

declare the law *ultra vires*. The exercise of this power has led to the confrontation between the Supreme Court and Parliament. By 24th and 25th and 42nd Amendment Acts Parliament has sought to curb the Court's power of judicial review. But the Court asserted its power in the *Minerva Mills Case* (1980) that Parliament cannot amend the "basic structure" of the Constitution.

To conclude, as compared with the American Supreme Court, the jurisdiction and powers of our Supreme Court are wider except the original jurisdiction. In the United States the Court's original jurisdiction extends to cases affecting ambassadors and consuls and other cases relating to naval forces. But in our country such cases do not fall within the original jurisdiction of the Supreme Court. On the other hand, the appellate jurisdiction of our Court is wider than that of the American Court. Further, the American Supreme Court has no advisory jurisdiction.

2 Role and Position of the Supreme Court

The Supreme Court of India stands at the apex of the judiciary and occupies a position of great importance in the constitutional system of the country. Its **multifunctional role—a federal court, appellate court, advisory role, guardian of the Constitution and protector of citizen's rights**—makes it more powerful than even the Supreme Court of the United States. First, the appellate jurisdiction of the American Supreme Court is limited to constitutional cases decided by the highest courts of the States. But our Supreme Court not only hears appeals in civil, criminal and constitutional cases, it has almost unfettered discretionary power to grant special leave to appeal against the judgements of lower courts and tribunals (except military tribunals) in the country. This is an extra-ordinary power not possessed by the American Supreme Court. Second, the American Supreme Court does not perform any advisory function like our Court.

Role as a Federal Court. A federal system requires an arbiter to keep the National and State Governments within their proper constitutional spheres, and to settle disputes when they arise between them. Our Supreme Court, like its American counterpart, has the exclusive power to decide disputes (a) between the Government of India and one or more States, (b) between the Government of India and any State on one side and any other State or States on the other side, (c) between two or more States. Thus the Supreme Court is to act as a federal Court, as an umpire between the Union of India and its constituent units (the States). In order to maintain the constitutional distribution of powers between the Union

and the States, Article 131 of the Constitution has vested this power exclusively to the Supreme Court. It is the Court's original jurisdiction. The first suit under this original jurisdiction was brought before the Supreme Court by the State of West Bengal against the Government of India in 1961. The West Bengal State, sought the declaration of the Court that Parliament was not competent to make a law authorising the Centre to acquire coal-bearing lands vested in the State and hence the Act of Parliament passed in 1951 was unconstitutional. The Court declared that the Parliament which is competent to destroy a State has the authority to acquire the property of the State for public purpose and hence the Act was constitutional and valid.

Court of Appeal. Like the House of Lords in England, our Supreme Court is the highest court of appeal in the land. Appeal lies to the Supreme Court against judgement of lower courts in all cases—whether civil or criminal—which involve a substantial question of law or constitutional question. In criminal cases, under Article 134 an appeal lies to the Supreme Court as a matter of right where the High Court (a) has reversed an order of acquittal of an accused person and has sentenced him to death, or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and in such trial has convicted the accused and sentenced him to death. Additionally, our Supreme Court has almost unfettered discretionary power to grant special leave to appeal against judgements of lower courts and tribunals (except military tribunals) in the country.

Role of Custodian of the Constitution. The Supreme Court is the guardian and protector of the Constitution of India. The Court as the guardian of the Constitution means an authority to preserve the sanctity of the Constitution; in other words, it means an authority whose duty is to see that both the executive and the legislature exercise their powers and functions within the framework of the Constitution which is written. If it finds any executive act or legislative statute inconsistent with the written provisions of the Constitution it may declare such an executive act or a legislative statute void and unconstitutional. This is known as the Court's power of "judicial review" exercised by the American Supreme Court. The American Supreme Court has assumed its power to act as the guardian of the Constitution by interpreting two provisions in the American Constitution : (1) The Court "shall determine all cases arising under the Constitution" and (2) "The Constitution shall be the supreme law of the land". Our Constitution does not contain such provisions. At the same time, it does not expressly give the

Supreme Court the power to invalidate laws of Parliament or State Legislatures. But our Constitution has imposed definite limitations upon both the branches of Government. If Parliament or a State Legislature transgresses the constitutional limitations, the Supreme Court declared in the famous *Gopalan's case*, "the Court will courageously declare the law unconstitutional".

The limitations imposed by our Constitution upon the legislative powers of Parliament or State Legislatures are : (a) Fundamental Rights embodied in Part III; (b) legislative competence; (c) other mandatory and justiciable provisions. Outside these limitations, the Supreme Court observed, "our Parliament and State Legislatures are supreme in their respective legislative fields and the Court has no authority" to question the reasonableness, fairness or policy of the law, as the American Supreme Court can do. The scope of judicial review in India being thus limited as compared with the judicial review in the United States, the role of our Supreme Court as the guardian of the Constitution is also limited.²

Nevertheless, our Supreme Court—as the final interpreter of the Constitution can decide the constitutionality of any law and declare it void if it finds that the law in question is inconsistent with a provision of the Constitution. In the exercise of this power the Court has on numerous occasions come face to face with Parliament, the latter trying to assert its supermacy—by amending the Constitution. In 1973, however, the Supreme Court, in the case of *Keshavaranda Bharati v. State of Kerala*, reasserted its authority by declaring that Parliament cannot make constitutional amendments which violate "the fundamental features" or the "basic structure" of the Constitution.

