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SUPREME COURT AND ITS ROLE IN CHANGING THE DYNAMICS OF LAW

Author

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SUPREME COURT AND ITS ROLE IN CHANGING THE DYNAMICS OF LAW

Vipul Gaur¹ and Dr. Kirti Dahiya²

ABSTRACT:-

The Judiciary in India is divided in three levels: the Supreme Court at the top, below it are the High Courts (for each State/ UT) and below the High Courts are the District Courts, which are at the district and the tehsil. By virtue of the Constitution of India, the Judiciary is independent and free from any influence from the Legislature and the Executive. The Supreme Court, being the Constitutional Court and the interpreter of the Constitution, is also known as the guardian of the Constitution. The Supreme Court has the power of reviewing the Laws, to ensure there is no violation to the Constitution. The objective of this paper is to analyse a few cases and trace the course of how the law has been interpreted by the Supreme Court, and also how the recommendations of this Court have paved the way for the formation of new laws.

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SUPREME COURT AND ITS ROLE IN CHANGING THE DYNAMICS OF LAW

“Injustice anywhere is the threat to justice everywhere”

-Martin Luther Jr.

The Constitution was made by the Constituent Assembly while taking reference from various texts and Constitutions of various Nations, each and every word written was analysed to make it relevant to the Country which had just acquired independence after decades of struggle. The Constitution was made in a way to provide maximum benefits to the people of the country, and yet provide space to the Government to make decisions for the advancement of the nation. India is a democracy with three major pillars, Executive, the Legislature and the Judiciary. The Constitution of India is the supreme text which clearly demarcates the powers and functions of all the three pillars. Also Article 50³ of the Constitution of India provides that the judiciary would remain separated from the executive to ensure that the judiciary remains independent and is free from any bias from the executive.

The Judiciary in India is divided into three levels, starting from the District Courts at the district level, above which are the High Courts at the State Level which have supervisions over the District Courts under them. The highest authority under the Indian judicial system is the Supreme Court with its seat at New Delhi⁴. It is the Supreme Court whose judgment is binding on all the Courts, quasi-judicial authorities and other authorities. The Supreme Court and High Courts are the Court of Records⁵, having the power to punish for its contempt and also the contempt of the Courts under it.

The Indian Constitution gives the power of judicial review to the Supreme Court of India, which indeed means that the Constitutional Court has the power to review any act passed by

³ Article 50 of the Constitution of India, “*The State shall take steps to separate the judiciary from the executive in the public services of the State.*” Source:- <https://legislative.gov.in/sites/default/files/COI.pdf>

⁴ Article 130 of the Constitution of India, “*The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.*” Source:- <https://legislative.gov.in/sites/default/files/COI.pdf>

⁵ Article 129 of the Constitution of India, “*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*” and Article 215, “*Every High 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.*” Source:- <https://legislative.gov.in/sites/default/files/COI.pdf>

the legislature which is in violation of the Constitution or is otherwise not valid. In various cases, it has been decided that Judicial review⁶ is also the basic structure⁷ of the Constitution, and hence it cannot be amended.

The Scope of this paper is to analyse the role of Courts in changing the dynamics of Law. The paper discusses a few landmark judgments given by the Supreme Court, which have the effect of interpreting the law or which have been the guiding light in passing of a new legislation.

SUPREME COURT OF INDIA

The Constitution of India under Article 124⁸, establishes the Supreme Court with its seat at Delhi⁹. While originally the Supreme Court had eight Judges including the Chief Justice of India, but now there are thirty-four Judges including the Chief Justice of India. The President appoints Judges of this Court on the recommendation given by the Collegium¹⁰ consisting of the Chief Justice of India and four other most senior Judges of the Supreme Court. Also a Judge can be removed from his office on the grounds of proved misbehaviour or incapacity, by the order of the President after both the Houses of Parliament have passed a motion to this effect with, majority of total membership of the particular House and not less than two-third of the members present and voting in the same session¹¹. Further, a Judge can also submit his resignation to the President.¹²

⁶ M. Nagaraj v. Union of India, (2006)8SCC 212

⁷ The Supreme Court in *Kesavananda Bharti v. State of Kerala* (1973) 4 SCC 225 introduced the doctrine of basic structure, according to which, the Parliament though has the power to amend the Constitution but it cannot amend the basic structure which included features like Supremacy of Constitution, Sovereignty, Unity, Secularism.

