**CASE ANALYSIS OF L. C. KUMAR V. UNION OF INDIA**

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**Background of the case**

For a long time, there had been a quest for disburdening the legal systems from the immense burden of service litigation, which formed a substantial portion of all pending litigations. It has a matter of concern, as they were tedious and costly, both of the legal system as well as the parties.It was aimed that the Courts will more time to adjudicate other cases expeditiously.Committees like Swarn Singh Committee (1975) and Administrative Reform Commission (1969) and the Apex Court in the case of **K.K. Dutta v. Union of India**[[1]](#footnote-2), advised that administrative or service tribunals must be established in order to protect the legal system from the avalanche of writs and appeals in the service matters. The Parliament passed the Constitution (42nd Amendment) Act, 1976, with effect from March 1, 1977, that added a Part – 14A to the same, through Section 46. This Part titled as “Tribunals” and consisting of two articles namely, Article 323-a and Article 323-b. Article 323-a dealt with dealing with administrative tribunals andArticle 323-b dealt with tribunals for other matters.

Numerous Special Leave Petitions, writs and civil appeals were filed which formed an array of matter bought before the Apex Court, owing to separate decisions of several High Courts and different provisions and enactments, hereby raising a number of questions of law, which were merged together in “**L. C. Kumar v.Union of India**”[[2]](#footnote-3) for the purpose of proper adjudication.The questions were mainly based on the constitutionality of in Article 323A (1) and Article 323B (2), and whether the Tribunals constituted under Part 14 of the Constitution of India is an effective substitute of the existing High Courts and the Supreme Court.

The present controversy has been referred to us by an order of a Division Bench of the Supreme Court, , which concluded that the decision rendered by a five-Judge Constitution Bench of this Court in [**Sampath Kumar v. Union of India**](https://indiankanoon.org/doc/359668/)[[3]](#footnote-4), needs to becomprehensively reconsidered. An interim order, dated October 31, 1985, was passed by the Apex Court that ordered carrying out of certain measures with a view to ensuring the functioning of the Tribunal along constitutionally sound principles. The issue of constitutionality of Article 323A (2) (d) was never challenged in the said case.

**Delay of Justice**

Justice has much a wider connotation than merely settling a dispute between two persons or determining whether a person is guilty of the crime of which he is accused by the State. Justice, in today’s day and age, and democratic setup, includes ensuring that every citizen gets his aliquot share of social goods and services, and opportunities- his human right – and treated fairly.

Delayed justice is a much-discussed issue. There are, however, two more issues, which, despite their seriousness, find little discussion: (i) docket exclusion, i.e., the injustice suffered by those who lack the wherewithal to access justice; and (ii) succumbing en route, i.e., those who come to Court, after waiting for few years, and despite being in the right, abandon as they are unable to bear the cost and delay.

We are a nation governed by the Rule of Law, which includes a number of within it – each contributing to the total confidence of the citizen in the democratic set up and the perception of its qualitative functioning. It is the foundation of civilized society and establishes a transparent process accessible by all, and equal to all. It includes quality of laws, security of persons and property, respect for law in relations between citizens *inter se*and between the citizen and the government. Accessibility and efficiency of the justice delivery system is an important component of Rule of Law.

What the grounds realities are*re*access to justice? Each one of us must ask this question ourselves. Fair distribution of social goods and services to citizens withoutshort delivery is possible only when there is access to justice. It is not only the corporate and the rich, but also the common person, who is entitled to justice – and equally. The ‘value’ of justice to the common person cannot be measured in terms of a table annexed to Court Fees Act, 1870 or a Suit Valuation Act, 1887.

It is necessary to look at our 1.3 billion population from an economic perspective regarding their affordability of access to justice by putting ourselves in their shoes. Only 4% pay tax. As also, to be remembered is the phenomenon that accessible and effective justice system improves primary (*ex ante*) behavior of the citizens as also the working of the State machinery.

The bulk of population suffers civil injustice, without even knowing that their rights are being violated, and the few who are aware, hesitate to take action. Most find themselves unable to access the justice system for financial reasons. To add up insult to injury, with the delays that take place, most of those who do come to the Court, unable to bear the wait and the mounting costs, and with little hope to recompense for the wait, surrender enroute and blame the system. Others quietly suffer injustice, blaming their own destiny.

