Appeals from Tribunals: (Im)Permissibility and (Un) Desirability of providing Direct Appeals to the Supreme Court+

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Introduction

The Constitution (Forty Second Amendment) Act, 1976, which inserted articles 323A and 323B to provide a framework for establishing tribunals, has ushered in an era of tribunalization of justice in India. Ever since then, the tribunals are actually proliferating in the country. They have become important, though not integral, part of the Indian judicial system. More and more tribunals are being established to exercise judicial powers and adjudicate disputes pertaining to specific subject areas. Tribunalization was sought to be justified on the ground that tribunals provide inexpensive and expeditious justice to aggrieved persons. However, the manner of their creation, composition, the extent of power conferred or jurisdiction vested in them etc., have given rise to several constitutional questions. In a number of cases, the apex court has dealt with them. However, it seems controversies around tribunals refuse to die down in India. One or the other issues keep cropping up. In *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd*.,[1] the Supreme Court of India has directed the Law Commission of India to examine certain questions relating to tribunals and submit a report. One of the important

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[1] (2016) 9 SCC 103.

questions that the Supreme Court asked the Commission to look into was: [2]

> Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time?

The Law Commission had examined the question and reiterated, in its report,[3] the recommendation made by the Supreme Court in *L. Chandra Kumar*[4] that "[E]very order emanating from the Tribunal or its Appellate Forum, wherever it exists, attains finality. Any such order may be challenged by the party aggrieved before the Division Bench of the High Court having territorial jurisdiction over the Tribunal or its Appellate Forum."[5] As the Commission had dealt with many other questions in the report, it does not appear to have paid adequate attention to the specific questions of 'permissibility' and 'advisability' of providing direct appeal to the Supreme Court. It had not examined both aspects holistically in light of the existing constitutional scheme.

The paper examines both the aspects of 'permissibility' and 'advisability' independently and argues, after analyzing the relevant legislative and constitutional provisions that the trend of providing direct appeal to the Supreme Court is leading towards converting the highest court of the land into a regular court of (first) appeal. If the trend

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[2] *Id*. at 43

[3] Law Commission Report, *Assessments of Statutory Frameworks of Tribunals in India*, Report No. 272, (2017)

[4] *L. Chandra Kumar* v. *Union of India* (1997) 3 SCC 261.

[5] *Supra* note 3, at 98.

continues, the apex court may not be well placed to expeditiously discharge its constitutional functions. The paper also highlights an anomaly created by such a practice i.e., a person aggrieved by a decision of any tribunal would have greater access to the Supreme Court than the one aggrieved by a decision of any high court, which is superior to all the tribunals situated within its territorial jurisdiction. The paper argues that it is not only 'impermissible' but also 'undesirable' to provide direct appeal to the Supreme Court.

Position of Tribunals *vis-à-vis* High Courts

Where do tribunals in India stand in the judicial hierarchy is an important question that needs to be addressed at the outset before examining the question of permissibility of direct appeal to the Supreme Court. The pertinent that question that needs to be addressed is in the Indian judicial hierarchy, do tribunals stand at par with high courts or are they subordinate or inferior to them?

In India, though the idea of establishing tribunals to discharge certain adjudicative functions was envisaged in the original Constitution itself, it is the Constitution (Forty Second Amendment) Act, 1976, which laid the strong framework for establishing administrative tribunals by inserting Articles 323A and 323B to the Constitution of India. On a plain reading of 'statement of objects and reasons and the relevant provisions of the Constitution (Forty Second Amendment) Act, 1976, it is abundantly clear that tribunals were intended to be created to 'substitute' high courts as regards dispute concerning certain subject matters. It is an inescapable inference one can draw particularly from Article 323A (2) (d), Article 323B (3) (d) and Article 227 as amended by the aforesaid constitutional amendment. Article 323A (2) (d) and Article 323B (3) (d), explicitly empower the Parliament or the State Legislature, as the case may be, to exclude the jurisdiction of all courts including high courts (but not the jurisdiction of the Supreme Court under Article 136) with respect

to specified matters for adjudication of which tribunals were contemplated to be established.

From the overall scheme, it is evident that Articles 323A and 323B not only permitted conferment on tribunals the powers and jurisdictions being exercised by the high courts but also to exclude the high courts from exercising such powers and jurisdictions with respect to those specified matters. In other words, these provisions contemplated transferring the powers and jurisdictions of high courts to the tribunals to be exclusively exercised by them. As tribunals were conceived to substitute the high courts, Article 227 was also amended to keep them outside the supervisory jurisdiction of the high courts. The idea was to ensure that the tribunals were independent of high courts and equivalent to them as regards adjudication of disputes or complaints with respect to the specified subject areas. As per the intended scheme, their decisions were to be made appealable only before the Supreme Court by exercising jurisdiction under Article 136, which is a discretionary power.