⁸ Article 124 of Constitution of India, states, “*There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.*”

⁹ *Supra* at 1

¹⁰ Various cases relating to Collegium has been discussed later in this paper.

¹¹ Article 124(4) of the Constitution of India, “*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*”

¹² Article 124(2) of the Constitution of India, “*Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and shall hold office until he attains the age of sixty-five years:*

[Provided that]—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause” Source:- <https://legislative.gov.in/sites/default/files/COI.pdf>

A person is qualified for being appointed as the Judge of this Court only if he has been a Judge of a High Court(s) for a period of five years, or an Advocate of High Court(s) for 10 years or is a distinguished Jurist in the opinion of the President.¹³

JURISDICTION OF SUPREME COURT

The Supreme Court can entertain various cases in the varied powers given to it under the Constitution. The various jurisdictions enjoyed by this Court have been discussed as under:-

- A) Original Jurisdiction¹⁴ for the disputes between
 - a) Centre and a State, or
 - b) Between one or more States and Central Government on one side and one or more States on the other side or
 - c) Between two States.

- B) Appellate Jurisdiction

The Supreme Court also have an appellate jurisdiction for cases decided by the High Courts and hence the Supreme Court is also called the Court of highest appeal. The appellate jurisdiction of this Court can be categorized into three parts namely:

- a) General Appellate Jurisdiction¹⁵: If the High Court in a case decides, that the cases has a substantial question of law or fact and gives a certificate under Article 134A¹⁶ to this effect, any party to the suit may approach the Apex Court on the ground that the question has not been correctly decided by the concerned High Court.
- b) Appeals in Civil cases¹⁷: The Supreme Court has the appellate jurisdiction in regards to the Civil cases, where the High Court has through a certificate under Article 134A

¹³ Article 124(3) of the Constitution of India, “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.”

¹⁴ Article 131 of the Constitution of India

¹⁵ Article 132 of the Constitution of India

¹⁶ Article 134A of the Constitution of India, “Certificate for appeal to the Supreme Court.—Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,—

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.” Source:- <https://legislative.gov.in/sites/default/files/COI.pdf>

¹⁷ Article 133 of the Constitution of India

certified that the case involves a substantial question of law which needs to be decided by the Supreme Court. Further a party may also challenge the decision of the High Court in this regard.

- c) Appeals in Criminal Cases¹⁸: The Apex Court has powers of appeal in criminal cases where the High Court has on appeal from a lower court changed the acquittal into conviction with sentence of death penalty or has transferred a case from any lower court to itself and convicted the accused with death penalty. The Supreme Court can also take appeals from the High Court if the latter has approved under Article 134A that the question in the case should be decided by the Supreme Court.
- d) Appeal by Special Leave¹⁹: The Supreme in its special jurisdiction can take appeals from cases decided by any Court in the Country except cases decided by any Court established under the Armed Forces Act.

INTERPRETATION OF LAWS BY THE SUPREME COURT

The Supreme Court has the power to review the acts passed by the Legislature by virtue of Article 13²⁰ of the Constitution of India. The doctrine of judicial review²¹ is also considered to be one of the basic structures of the Indian Constitution, which the Parliament cannot amend. The Supreme Court, being the guardian of the Constitution and the fundamental rights, is the final interpreter of the laws passed by the Parliament to check if they don't violate the provisions of Part III of the Constitution.

It was held in the case of *Minerva Mills*²², “*It is the function of the Judges, nay their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the*

¹⁸ Article 134 of the Constitution of India

¹⁹ Article 136 of the Constitution of India:- “*(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, 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.*

(2) 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.”

²⁰ Article 13, “*(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.*

(2) 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 the contravention, be void.” Source:- <https://legislative.gov.in/sites/default/files/COI.pdf>

²¹ Judicial review was held to be the basic structure of the Constitution in the case of *Indra Gandhi Nehru v. Raj Narain* (1975) and also in *Minerva Mills v. Union of India* (1980)

²² Indian Constitutional law, M.P. JAIN, 7TH Edition at page 1694 and

fundamental rights conferred upon the people will become a mere adornment because rights without remedies are as writ in water. A controlled Constitution will then become uncontrolled.”

Below are the few cases in which the Supreme Court has struck down the provision of the laws or have been the guiding factor for introducing a new law.

1) **His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala and Anr.**²³

This is one of the most important and celebrated cases in constitutional history as this changed the paved the way for a new doctrine, the basic structure doctrine.