Procedural Law is a set of rules that help guide the adjudication process. The quality of procedural law, as also the depth, determines (i) accuracy if the result, (ii) the time taken and (iii) the costs incurred. The procedural law in our country – civil and criminal – is outdated and needs a complete reform. Further, in order to achieve greater efficiency in justice delivery, it calls for subject-specific tailoring of procedures, regular issue of practice directions and attention towards forms, checklists and instruction notes.

Too initiate, carry out and complete the judicial process has a cost. That ‘cost’ depends on two factors: (i) efficiency of the procedures and practices and (ii) the consumption of the Court time by the wrong-doers, only to make their unfair gain, and thereby delay the whole process and increase costs.

In so far as reducing the costs is concerned, there are three parts to it:

* Preventing consumption and waste at the instance of those who seek to abuse the judicial system for their own wrongful private gain (this accounts for 90% of the time consumption today)
* Improving procedures and practices for adjudication
* Improving functioning of the Court and the support staff so as to turn out greater productivity as compared to the present, and this includes preventing overloads of work with a judicial officer

The dynamics behind the development of the current state of affairs in our litigation with endless delays is actually a vicious cycle. The component element of every such vicious cycle – in fact, each with its individual feedback loop – needs to be analyzed. Only thereafter would any meaningful tailor-made procedural reforms and practices work as an exogenous factor to break the loop of the various adverse elements – primarily by removing the incentives that create the requisite momentum for that loop.

The 42nd Amendment in the Constitution of India was the said momentum required towards reversing the vicious cycle and was a stepping-stone in bringing the much-needed reform in the procedural laws in the civil litigation.

**Facts In Issue**

1. “Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by Sub-clause (2) (d) of [Article 323A](https://indiankanoon.org/doc/237570/) or by Sub-clause (3) (d) of [Article 323B](https://indiankanoon.org/doc/1249292/) of the Constitution, totally exclude the jurisdiction of 'all courts', except that of the Apex Court under [Article 136](https://indiankanoon.org/doc/427855/), in respect of disputes and complaints referred to in[Article 323A](https://indiankanoon.org/doc/237570/) (1) or with regard to all or any of the matters specified in [Article 323B](https://indiankanoon.org/doc/1249292/) (2), runs counter to the power of judicial review conferred on the High Court under Articles 226 or 227 and on the Supreme Court under [Article 32](https://indiankanoon.org/doc/981147/) of the Constitution?
2. Whether the Tribunals, constituted either under [Article 323A](https://indiankanoon.org/doc/237570/) or under[Article 323B](https://indiankanoon.org/doc/1249292/) of the Constitution, possess the competence to test the constitutional validity of a statutory provision?
3. Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?”[[4]](#footnote-5)

**Critical Analysis**

Article 323B of the Constitution of India empowers Central or the State Legislatures, as the case may be, to enact laws providing for the adjudication by Tribunals of disputes, complaints or offences with respect to a wide variety of matters including inter alia disputes relating to tax cases, foreign exchange matters, industrial and labor cases, ceiling on urban property, election to State Legislatures and Parliament, essential goods and their distribution, criminal offences etc., as mentioned under Clause (2).

**[R.Ramar v. The Secretary to Government](https://indiankanoon.org/doc/168847478/)**[[5]](#footnote-6)seeks to challenge a judgment of the Madras High Court, which has held that the establishment of the Tamil Nadu Land Reforms Special Appellate Tribunal will not affect the powers of the Madras High Court to issue writs. This decision is based on the reasoning that the Legislature of the State had “no power” to infringe upon the High Courts' powers to issue writs under [Article 226](https://indiankanoon.org/doc/1712542/) of the Constitution and to exercise its powers of superintendence under [Article 227](https://indiankanoon.org/doc/1331149/) of the Constitution.

Issues arose in functioning of these Tribunals especially in respect of the manner in which they excluded the jurisdiction of the High Courts of their respective States.

In **J.B. Chopra and Ors v. Union of India**[[6]](#footnote-7), a Division Bench of the Supreme Court held that “the Administrative Tribunal being a substitute power of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the Constitutional validity or otherwise of such laws as offending Articles 14 and 16(1) of the Constitution.”