The position of tribunals in the judicial hierarchy got diminished to some extent with the passing of the Constitution (Forty Fourth Amendment) Act, 1978, which restored the supervisory jurisdiction of the High Courts over Tribunals.[6] It is axiomatic to state that subjecting the tribunals to the supervisory jurisdiction of high courts denies tribunals their hierarchical equivalence with high courts. The position of tribunals *vis-à-vis* high courts got diminished almost completely with the invalidation of the aforesaid Articles 323A (2) (d) and 323B (3) (d) of the Constitution by a constitution bench of the Supreme Court in *L. Chandra Kumar*.[7] The court, in the instant case, emphatically declared that the jurisdiction of high courts under Articles 226 and 227 of the Constitution form part of the basic structure and, thus, inviolable. Articles 323A (2) (d) and 323B (3) (d) of the Constitution were invalidated precise for the

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[6] INDIA CONST. art. 227

[7] *Supra* note 4.

reason that they provided for curtailment of the inviolable jurisdiction of the high courts. As a result of invalidation of Article 323A (2) (d), Section 28 of the Administrative Tribunals Act, 1985 (AT Act, 1985) was also invalidated. Section 28 had explicitly excluded the jurisdiction of all courts except the Supreme Court. By virtue of the said provision, high courts were denied their jurisdiction to entertain proceedings "in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post".[8]

With the invalidation of those provisions, the jurisdiction of the high courts under Articles 226 and 227 were restored. The apex court stated in unequivocal terms that the tribunals can be established only to supplement high courts and not to substitute them. Further, the court also opined that the decisions of the tribunals shall be made subject to scrutiny before the division bench of the jurisdictional high court.

The position taken in *L. Chandra Kumar* has, thus, not only defeated the very *raison d' etre* of establishing tribunals but also diminished them in rank. As a result, tribunals became subject to the writ and supervisory jurisdictions of high courts respectively under Articles 226 and 227 of the Constitution of India. Tribunals no longer stand at par with the high courts and are inferior to the high courts in the hierarchy of courts.

Since *L. Chandra Kumar* had obviated the possibility of expressly excluding the jurisdiction of the high courts, the legislative trends indicate that the Parliament, post *L. Chandra Kumar,* seems to have adopted a more subtle strategy to exclude their jurisdictions by providing for direct appeal to the Supreme Court.

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[8] *Id.* at 28.

Direct Appeals to the Supreme Court: Legislative Trends

It is appropriate to clarify here that the practice of providing direct appeal to the Supreme Court from the tribunals or other adjudicative bodies exercising judicial power did not start only after *L. Chandra Kumar*. Even prior to that there were legislations enacted by the Parliament, which provided for a direct appeal from the decisions of tribunals or other adjudicative bodies to the Supreme Court *viz*., Section 38 of the Advocates Act, 196, Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act, 1969) Section 23 of the Consumer Protection Act 1986 (CP Act, 1986) and Section 15-Z of the Securities and Exchange Board of India Act, 1992 (SEBI Act 1992).

The constitutional validity of any of the aforesaid provisions providing for direct appeal to the Supreme Court was never challenged before any court. It may be because, unlike the AT Act, 1985, none of the aforesaid legislations contained explicit provisions ousting the jurisdiction of high courts. In *L. Chandra Kumar*, it is important to note that Section 28 of the AT Act, 1985 was challenged not because it had contemplated appeal to the Supreme Court from the decision of administrative tribunals but because it contained explicit provisions ousting the jurisdiction of all courts including the High Courts. Since the Supreme Court struck down Section 28 of the AT Act, 1985 along with Articles 323A (2) (d) and 323B (3) (d) of the Constitution, the Parliament did not explicitly include provisions identical to Section 28 of the AT Act, 1985 in any of the subsequent legislation enacted for establishment of tribunals. The practice of providing direct appeal to the Supreme Court, however, continued unabated even after *L. Chandra Kumar.*

Without explicitly ousting the jurisdiction of the High Courts, most of the legislations enacted by the Parliament even after *L. Chandra Kumar* provide for direct appeal to the Supreme Court on varied grounds. It would not be an exaggeration to state that the provision providing for direct appeal to the Supreme Court has almost become a salient feature of

every legislation enacted for establishing tribunals to adjudicate disputes pertaining to different subject matters. To illustrate the same, reference may be made to Section 18 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act, 1997); Section 10-GF of the Companies Act, 1956; Section 53T of Competition Act, 2002; Section 125 of the Electricity Act, 2003; Section 30 and Section 31 of the Armed Forces Tribunal Act, 2007 (AFT Act, 2007); Section 22 of the National Green Tribunal Act, 2010 (NGT Act, 2010), and Section 423 of the Companies Act, 2013.