During the Emergency Parliament by passing the 42nd Amendment Act suspended the Court's power of judicial review. After the termination of emergency and Indira Congress lost power to the Janata Party following General Elections in 1977, Parliament sought to restore Court's authority by passing the 45th Constitution Amendment Act. However, the Supreme Court in May 1980 restored *via* judicial review what the 45th Amendment could not do. In the *Minerva Mill's case*, the Court invoked *Keshavanda* to declare invalid two clauses of the 42nd Amendment which sought to reverse *Keshavananda*. The Supreme Court has thus established *via* judicial review its role as the custodian of the Constitution, though not as firmly in India as it has in the United States.

Role as Protector of Fundamental Rights. The Supreme Court is "the protector and generator of the fundamental rights" in Part III of the Constitution (*Daryao v. State of U. P.*, 1961; *State of Mysore v.*

Kangan, 1975; *Ashok v. Collector*, 1980). The fundamental rights guaranteed in the Constitution are not absolute. They are limited because the Constitution grants Parliament to impose "reasonable restrictions" on them by a law in the interest of collective good. Here enters the Court. Since the Court is to interpret the law and the Constitution, it interprets the meaning and content of the fundamental right while applying the law in a particular case. If it finds that the "restrictions" imposed on a fundamental right are unreasonable it refuses to apply it, and uphold the fundamental right guaranteed in the Constitution.

Again, under Article 32 of the Constitution, an aggrieved individual has the right to move the Supreme Court for writs for the purpose of enforcement of fundamental rights. And the right to move the Court where a fundamental right has been invaded is itself a fundamental right (*Kochunni v. State of Madras*, 1959). The power of the Court to issue the writs for the enforcement of fundamental rights is absolute, it cannot be suspended except during the Proclamation of Emergency (Art. 359), it cannot be taken away by any legislation (*Gopalan v. State of Madras*). The Supreme Court is thus "constituted the protector and guarantor of fundamental rights" (*Ramesh Thappar v. State of Madras*).

Since the implementation of the Constitution, the Court in performing its role as the protector of citizen's rights has raised controversies. While the rights against exploitation (forced and child labour) and those of religion and minorities have produced less controversy, the dispute has been great in two areas. First, during India's first two decades as an independent State, the Court invalidated land reform and nationalisation legislations in defense of the right to property which was originally a guaranteed fundamental right. In the face of India's gross inequalities and political support for some redistribution of wealth and income, the Court could have imaginatively drawn distinctions between property rights and other fundamental rights. Instead, the Court relied on narrow legalistic, formalistic and technical interpretation of the Constitution and obstructed governmental efforts to effect social and economic change. To remove such legislations from judicial attack, Parliament enacted the 1st and 4th Constitution Amendment Acts. The second area of conflict was the right to move the Supreme Court for the enforcement of fundamental rights which was suspended during the Proclamation of Emergency in 1962. In 1967 the Court 'replied' with the decision (*Golaknath Case*) that Parliament could not abrogate or abridge Fundamental Rights even through constitutional amendments. Parliament responded with the 24th amendment

which overrode *Golaknath* by making fundamental rights amendable by Parliament. In 1973 the battle was rejoined in the *Keshavananda Bharati Case*; the court recognised Parliament's amending power but limited it to matters that do not destroy the "basic structure" or "essential features" of the Constitution. The Court, however, lost its power in 1976, during National Emergency, when Parliament passed the 42nd amendment which laid down Parliament's unlimited power to amend any part of the Constitution, the primacy of Directive Principles over Fundamental Rights, and severely restricted the Court's power to issue writs for enforcement of Fundamental Rights. Three years after the lifting of the Emergency and the defeat of Prime Minister Indira Gandhi in 1st March, 1977 polls, the Supreme Court in the *Minerva Mills' case* invoked *Keshavananda* to declare invalid the two clauses of the 42nd Amendment Act on the ground that they attacked the "basic structure" of the Constitution.

Public Interest Litigation. In the interest of social justice and to discharge its constitutional duty to protect fundamental rights the Supreme Court has made a distinctive innovation known as the "public interest litigation". The Court in several cases has laid down that a writ petition may be moved (*State of Himachal Pradesh v. Student's Parent, A*, 1985; *Nakara v. Union of India*, 1983) by an aggrieved individual but also by a public spirited individual (*Gupta v. Union of India*, 1982; *Sheela v. Union of India*, 1986; *People's Union v. Police Commissioner*, 1989) or a journalist (*Bholanath v. State of U.P.*, 1990) or a social action group, for the enforcement of constitutional or legal rights of some other person or persons. Such proceeding has been called "public interest litigation".

While delivering a Supreme Court judgement on 18 September 1982 on a writ petition filed by the civil rights group, the People's Union for Democratic Rights, to ensure observance of labour laws, Justice P. N. Bhagwati (later Chief Justice of India) observed : "The time has come when the courts must become the courts of the poor and struggling masses of this country. They must shed their character as upholders of the established order and the *status quo*. They must be sensitized to the need of doing justice to the large mass of people to whom justice has been denied by a cruel and heartless society for generations."⁴ The Court will therefore entertain a writ petition from a public spirited person (even through a letter) or a social action group for the vindication of a fundamental right of a person who is unable to enforce them because he belongs to a class or group of persons who are in a disadvantaged position on account of poverty, disability or other social or economic impediment and are unable to enforce these rights (*S. P. Gupta v. President of India*, 1982; *Subhas v.*