In a separate but concurring judgment, Ahmadi, J. (as he then was) speaking for himself and Punchhi, J., endorsed the recommendations in the following words:

“The time is ripe for taking stock of the working of the various Tribunals set up in the country after the insertion of Articles 323A and 323B in the Constitution. A sound justice delivery system is a *sine qua non* for the efficient governance of a country wedded to the rule of law. An independent and impartial justice delivery system in which the litigating public has faith and confidence alone can deliver the goods. After the incorporation of these two articles, Acts have been enacted where under tribunals have been constituted for dispensation of justice. Sufficient time has passed and experience gained in these last few years for taking stock of the situation with a view to finding out if they have served the purpose and objectives for which they were constituted. Complaints have been heard concerning the functioning of other tribunals as well and it is time that a body like the Law Commission of India has a comprehensive look-in with a view to suggesting measures for their improved functioning. That body can also suggest changes in the different statutes and evolve a model on the basis whereof tribunals may be constituted or reconstituted with a view to ensuring greater independence. An intensive and extensive study needs to be undertaken by the Law Commission concerning the Constitution of tribunals under various statutes with a view to ensuring their independence so that the public confidence in such tribunals may increase and the quality of their performance may improve. We strongly recommend to the Law Commission of India to undertake such an exercise on priority basis. A copy of this judgment may be forwarded by the Registrar of this Court to the Member Secretary of the Commission for immediate action.”

The 42nd Amendment to the Constitution of India was motivated by a feeling of skepticism towards the established judicial institutions andsought to divest constitutional courts of their jurisdiction. The aim was to vest such constitutional jurisdiction in creatures whose establishment and functioning could be controlled by the executive.

The validity of the impugned provisions has to be determined irrespective of the manner in which the power conferred by them has been exercised. In Sampath Kumar's case, this Court restricted its enquiry to the Act, which did not oust the jurisdiction under [Article 32](https://indiankanoon.org/doc/981147/), and did not explore the larger issue of the constitutionality of [Article 323A (2)(d](https://indiankanoon.org/doc/237570/)). The correct test is to square the provision against the constitutional scheme and then state upon its compatibility. The vice in [the](https://indiankanoon.org/doc/237570/) said Article is that it permits Parliament to enact, at a future date, a law to exclude the jurisdiction of this Court under [Article 32.](https://indiankanoon.org/doc/981147/) Being possessed of such potential for unleashing constitutional imbalance in the future, its powers cannot be sustained

The power of judicial review vested in the Supreme Court under [Article 32](https://indiankanoon.org/doc/981147/) and the High Court under [Article 226](https://indiankanoon.org/doc/1712542/) is part of the basic structure of the Constitution as in **Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr**.[[7]](#footnote-8), [**Fertilizer Corporation Kamgar Union v. Union of India**](https://indiankanoon.org/doc/1171702/)[[8]](#footnote-9) and [**Delhi Judicial Service Association v. State of Gujarat**](https://indiankanoon.org/doc/1496509/)[[9]](#footnote-10) highlight the importance accorded to [Article 32](https://indiankanoon.org/doc/981147/).

The theory of alternative institutional mechanisms advocated in Sampath Kumar's case ignores the fact that judicial review vested in the High Court’s consist not only of the power conferred upon the High Courts but also of the High Court’s themselves as institutions endowed with glorious judicial traditions since the 19th century and possesses the faith h of the people. A Tribunal, being a new creation of the executive, would not be able to recreate a similar tradition and environment overnight.

**Constitutionality of The Impugnated Sections**

The principal violation was that of the limitation of the power of judicial review vested Apex Court under Article 32 of the Constitution, and that of the High Courts under Article 226 of the Constitution.

Chief Justice Bhagwati reiterated the earlier view expressed by him in **Minerva Mills v. Union of India**[[10]](#footnote-11) about the power of Parliament to set up effective alternative institutional mechanism or arrangements for judicial review by amending the Constitution. “If, by such constitutional amendment, the power of judicial review of the high-court is taken away and vested “in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, i.e., the alternative institutional mechanism or authority set up by Parliamentary amendment is no less effective than the highcourt.”

In **Sampath Kumar v. Union of India**, in the verdict the Supreme Court held that Section 28 of the Administrative Tribunals Act, 1985, which excludes jurisdiction of the HighCourts under Articles 226is constitutional. The Court ruled that this section does not completely bar judicial review. It also said that Administrative Tribunals under the said Act are substitute of HighCourts and will deal with all service matters even involving Articles 14, 15 and 16. It also advised for changing the qualifications of Chairman of the tribunal. As a result, the Act was further amended in 1987. The appointment of the Chairman, the Vice- Chairman and Administrative Members should be madeonly after the recommendations of the Chief Justice of India. A district judge or an advocate who is qualified to be a judge of the HighCourt should be regarded as eligible for being the ViceChairman of the Administrative Tribunal.