Except for the AT Act, 1985, all the other aforesaid legislations, enacted by the Parliament either before or after *L. Chandra Kumar*, provides for an appeal from the decision or order of the tribunal/ adjudicatory body (in some cases, it is from the decision or order of appellate tribunal constituted under the Act) to the Supreme Court directly without explicitly ousting the jurisdiction of High Courts.

It may also be noted that even though each of these legislations provide for direct appeal to the Supreme Court, the scope and ambit of the appellate jurisdiction conferred on the Supreme Court varies from legislation to legislation. Under Sections 30 (1) and 31 (1) of the AFT Act, 2007 appeals can be filed in two ways: (i) with the leave of the tribunal, wherein it certifies that the decision involves 'a point of law of general public importance', or (ii) without the leave of the tribunal. In the latter case, the apex court can entertain an appeal if it appears to it that the 'point' involved in a case is 'one which ought to be considered by it. As it appears from the text, the 'point' involved need not be 'a point of law' as in the first case. In addition, Section 30 (2) provides for appeal 'to the Supreme Court as of right from any order or decision of the Tribunal in the exercise of its jurisdiction to punish for contempt'. The AFT Act, 2007, thus, permits filing of appeals, in certain cases, to the Supreme Court even though the case does not involve any 'question of law' much less the 'substantial question of law'.

The MRTP Act, 1969, TRAI Act, 1997, Electricity Act, 2003 and NGT Act, 2010 restrict appeals only to cases involving 'substantial

question of law'. These legislations contain identical provisions, which state that appeal can be filed 'on one or more of the grounds specified in section 100 of the Code of Civil Procedure'. The scope of the appellate jurisdiction of the Supreme Court under the SEBI Act, 1992 and the Companies Act, 2013 (also Companies Act, 1956) is larger as they provide appeal to the Supreme Court from the respective adjudicative bodies constituted thereunder on any 'question of law' arising out of decisions or orders of such adjudicative bodies. In this context, it is important to bear in mind the distinctions between 'question of law', 'substantial question of law' and 'substantial question of law of general importance. Every question of law is not a substantial question of law. Similarly, every substantial question of law may not be of general importance. For example, Section 100 of the Code of Civil Procedure allows a second appeal in civil cases only if the case involves a 'substantial question of law'. Under Article 133 of the Constitution of India, an appeal can be filed in the Supreme Court against any judgment, decree or final order passed by the high court in a civil proceeding only if the case involves a 'substantial question of law of general importance.' Understanding the distinctions between these phrases is a prerequisite to elucidate the scope and ambit of appellate jurisdictions of appropriate courts/tribunals. In *SBI* v. *S.N. Goyal*,[9] the Supreme Court made an attempt to distinguish them. It observed:[10]

> The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the *lis* between the parties. 'Substantial questions of law' means not only substantial

[9] (2008) 8 SCC 92.

[10] *Id*. at 13.

questions of law of general importance, but also substantial questions of law arising in a case as between the parties. In the context of Section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this Court (or by the High Court concerned so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this Court (or by the High Court concerned), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the High Court concerned) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this Court (or the High Court concerned) and the same has been followed by the lower court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration,

> alteration, modification or clarification or that there is a need to resolve an apparent conflict between two viewpoints, it can be said that a substantial question of law arises for consideration. There cannot, therefore, be a straightjacket definition as to when a substantial question of law arises in a case.

Indeed, it is true that there are no straightjacket definitions. It is, however, clear that the scope of appellate jurisdiction is larger when the court can entertain an appeal on ‘any question of law’. Allowing appeals only on ‘substantial question of law' limits the scope and allowing appeals only on ‘substantial question of law of general importance' limits it further. One can use three concentric circles to lucidly elucidate their relative scopes.

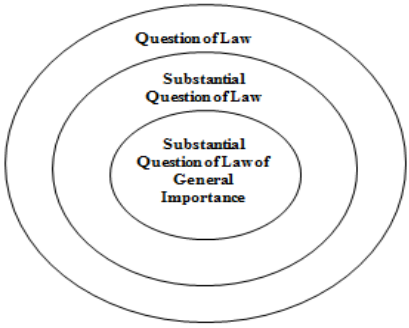

Fig. 1: Representation of relative scope of question of law and substantial question of law.

