

MC 18003 - Indian Constitution and Society

Assignment - 2

Name : SREE VISHAL R

Class : CSE - 'C'

Reg. no : 180501143

1Q) Describe the powers & functions of the Supreme Court of India.

A Supreme Court at the apex of the Indian Judiciary is the highest authority to uphold the constitution of India, to protect the rights & liberties of citizens, and to uphold the values of rule of law. Hence, it is known as the guardian of our Constitution.

#### POWERS OF THE SUPREME COURT:

1. Power to punish for contempt (civil or criminal) of court with simple imprisonment for 6 months or fine upto 2000. Civil contempt means wilful disobedience to any judgement. Criminal Contempt means doing any act which lowers the authority of the court for causing interference in judicial proceedings.
2. Judicial Review - To examine the constitutionality of legislative enactments & executive orders. The grounds of review is limited by - parliamentary legislation or rules made by the supreme court.
3. Deciding authority regarding the election of President and Vice President.
4. Enquiring authority in conduct & behaviour of UPSC members
5. Withdraw cases pending before high courts & dispose of them itself.
6. Appointment of ad hoc judges - Art 127 states that if at any time there is lack of quorum of judges of Supreme court, the CJ may with the previous consent of the President & Chief Justice of high court, request in writing the attendance of



judge of High Court duly qualified to be appointed as judge of SC.

7. Appointment of retired judges of Supreme Court or high-court - Art 68 - The CJI at any time with the previous consent of the president & the person to be so-appointed can appoint any person who had previously held the office of a Judge of SC.
8. Appointment of acting chief justice - Art 126 - When the office of CJI is vacant or when the chief justice is by reason of absence or otherwise unable to perform duties of the office, the president in such case can appoint judge of the court to discharge the duties of the office.
9. Revisionary Jurisdiction: The Supreme Court under Art 137 is empowered to review any judgement or order made by it with a view to removing any mistake or error that might have crept in the judgement or order.
10. Supreme Court is a Court of record, as its decisions are of evidentiary value and cannot be questioned in any court.

Removal of Supreme Court Judge:

A judge of Supreme Court can be removed only from the office of the president on the basis of a resolution passed by both the houses of Parliament with a majority of the total membership and a majority of not less than two-thirds of the members present & voting in each house, on the grounds of proved

misbehaviour of the judge in question.

### SUPREME COURT FUNCTIONS:

- a) The SC gives the final verdict against an appeal from the other subsidiary courts, i.e. high courts.
- b) It acts as an Institution where issues from different governmental bodies, central government & the state government matters are resolved.
- c) As per Constitution's article 141, laws passed by the SC, apply to all courts within the Indian Territory.
- d) In some matters, the Supreme Court also acts on its own & can pass *Suo moto*.

2Q) Discuss in brief the various writs that can be issued by the high court?

A A writ means an order, i.e. anything that is issued under an authority is known as a writ. The five writs are explained below:

HABEAS CORPUS is a Latin term meaning "you should have the body". The writ is issued to produce a person before a court who has been detained or imprisoned and not produced before the magistrate within 24 hours whether in prison or private custody and would release the person if such detention is found illegal. The purpose of the writ is not to punish the wrong doer but merely to release the person unlawfully detained.

Habeas Corpus becomes a very valuable writ for safeguarding the person liberty of an individual. SC can issue this writ only against the state only in case of violation of Fundamental Rights, whereas HC can



Issue it also against private individuals illegally or arbitrarily detaining any other person.

This writ can be filed by any person on behalf of the person detained or by detained person himself.

eg: In Soul Batra II vs Delhi admin., a letter written by a convict to one of the SC judges was treated as a writ petition.

MANDAMUS is a Latin word meaning "to command". It is a judicial remedy in the form of an order to act legally & to abstain from perpetrating an unlawful act. Where A has a legal right which casts certain legal obligation on B, A can seek this writ directing B to perform its legal duty. This writ is issued by the SC or the HC when any government, court, corporation (co) public authority has to perform a public or statutory duty, but fails to do.

The SC may issue this writ to enforce the fundamental right of a person when its violation by some governmental order or act is alleged.

eg: In Unni Krishnan Vs Union of India, held that a private medical/engineering college comes within the writ jurisdiction of the court irrespective of the question of aid & affiliation.

CERTIORARI is a Latin word meaning "to inform". It may be defined as a judicial order operating in person and carried out in the original legal proceedings, be issued against constitutional bodies, statutory bodies like corporation, non-statutory bodies like companies and

cooperative societies & private bodies & person requiring the records of any action to be certified by the court.

There are various grounds on the basis of which this writ is issued;

- 1) Lack of jurisdiction.
- 2) Excess of jurisdiction
- 3) Abuse of jurisdiction.
- 4) Violation of the principles of natural justice.
- 5) Error of law apparent on the face of the record.

eg: In *Syed Yakoob Vs Radhakrishnan*, held that the jurisdiction of the HC to issue this writ is a supervisory jurisdiction & the court exercise it is not entitled to act as an appellate court.

PROHIBITION refers "to forbid or to stop" & is popularly known as "stay order". The writ is issued by the SC or any HC when a lower court or a quasi-judicial body tries to violate the powers vested in it & prohibiting the latter from continuing the proceedings.

QUO WARRANTO is a latin term which means "by what warrant". The writ is issued to restrain a person from holding a public office to which he is not entitled. It can be issued against offices created by the constitution such as the advocate general, the speaker of legislative assembly, officers under the municipal act, members of a local government board, but it will not issue against the managing committee of a private school which is not appointed under the authority of a statute.



3Q) "Powers of the parliament to amend the constitution is wide but not unlimited" - Explain in detail.

A The constitution of India lays down the framework on which Indian polity is run. The constitution declares India to be a sovereign, socialist, democratic republic.

The parliament can amend many elements of the constitution by a simple majority & other elements of the constitution with the special majority while to amend certain features affecting the federal structure, provisions related to President's election & its manner, extent of the executive power of the union & the States; SC & HC etc. requires special majority with ratification by half of the states; making the Constitution of India neither flexible nor rigid. The constituent Assembly originally provided the parliament with powers to amend the constitution by the manner enshrined in Article 368 which was plenary & without limitations or exceptions. Also, the constituent Assembly Debates indicate that the founding fathers & mothers did not envisage any limitation on the amending power.

The decision of the Supreme Court in Golaknath case exempted the fundamental rights from amending powers of the parliament, which was nullified by parliament through legislation namely The Constitution

(Twenty-fourth) Amendment Act, 1971. Further, in the Kesavananda Bharati judgement in 1973, the uncontrolled power of the parliament has been controlled & curtailed by the Doctrine of Basic Structure, which has introduced more rigidity, effectively absolute rigidity in the constitution with respect to certain features of it, rendering that parliament cannot use its power to amend the constitution to alter, distort or damage in any way the basic characteristics & principles of Constitution.

With the evolution of Constitution & its jurisprudence, the amending powers of the parliament were reviewed by the court & various restrictions & exceptions were put to the powers of the parliament. It is envisaged with very wide scope for amendments to the constitution but the court immunised certain features of the constitution from amending powers of the parliament. So it can be inferred that the powers of the parliament to amend the constitution is wide but not unlimited.