In **Union of India v. Parmanand**[[11]](#footnote-12), a two-judges Bench upheld the authority of the Administrative Tribunals to decide the constitutionality of service laws.

The Supreme Court, after analyzing- the text of disputed Article 323A of the Constitution, the provisions of the impugned Act and the decision in Sampath Kumar’s case, rejected the argument that the tribunals were the equals of the High Courts in respect of their service contexts.

The power of judicial review is a basic and essential feature of the Constitution and the jurisdiction conferred on High Courts under Articles 226 and 227 and on Supreme Court under Article 32 of the Constitution is a part of the basic structure of the Constitution and cannot be amended

For protecting the independence of judiciary, the judges of superior courts have been endowed with the power of judicial review. Though the Parliament is empowered to amend the Constitution, the power of amendment cannot be exercised so as to damage the heart and soul of the Constitution.

The High Courts and the Supreme Court have been entrusted with the task of upholding the Constitution and for achieving that goal, they have to interpret it.

**Petitioner’s Contention**

* To hold Article 323A(2)(d) and Article 323B(3)(d) of the Constitution to be unconstitutional to the extent they allow Tribunals created under the Act to exclusively exercise the jurisdiction vested in the High Courts, under Articles 226 and 227, and that the power to interpret the provisions of the Constitution is solely bestowedon the traditional courts and cannot be conferred on newly created quasi-judicial institutions which are vulnerable to influence by executive.
* To hold Section 5(6) of the impugned Act, in so far as it allows a single Member Bench of a Tribunal to test the constitutional validity of a statutory provision, unconstitutional.
* The impugned provisions of the Constitution, as far as they exclude the jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226, are unconstitutional.
* While the provisions of the Act do not profess to affect the jurisdiction of the Supreme Court under Article 32 of the Constitution, therefore liable to be struck down.
* The decision in Sampath Kumar’s case was founded on the hope that the Tribunals would be effective substitutes for the High Courts. This position is neither factually nor legally correct on account of the following differences between High Courts and these Tribunals: (1) High Courts enjoy vast powers as a result of being Courts of Record under Article 215 and possess the power to issue Certificates of Appeal under Articles 132 and 133. This is not so in case of Tribunals. (2) The qualifications for appointment of a High Court Judges and other legal safeguards ensure the independence and efficiency of the Judges chair the High Courts. The conditions prescribed for Members of Tribunals are not comparable (3) While the jurisdiction of the High Courts is protected by the Constitution, a Tribunal can be abolished by simply repealing its parent statute. (4) While the expenditure of the High Courts is charged to the Consolidated Fund of the States, the Tribunals are dependent upon the appropriate Government for the granting their funds.
* Every High Court has under Articles 226 and 227, the power to issue writs or orders to all authorities of the State, which function within its territorial jurisdiction. In such a situation, no Tribunal located within the territorial jurisdiction of a High Court can disregard the law declared by it. The impugned constitutional provisions, as far as they seek to dispossess the High Courts of their power of superintendence over all situated within their territorial jurisdiction, violate the basic structure of the Constitution.
* The High Courts had been in existence since the 19th century enabling them to win the confidence of the people. A Tribunal, being a new instrument of the executive, would not be able to recreate a similar tradition and faith overnight.

**Respondent’s Contention**

* To uphold the validity of the impugned constitutional provisions and to allow such Tribunals to exercise the jurisdiction under Article 226 of the Constitution.
* It is a well-established proposition in law that the jurisdiction of this Court under Article 32 of the Constitution is sacred and is beyond any doubt a part of the basic structure of the Constitution. This position had been clearly affirmed well before the 42nd Amendment to the Constitution was made. Hence, Parliament must be deemed to have been well aware of such a position and it must be concluded that the jurisdiction under Article 32 and 226 was never aimed to be affected. However, the jurisdiction of the High Courts under Article 226 was sought to be divested by creating alternative institutions.
* Articles 323A and 323B do not seek to divest the supervisory jurisdiction of the High Courts over the Tribunals situated within their territorial jurisdiction.
* Since the decisions of this, Court in **Amulya Chandra’s case**[[12]](#footnote-13)and **Dr. Mahabal Ram’s case**[[13]](#footnote-14) had clearly held that matters relating to the vires of a provision are to be dealt with by a Division Bench consisting of a judicial member,Section 5(6) of the Administrative Tribunals Act, 1985 as valid and constitutional.