The larger circle represents jurisdiction to hear appeals on ‘question of law’, the intermediary circle represents jurisdiction to hear appeals on ‘substantial question of law’ and the inner circle represents

jurisdiction to hear appeals on 'substantial question of law of general importance.

It is evident from the above figure that the scope of the appellate jurisdiction of the Supreme Court under SEBI Act, 1992 and Companies Act, 2013 (also Companies Act, 1956) is larger than its jurisdiction under the MRTP Act, 1969; TRAI Act, 1997; Electricity Act, 2003 and NGT Act, 2010. The Advocates Act, 1961; the Competition Act, 2002, and, the CP Act, 2019 (even the CP Act, 1986) confer even larger appellate jurisdiction and allow appeal to the Supreme Court from any decision or order, as the case may be, of the respective adjudicative bodies whether or not the case involves question of law. It is possible to entertain appeals under these provisions on 'mixed question of law and facts' or even on pure 'question of facts'.

As rightly pointed out by the apex court in the referral judgment i.e., *Gujarat Urja Vikas Nigam Ltd.*,[11] many of these legislations provide, routinely, appeal to the Supreme Court even when the case does not involve 'substantial question of law as to the interpretation of the Constitution' or 'substantial question of law of general or national importance.' Though the AFT Act, 2007 refers to 'point of law of general public importance,' it is evident from the discussion above that the appeals under the said Act are not restricted only to such points of law. It seems, in some cases, even questions of fact can also be raised in appeal before the Supreme Court. It is important to note that the decisions of the high courts, which exercise supervisory jurisdiction over tribunals situated within their territorial jurisdictions, cannot be appealed, except under the discretionary power of the Supreme Court under Article 136 of the Constitution, on grounds similar to the ones on which these laws allow the tribunals' decisions to be appealed as a matter of statutory right. This aspect will be discussed later in some detail.

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[11] *Supra* note 1.

In this context, an important question arises whether it is permissible to do so under the scheme of our Constitution? If so, would it be desirable keeping in view the constitutional role assigned to the Supreme Court and the necessity of rendering decisions within a reasonable time? The questions of (im)permissibility and (un)desirability will be dealt with separately in the following two sections.

(Im)permissibility of Providing Direct Appeal to the Supreme Court

It is axiomatic to state that the permissibility of any state action, irrespective of its nature, depends on its conformity with the constitutional framework and provisions. It is, thus, necessary to examine the question of permissibility of providing direct appeal to the Supreme Court in the light of constitutional scheme.

On a careful reading of Articles 323A and 323B, it appears that providing direct appeal, as a matter of right, to the Supreme Court from the decisions of tribunals was, in fact, not contemplated under those provisions. That alone, however, is not a sufficient reason to conclude that it is impermissible to do so. Under the Constitution, the Supreme Court has original, appellate, extraordinary appellate, review, and advisory jurisdictions. In addition, Article 138 empowers the Parliament to enlarge the jurisdiction of the Supreme Court, *inter alia*, with respect to any of the matters in the Union List of Schedule – VII of the Constitution. The power to enlarge the jurisdiction is reinforced by Article 246 read with Entry 77 of the Union List.

The power to enlarge the jurisdiction undoubtedly includes power to enlarge the appellate jurisdiction to hear appeals from any judgment, decree or order of any court or tribunal on any ground(s) broader than the grounds provided under Articles 132, 133 or 134 of the Constitution to hear appeals from the decisions of the high courts. Thus, by relying on Article 138 and Article 246 read with Entry – 77 of the Union List of Schedule – VII of the Constitution, it is plausible to argue that it is

permissible under the Constitution to confer appellate jurisdiction on the apex court to hear appeals from the decisions of the tribunals on any ground. The most important question, however, is – Is it permissible to do so by bypassing the high courts, which have supervisory jurisdictions over tribunals within their respective territorial jurisdictions? Reference may be made, in this context, to certain pertinent and categorical observations made in *L. Chandra Kumar.*[12] The apex court, in its unanimous and single judgment, after declaring that 'the jurisdiction of the High Courts under Articles 226 or 227 cannot wholly be excluded', observed:[13]

> We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In R.K. Jain case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforestated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

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[12] *Supra* note 4.

[13] *Id*. at 91-92.

> We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226 or 227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

It is true that, unlike the legislation that was in question in *L. Chandra Kumar* i.e., the AT Act, 1985, none of the other legislations discussed above expressly provided for ousting the jurisdiction of High Courts under Articles 226 and 227. Further, they do not also leave an option to appeal only under Article 136 of the Constitution as in the case of AT Act, 1985. They provide direct statutory appeal to the Supreme Court from the decisions or orders of the tribunals on different grounds. This would also have the effect of implicitly limiting, if not ousting, the jurisdiction of the high courts under the said provisions. In *Madras Bar Association* v. *Union of India*[14](MBA), the apex court has rightly understood the implications of such provisions on the jurisdiction of high courts under Articles 226 and 227 of the Constitution. It observed:[15]

> We may also simultaneously notice that the power of 'judicial review' vested in the High Courts under Articles

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[14] (2014) 10 SCC 1.