In this case, the Constitutional validity of certain provisions of the Twenty fifth, Twenty Sixth and the Twenty-ninth Amendment(s) to the Constitution was challenged. An important question to be decided in this case was the powers and the extent to which the Constitution can be amended by the Parliament.

This case was decided by a bench of thirteen Judges, the judgment was given by a 7:6 ratio in which the majority Judgment held that though the Parliament has the power to amend the Constitution, yet it cannot amend the basic structure of the Constitution, the Parliament's power to amend the Constitution is not more than the Constituent Assembly's power. It was held, “*The basic structure may be said to consist of the following features:*

- (1) *Supremacy of the Constitution;*
- (2) *Republican and Democratic form of Government.*
- (3) *Secular character of the Constitution;*
- (4) *Separation of powers between the Legislature, the executive and the judiciary;*
- (5) *Federal character of the Constitution.* ”²⁴

2) **Indira Nehru Gandhi v. Shri Raj Narain & Anr.**²⁵

In this case, the validity of the Thirty-Ninth Constitutional Amendment was challenged. The amendment sought to remove the election to the office of Prime Minister from the purview of the reviewing by the judiciary, rather the election would be called in question before an authority as made by law. It was argued that this would help in maintaining the essence of Article 105 of the Constitution which provides certain powers and privileges to the members of the Parliament and also would advance the Doctrine of separation of power

²³ AIR 1973 SC 1461

²⁴ <https://indiankanoon.org/doc/257876/>

²⁵ AIR 1975 SC 2299

as is the essence of the Constitution. Before this amendment the Allahabad High Court had invalidated the election of the Prime minister on the ground of using corrupt practices in the election. The amendment also sought to negative this decision.

The Supreme Court in this case struck down the provisions which barred the judicial review from the election proceeding and held that, democracy and separation of power is the basic and essential feature of the Constitution. The bench was unanimous in this regard. It was held, “*If Article 329(b) envisages the resolution of an election dispute by judicial process by a petition presented to an authority as the appropriate Legislature may by law provide, a constitutional amendment cannot dispense with that requirement without damaging an essential feature of democracy*”²⁶ The Court further said, “*It is difficult to understand, when the amending body expressly excluded the operation of all laws relating to election petition and matters connected therewith by the first part of clause (4), what ideal norms of free and fair election it had in view in adjudging the validity of the election of the appellant. I cannot conceive of any pre-existing ideal norms of election apart from the law enacted by the appropriate Legislatures. If the amending body evolved new norms for adjudging the validity of the particular election, it was the exercise of a despotic power and that would damage the democratic structure of the Constitution.*”²⁷

3) Minerva Mills v. Union of India²⁸

In this case, majorly Article 31-C, which was added by the Forty-Second Constitutional Amendment Act and Clause 4 and 5 of Article 368 added by the Thirty-Ninth Constitutional Amendment were challenged as being unconstitutional.

Article 31-C sought to give more importance to the Directive Principles of State Policy in relation to the fundamental rights. The Court held it to be beyond the amending powers of the Parliament and noted, “*The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution. Granville Austin's observation brings out the true position that Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social*

²⁶ <https://indiankanoon.org/doc/936707/>

²⁷ Supra at 23

²⁸ AIR 1980 SC 1789

*revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is founded on the bed-rock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.”*²⁹

Further with reference to the amendments made in article 368, the Supreme Court found them to be unconstitutional on the grounds that it sought to make the amendments completely immune from the judicial review and hence balance between the separation of power between the three pillars of democracy would be disturbed. The Parliament has a limited power to amend the Constitution. The amendments to Article 368 were held to be against the basic structure of the Constitution and hence unconstitutional. If the amendments were held to be valid then it will deprive the citizens of their basic rights or the fundamental right as guaranteed under the Article 32 which provides for Constitutional remedies that is, approaching the Supreme Court for any violation of the fundamental rights.