**Ratio Decendi**

* Power of judicial review over legislative action vested in the High Courts and the Supreme Court under Articles 226 and 32 respectively is the basic structure of the Constitution and is beyond the scope of any amendment.
* Power of judicial superintendence over decisions of all courts and Tribunals within their jurisdiction is also the basic structure of the Constitution.
* Judicial review of legislative action in exercise of power by subordinate judiciary or Tribunals created under ordinary legislation cannot be to the exclusion of the High Courts and the Supreme Court. However, they can perform supplemental – as opposed to substitutional.
* Tribunals constituted under Articles 323A and 323B have the power to test vires of subordinate legislation except that of their parent statutes. All its decisions would be subject to scrutiny before Division Bench of their respective High Courts under Articles 226 and 227. No appeal would lie directly to the Supreme Court under Article 136. The said direction would operative prospectively.
* Appointment of Administrative members need not be paralyzed.
* Until a wholly independent body is set for overseeing the working of the Tribunals, all such Tribunals will be under single nodal ministry whose members would be Ministry of Law.

**Verdict**

Relying on the judgment of **SakinalaHarinath and Ors. v. State of Andra Pradesh**[[14]](#footnote-15)in which Article 323A(2)(d) of the Constitution was declared unconstitutional to the extent it empowers Parliament to exclude the jurisdiction of the High Courts. in addition, Section 28 of the impugnatedAct has also been held to be unconstitutional to the extent it divests the High Courts of jurisdiction under Article 226, in relation to service matters.The Apex Court also held that the Section 28 of The Administrative Tribunals Act, 1985, the “exclusion jurisdiction” of all other laws under the umbrella of Articles 323A and 323B to the extent that exclude the jurisdictions of the traditional judicial systems would be ultra vires to the Constitution.

The jurisdiction of the High Courts and the Supreme Court are a part of the basic structure of the Constitution and are beyond the scope of amendments. The Tribunals play a supplemental role and not a substantive law.

They can also examine the constitutionality of various statutes and rules of their parent Act, subject to certain limitations. The validity of their decisions is subject of scrutiny by a Division Bench of the High Court of the respective barring cases where the constitutionality of the parent Act is challenged, all questions regarding services must be raised only before an administrative tribunal, and writ would lie against an administrative tribunal’s decision to a High Court having jurisdiction over it. An appeal would also lie to the High Court from a tribunal’s decision

A Nodal Agency is to be set up under the Ministry of Law to oversee the work of the Tribunals.

**Tribunals in Other Countries**

In many countries, in addition to general courts, there is a separate system of administrative courts, where the general and administrative systems do not have jurisdiction over each other.

In Europe, The Administrative Tribunal of the Council of Europe (ATCE) is an international administrative court competent to adjudicate complaints of the serving and former staff of the Council of Europe against their employer. The jurisdiction of the Administrative Tribunal has also been recognized by other international organizations.

The parallel system is found in countries like Egypt, Greece, Germany, France, Italy, Portugal, Taiwan and others. In France, Greece, Portugal and Sweden, the system has three levels as the general system, with local courts, appeals courts and a Supreme Administrative Court.

In Finland, Italy, Poland and Taiwan, the system has two levels, where the court of first instance is a regional court. In Germany, the system is more complicated, and courts are more specialized.

In the [United States](https://en.wikipedia.org/wiki/United_States) of America, administrative courts are [tribunals](https://en.wikipedia.org/wiki/Tribunals) within administrative agencies, and are distinct from judicial courts. Decisions of administrative courts can be appealed to a judicial court.

Notably, in 1952, the [Communist](https://en.wikipedia.org/wiki/Communist) [East German government](https://en.wikipedia.org/wiki/East_Germany) abolished the administrative courts as "bourgeois". In 1989, re-establishment of the system began in DDR, but the [German reunification](https://en.wikipedia.org/wiki/German_reunification) made this initiative obsolete.

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