



AN ANNOTATION ON L. CHANDRA KUMAR CASE ADJUDICATING CONSTITUTIONALITY OF ARTICLE 323A&B

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ABSTRACT:

Dr. Ron Paul states “The Constitution was written very precisely to restrain the power of the Government and to protect the liberties of each and every one of us.” **Doctrine of Basic Structure** of Indian Constitution can never be contravened by any Amendments, Legislations, and rules. Violative of Basic structure will be deemed null and void to the extent of infringement. “**Constitution** is the documentation of founding faiths of a nation and the fundamental directions for their fulfillment”– **Justice V.R. Krishna Iyer**. At no time Indian Constitution remains rigid to amend things that ensures justice and protects the welfare of people. The power of judicial review of higher judiciary is embedded in the Indian Constitution to inspect the legislative, executive, and administrative actions. **Judicial Review** is an inevitable part of the Doctrine of Basic Structure. Considering the suggestions of several Law Committees, Part XIV was inserted by 42nd Amendment, 1976 entitled as Tribunals which set aside the Judicial Review of Supreme Court and High Courts. This paper focuses on the landmark case *L. Chandra Kumar v. Union of India* which annotated the jurisprudential premise of the Articles 323-A, 323-B and prerogative of Supreme Court and High Courts in Judicial Reviewing.

KEYWORDS:

Judicial Review, Tribunals, Basic Structure, Administration, High courts.

INTRODUCTION:

The critical issue that **Indian Judiciary** face is the slow run of judicial mechanism which led to pile up cases in the Indian Courts amounting huge burden in the shoulders of Courts to provide litigation which ultimately resulting in long time mechanism and increasing the numbers of Lis Pendens. In 1958, Law Commission Report was submitted recommending the establishment of Tribunals comprising of judicial and administrative members to litigate service matters. Alike in 1969, Administrative Commission suggested to set up Civil Service Tribunals for Central and State Civil Servants. Again in 1975, Swaran Singh Committee put forward the proposal of setting up Tribunals. The idea of setting up service tribunals also found favor with the Supreme Court, in *K. K. Dutta v. Union of India*^[1] advocated the setting up of service tribunals to save courts from avalanche of writ petitions and appeals in service matters.^[2] In 1976, **42nd Constitutional Amendment** added **Part XIV-A** entitled as **Tribunals** which contained two articles 323-A and 323-B. The landmark case *L. Chandra Kumar v. Union of India* dealt with the controversies emerged from the Constitutional Amendment that inserted 323-A and 323-B which did away the jurisdiction of High Courts in service matters.

OBJECTIVE OF THE STUDY:

The objective of this case study is to know the importance and power of **Judicial Review** by the higher judiciary and its impact in rendering justice which cannot be omitted in any sense as being the integral part of the Basic Structure of the Indian Constitution.

RESEARCH METHODOLOGY:

This is a descriptive study based on primary and secondary data and facts from legislations, judgement, books, journals, articles as well as from websites. Analysis has been done with relevant facts and data to reach over some conclusions.

BACKGROUND OF THE CASE:

As per the inclusion of Part XIV-A, **Article 323-A**^[3] empowers the Parliament to establish the administrative tribunals for the adjudication of disputes relating to the recruitment and service conditions of the public servants of the Centre, State, local bodies, public administration, and other public authorities and excludes the jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136.

Article 323-B^[4] states that the Parliament and the State Legislatures are authorized to establish the tribunals for the adjudication of disputes relating to taxation, foreign exchange, import and export, industrial and labor

¹ K.K. Dutta v. Union of India, (1980) 4 SCC 38 (India)

² Para 83 of the Judgement – L. Chandra Kumar v. Union of India, AIR 1997 SC 1125 (India), <<https://indiankanoon.org/doc/1152518/>>

³ INDIAN CONST. art. 323-A, amended by The Constitution (Forty Second Amendment) Act, 1976.

⁴ INDIAN CONST. art. 323-B, amended by The Constitution (Forty Second Amendment) Act, 1976.

disputes, land reforms, ceiling on urban property, elections of either house of Parliament and State Legislatures, food stuffs, rent, tenancy rights.

In pursuance of Article 323-A, Administrative Tribunal Act was passed by the Parliament in 1985 to inaugurate Central and State Tribunals to provide speedy and inexpensive justice to the aggrieved public servants.