4) Indra Sawhney v. Union of India³⁰

This case is also referred to as the Mandal Commission case. The case discussed the issue of reservation in jobs exceeding 50%. The Court in this case was of the view that the reservation, except in certain exceptional cases should not be more than the slab of 50% as it violates the principle and the right of equality as is the essence of the Constitution. The Court observed, “*The reservations contemplated in Clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main-stream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.*”³¹

²⁹ <https://indiankanoon.org/doc/1939993/>

³⁰ AIR 1993 SC 447

³¹ <https://indiankanoon.org/doc/1363234/>

5) CASES RELATING TO JUDICIAL APPOINTMENTS

i) *S.P. Gupta v. Union of India*³²

In this case, the question of the appointment of the Judges to the Supreme Court was called in question as how much reference or consultation would be required by the President from the Chief Justice of the Supreme Court. The Court in this case held that the President would have the right to differ from the opinions which have been given by the Judges and would not be challenged until malafide.

ii) *SC Advocate on Record Association v. Union of India*³³

The case was decided by a bench of nine judges and gave a historic judgment by bringing the Collegium system in which the appointments were made in consultation with the Chief Justice and two senior-most judges of the Supreme Court, and in matters of appointment in the High Court, the consultation of the Chief Justices of the concerned High Courts is also required.

iii) *In Re-Presidential reference*³⁴

This case was yet again a historic development in the process of judicial appointments where it was held that instead of two judges, the Chief Justice is required to consult four senior-most judges. The Consultation made would be thus binding on the executive.

iv) *Supreme Court Advocates-on-Record Association and Another v. Union of India*³⁵, The NJAC case

The Government came up with the 99th Constitutional amendment in which the National Judicial Appointment Commission was brought, which had the power of appointment of Judges to the Supreme Court and the High Court. The Members of the Commission³⁶ included, the Chief Justice, along with his two

³² AIR 1982 SC 149

³³ (1993) 4 SCC 441

³⁴ AIR 1999 SC 1

³⁵ [2015] 13 SCR 1

³⁶ Article “124A. National Judicial Appointments Commission.—(1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:—

(a) the Chief Justice of India, Chairperson, *ex officio*;

(b) two other senior Judges of the Supreme Court next to the Chief Justice of India—Members, *ex officio*;

(c) the Union Minister in charge of Law and Justice—Member, *ex officio*;

(d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People—Members.” Source:-

<https://legislative.gov.in/sites/default/files/COI.pdf>

senior most colleagues, the Union Minister of Law and two eminent persons who were appointed by another committee.³⁷

The Supreme Court, held this amendment to be unconstitutional as it in a way took away the independence of the Judiciary as the judicial appointment might be affected by the influence of the executive. The collegium system was upheld.

6) **Vishaka and others v. State of Rajasthan**³⁸

This case is a landmark case as it led to the enactment of the Sexual harassment of Workplace act. The Court in this case gave the guidelines known as the Vishakha guidelines which were required to be followed by all the employers, the objective of which was to make the workplace more friendly for all the employees. Further the goal of equality was sought to be achieved.

7) **Common Cause (A Regd. Society) v. Union of India**³⁹

It is yet again a historic judgment passed by the Supreme Court in which the Court allowed the use of passive euthanasia, upholding the right to die with dignity. The Court observed, “*In view of our conclusions as noted above the writ petition is allowed in the following manner:*

(a) The right to die with dignity as fundamental right has already been declared by the Constitution Bench judgment of this Court in Gian Kaur case (supra) which we reiterate.

*(b) We declare that an adult human being having mental capacity to take an informed decision has right to refuse medical treatment including withdrawal from life saving devices.”*⁴⁰

Further the court observed, “*We are thus of the opinion that the right not to take a life saving treatment by a person, who is competent to take an informed decision is not covered by the concept of euthanasia as it is commonly understood but a decision to withdraw life saving treatment by a patient who is competent to take decision as well as with regard to a patient who is not competent*

³⁷ Supra at 34

³⁸ (1997) 6 SCC 241

³⁹ AIR 2018 SC 1665

⁴⁰ <https://indiankanoon.org/doc/184449972/>

to take decision can be termed as passive euthanasia, which is lawful and legally permissible in this country.”⁴¹

Conclusion

This paper has mentioned only a few cases in which the Supreme Court has played a proactive role in preserving the rights of the individual while there are various other cases including the ban on tinted glasses, guidelines given on arrest in the DK Basu’s case which later became part of the Code of Criminal Procedure, guidelines given for pre-investigation in the cases of domestic violence. The Supreme Court has also played an important role in safeguarding the environment and is known for its judgments given in this sector which have played a major role in protecting the environment, rather the court has given historic judgements in the environmental jurisprudence. The Court has been the final interpreter of the laws made by the Legislature and has been at front for saving the individual rights. Despite having a pendency in cases, the Court actively accepts petitions where the rights of any individual is violated.

⁴¹ Supra at 37

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