreme Court. This frequent use of its power of judicial review has given an umbrage to the Parliament and the Supreme Court has been vehemently criticised in and outside the Parliament and has been called a 'usurper' for exercising this jurisdiction which is conferred on it by the Constitution. Parliament has several times attempted to bring forth legislation to curtail this power of judicial review vested in the Supreme Court.

It follows from the foregoing discussion that the Supreme Court in India has played a significant and effective part in the working of the Indian political system. As a result of the decisions of the Supreme Court certain principles have come to be established which have been hailed as ushering an era of social justice.

For example, the principle of making fair procedure obligatory even in matters of consideration of issuing a passport\(^1\), the protection of the rights of undertrials to legal aid and a fair trial\(^2\), and providing protection to prisoners against oppression\(^3\).

The discussion of the powers, functions and position of the Supreme Court in the foregoing pages has brought out in bold relief that a wide and a most important area which emanates from its power of judicial review conferred on it by the Constitution, has led to a tug of war between the Parliament and the Supreme Court in regard to the issues of the ambit of constituent power of Parliament, fundamental rights, question of according primacy to unenforceable, Directive Principles of State Policy over the guaranteed Fundamental Rights, election disputes concerning the office of the Prime Minister and the Speaker and the matter of appointment of the Chief Justice. The Parliament has joined issue with the Supreme Court in regard to these questions. The next two chapters (IV and V) discuss in depth this question.