The Administrative Tribunals Act, 1985 provides 3 types of Tribunals:

1. Central Administrative Tribunal (CAT), to be established by Central Government that deals with the jurisdiction of service matters pertaining Central Government employees or any Union Territory or local or other government or corporation owned and controlled by the Central Government.
2. State Government Tribunals (SATs), is to be established by the Central Government on the receipt of request on behalf of the State Government which will exercise the jurisdiction of service matters of State government employees.
3. Joint Administrative Tribunal (JAT), two or more States can ask for joint tribunal to exercise jurisdiction of such States.

Each of the tribunals will have Chairperson, Vice Chairpersons, Judicial and Administrative members as the appropriate government might deem fit.

In pursuance of Article 323-B, Tribunals can be established by Parliament and State Legislatures which deals with the jurisdiction of matters falling within their legislative competence. Here hierarchy of tribunals may be created ^[5].

FACTS:

However, even before the Tribunals have been established, several writ petitions were filed in High Courts and Supreme Court challenging the constitutional validity of **Article 323-A(2)(d)** and **Article 323-B(3)(d)** which excludes the jurisdiction of Supreme Court under Article 32 and High Courts under Articles 226 and 227 that is contrary to the spirit of Indian Constitution where Judicial Review is the part of basic structure of the Indian Constitution.

In *S.P. Sampath Kumar v. Union of India* ^[6] - concerning the constitutional validity of Section 28(1) of Administrative Tribunal Act 1985 under the purview of Article 323-A which excludes the jurisdiction of Supreme Court and High Courts. Held that vesting the power of judicial review of the High Court in an alternative mechanism is not the violation of the basic structure of the Indian Constitution, so long it was ensured that the alternative mechanism as effective and real substitute for the High Court.

⁵ Patil Amruta, L. Chandra Kumar Case, Prepp, < <https://prepp.in/news/e-492-l-chandra-kumar-case-indian-polity-notes>>, (Last visited on 7 September 2023)

⁶ S.P. Sampath Kumar v. Union of India, (1985) 4 SCC 458 (India)

An aspect which needs to be emphasised is that the Constitution Bench in Sampath Kumar's case had not specifically addressed the issue whether the Tribunals under the Act would have the power to strike down statutory provisions or rules as being constitutionally invalid.

ISSUES:

1. Whether the power conferred upon the Parliament under Article 323-A(2)(d) and upon the State Legislature under Article 323-A(3)(d), to exclude the jurisdiction of all courts except that of Supreme Court under Article 136, which runs counter to the judicial review of Supreme Court under Article 32 and High Courts under Articles 226 and 227?
2. Whether the Tribunals constitution under Article 323-A and 323-B possess the competence to test the constitutional validity of the Statutory provision or rule?
3. Whether the Tribunals can be the effective substitutes for the High Courts in the discharging the power of Judicial Review? If not, what are the changes required to make them conform to their founding objects?

JUDGEMENT:

Supreme court held that Articles 323-A(2)(d) and 323-A(3)(d) to the extent excluding the jurisdiction of High Courts and Supreme Court under Articles 226, 227 and 32 are unconstitutional as they damage the basic feature of the Constitution.

CASE ANALYSIS:

ARGUMENTS TO BE VIEWED IN:

PETITIONER SIDE:

- Argued about the Constitutionality of the Tribunals under Articles 323-A(2)(d) and 323-A(3)(d) which provides exclusive power to the Tribunals to exercise the power vested to High Courts under Articles 226 and 227.
- Articles 323-A and 323-B allow Parliament to affect the sacrosanct jurisdiction of the Supreme Court under Article 32, therefore liable to struck down.
- These rights cannot be bestowed to the quasi – judicial body where executives have its influence.
- These provisions violate the basic structure of the Constitution by excluding the judicial review of High Courts and Supreme Court. This provision that only Constitutional Courts (Supreme Court and High Courts) have been vested with the power of judicial review of legislative action held in the case – *Kesavananda Bharati v. State of Kerala* ^[7].
- Section. 5(6) of Administrative Tribunal Act which allows only single member bench of the Tribunal to test the constitutional validity of the Statutory Provision which is also unconstitutional.

⁷ Kesavananda Bharati v. Union of India, AIR 1973 SC 1461 (India)

- In *Union of India v. Pratibha*^[8], Supreme Court has analysed the special constitutional status of judges of High courts and explained how they are distinct from other tiers of judiciary. Such analysis is applicable between High courts with glorious tradition and Tribunals being new creation^[9]
- The decision held in *S.P. Sampath Kumar v. Union of India* was given with the hope that the Tribunals established would be effective and efficient substitutes of High Courts which will reduce their burden in litigation which was neither legally nor factually correct.

RESPONDENT SIDE:

- Judicial Review of Supreme Court under Article 32 is sacrosanct and is indisputably a part of the basic structure of Indian Constitution. Jurisdiction of Supreme Court is not affected any way. However, the jurisdiction of High Courts under Article 226 was sought to be removed by creating an alternative institution.
- Articles 323-A and 323-B does not exclude the supervisory jurisdiction of High Courts on all the Tribunals established within its jurisdiction. High Courts still have the power as supervisory jurisdiction and body of corrective mechanism.
- Argued that Tribunals should be allowed to exercise jurisdiction under Article 226.
- The creation of an alternative mechanisms is not a violation of the basic structure if it is efficacious as courts. So, to ensure members of tribunal have the security of tenure for securing independence
- The theory denounced by the petitioner upon the case S.P. Sampath Kumar v. Union of India is not valid and does not require any reconsideration.

SCRUTINIZATION:

PREROGATIVE POWER OF SUPREME COURT AND HIGH COURT:

Judicial review is the essential component of our Constitutional structure, and the High Courts and Supreme Court have authority to rule on the constitutionality of specific legislation sections. It would be pointless to argue that a citizen cannot move the High Courts or Supreme Court to invoke their jurisdiction even in cases where his fundamental rights have been violated if the power of the High Courts under Article 226 and Supreme Court under Article 32 are excluded.

Let it not be forgotten that the judicial power conferred on the High Courts and this Court is meant for the protection of the citizens' fundamental right^[10]. Judicial reviewing is the prerogative power that the supreme court and High Courts exercise that should not be infringed.

⁸ Union of India v. Pratibha, 1996 AIR 693 (India)

⁹ Aswathy P.S., Summary of L. Chandra Kumar v. Union of India [AIR 1977 SC1125], Law Bhoomi, <<https://lawbhoomi.com/summary-of-l-chandrakumar-v-union-of-india-air-1997-sc-1125/>>, (Last visited on 7 September 2023)

¹⁰ Para 75 of the Judgement – L. Chandra Kumar v. Union of India, AIR 1997 SC 1125 (India), <<https://indiankanoon.org/doc/1152518/>>

ADMINISTRATIVE TRIBUNALS ACT, 1985 & ITS EFFECTIVENESS:

Section 4 of Administrative Tribunals Act, 1985 empowers the Central Government to establish: (1) a Central Administrative Tribunal with Benches at separate places; (2) an Administrative Tribunal for a State which makes a request in this behalf and (3) a Joint Administrative Tribunal for two or more States which enter into an agreement for the purpose.

Section 5(2) requires every Bench to ordinarily consist of one Judicial Member and one Administrative Member.

Section 5(6) of Administrative Tribunals Act which enables the Tribunal to function through Single Member Benches. “Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify. Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members the case or matter may be transferred by the chairman or, as the case may be, referred to him for transfer to such Bench as the Chairman may deem fit”.

Section 28 excluding the jurisdiction of courts except the Supreme Court under article 136 of the Constitution are the focus of s controversy.

The setting up of the Administrative Tribunals under Administrative Tribunals Act 1985, has not been widely welcomed. In the case of Administrative Tribunals, it has been pointed out that the administrative members who have been appointed have little or no experience in adjudicating such disputes; the Malimath Committee has noted that at times, IPS Officers have been appointed to these Tribunals. It is stated that in the short tenures that these Administrative Members are on the Tribunal, they are unable to attain enough experience in adjudication and in cases where they do acquire the ability, it is invariably on the eve of the expiry of their tenures.

S.P. Sampath Kumar v. Union of India held that Tribunals are substitutes of High Court that deals with service matters involving Articles 14,15 and 16.

The overall picture regarding the tribunalisation of justice in our country is not satisfactory, encouraging and not ensured path for which it had been established. Bearing in mind, the ineffective functionality Tribunals cannot be substitutes for High Courts.

EMPOWERING THE DOCTRINE OF BASIC STRUCTURE:

The verdict of *S.P. Sampath Kumar v. Union of India* held that S.28 of Administrative Tribunal Act which excludes the jurisdiction of High Court under Articles 226 and 227 is not unconstitutional. It does not totally bar judicial review.

In *Sakinala Harinath v. State of AP*^[11] held that Article 323-A(2)(d) is unconstitutional and repugnant to rule of basic structure of the Constitution.

Herein *L. Chandra Kumar v. Union of India*, Supreme Court's Divisional Bench uttered that five-bench verdict of *S.P. Sampath Kumar v. Union of India* is need of comprehensive reconsideration by a larger bench at fresh look. In the light of the opinion given, this matter was placed before larger bench of seven judges.

Observations by the seven bench judges described Judicial Review power conferred to Supreme Court under Article 32 (considered as heart and soul of the constitution) and High Court under Articles 226 and 227 is the part of basic structure of the Indian Constitution which should not be overstepped. For securing independence of judiciary, the judges of superior courts have entrusted with the power of judicial review. Though the Parliament is empowered to amend the Constitution, the power of amendment cannot be exercised to damage the essential feature of the Constitution or to destroy its basic structure. The Supreme Court and the High Courts have entrusted with the task of upholding the Constitution.

VERDICT:

In view of the reasoning dealt with Articles 323-A(2)(d) and 323-B(3)(d) to the extent, excluding the jurisdiction of the Supreme Court and the High Court under Articles 32, 226, 227 of the Constitution, are unconstitutional. Section 28 of the Administrative Tribunal Act and the 'exclusion of jurisdiction' clauses in all other legislations enacted under the aegis of Articles 323A and 323B, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226, 227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. Section 5(6) of the Act is valid, constitutional and is to be interpreted in the manner indicated^[12]. All these matters may now be listed before a Division Bench to enable them to be decided upon their individual facts in the light of the observations contained in this judgment^[13]. Tribunals are not considered as substitutes of Supreme Court and High Courts. Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226, 227 and 32 of the Constitution. The Tribunals have competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. Tribunals will nevertheless continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not therefore be open for litigants to directly approach the High Courts in cases questioning the vires of statutory legislations (except where the legislation which creates the Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

From my perspective - Over ruling the judgement of S.P. Sampath Kumar case, the verdict of L. Chandra Kumar case unconstitutionalizing the Articles 323-A(2)(d) and 323-B(3)(d) to the extent, contravening the judicial

¹¹ Sakinala Harinath v. State of AP, (1994) 1 APLJ (HC) 1 (India)

¹² Para 100 of the Judgement – L. Chandra Kumar v. Union of India, AIR 1997 SC 1125 (India), <
<https://indiankanoon.org/doc/1152518/>>

¹³ Para 101 of the Judgement – L. Chandra Kumar v. Union of India, AIR 1997 SC 1125 (India), <
<https://indiankanoon.org/doc/1152518/>>

review of Supreme Court and High Courts under Articles 32, 226 and 277 is the worthy way forward to uphold the Doctrine of Basic Structure and to keep check and balance of the powers vested with the Tribunals and quasi-judicial bodies where executives have its influence. But Supreme Court in this case did not delve the effective remedy for proper functioning of the Tribunals to meet the ultimate object of speedy justice and ease the burden of pending cases related to service matters.

CONCLUSION AND SUGGESION:

It is prominent fact that after the judgment was given in Kesavananda Bharati case, the basic structure of the Indian Constitution cannot be violated and all the legislation, acts, and regulations violating it will be considered null and void. Herein, L. Chandra Kumar case its apparent that if any new quasi-judicial body is established by the executive for speedy justice of some matters to reduce the burden on the High Courts and the Supreme Court then the decision should be subject to judicial review. However, it is established by the zeal of providing time-effective and cost-effective justice but nothing can be said about the quality of justice dispensed by it, so the decision by the Supreme Court. The Judgement settles the debate that the jurisdiction of the Constitutional Courts can never be ousted and too great extent also proves that the purpose for which the Tribunals were formed. This case, is highly remarkable considering the sacrosanct Constitutional provisions. Worthwhile Tribunalisation integrated with introspective judicial review will pave way for deplete the burden rendering speedy justice.

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