[15] *Id*. at 129.

> 226 and 227 of the Constitution has not been expressly taken away by the NTT Act. During the course of hearing, we had expressed our opinion in respect of the power of 'judicial review' vested in the High Courts under Articles 226 and 227 of the Constitution. In our view, the power stood denuded on account of the fact that Section 24 of the NTT Act vested with an aggrieved party a remedy of appeal against an order passed by NTT directly to the Supreme Court.

Further, the ruling against providing direct appeal to the Supreme Court under Article 136 of the Constitution from the decisions or orders of tribunals apply, logically speaking, in equal force against provisions providing for direct statutory appeals to the Supreme Court also. No doubt, differences exist between the legislation in question in *L. Chandra Kumar* and other legislations but the differences are only in 'form' and not in 'substance'.

Thus, in view of the decision of the Supreme Court in *L. Chandra Kumar*, it is impermissible to provide direct appeal, statutory or under Article 136 of the Constitution, to the Supreme Court from the decisions or orders of the administrative tribunals. There is no gainsaying that providing direct appeal to the Supreme Court implicitly curtails the jurisdiction of high courts. It may, however, be noted that, in *MBA*,[16] the majority had taken a slightly different view on the larger question as to whether adjudicatory functions of the high courts can be transferred to tribunals. They were of the opinion that the adjudicatory functions vested in the high court can be transferred to an alternative court/tribunal, which has all the salient characteristics of the high court and conforms to its standards. In other words, the majority in *MBA* has contemplated setting-up tribunals that can substitute high courts. This view of the majority

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[16] *Supra* note 16.

appears to be apparently inconsistent with the law laid down in *L. Chandra Kumar*, where the larger bench of the Supreme Court unanimously said 'there is no constitutional prohibition against their (tribunals) performing a supplemental – as opposed to a substitutional – role in this respect.' Thus, the court clearly meant that there is a constitutional prohibition against tribunals performing the substitutional role. Hence, it is opined that the aforestated view of the majority in *MBA* needs to be revisited by a bench of appropriate strength.

It is also pertinent to note that if it is constitutionally impermissible to substitute the High Courts or oust their jurisdiction explicitly, the legislation providing for the establishment of tribunals cannot seek to achieve the same ends implicitly by providing for direct (statutory) appeal to the Supreme Court. It would amount to, one may argue, playing fraud on the Constitution.

(Un)desirability of Providing Direct Appeal to the Supreme Court

When it is constitutionally impermissible to provide appeal directly to the Supreme Court from the decisions or orders of the tribunals, the question as to whether it is advisable to do so appears to be inconsequential. It may, however, be important to examine the question of 'desirability' as the question of 'permissibility' depends on the interpretation of constitutional provisions, which might change. If it is really desirable, the Supreme Court may be petitioned to review its decision in *L. Chandra Kumar*.

The question of desirability needs to be examined keeping in view some of the important aspects. The first question being whether the direct appeal to the Supreme Court from the decisions or orders of tribunals, which are proliferating these days, would affect its constitutional role?

The Constitution of India, though federal in nature, has established an integrated judicial system with the Supreme Court at the

apex. As stated previously, the Supreme Court has diverse jurisdictions *viz*., Original (Articles 32, 71 and 131); Appellate (Articles 132, 133 and 134); Residuary Appellate (Article 136); Review (Article 137); Advisory (Article 143); Transfer (Article 139A) and Enquiry (Article 317) jurisdictions.

Though the jurisdiction conferred by the Constitution on the Supreme Court appears to be very wide, it may be noted that each of these jurisdictions is well defined. If appreciated in proper perspective, one can decipher the constitutional role assigned to the Supreme Court. It has the original jurisdiction only in limited matters of great constitutional and federal significance; advisory jurisdiction to advise the President – the highest constitutional authority in the country and power to transfer cases only in limited matters etc. Since it is the highest appellate court of the land, its appellate jurisdiction is also well defined. On an overview of its appellate jurisdiction, it is amply clear that it is not conceived by the framers of the Constitution to be a regular court of appeal in all matters.

The appellate jurisdiction on the Supreme Court is conferred mainly by Articles 132, 133 and 134 of the Constitution. Under Article 132, an appeal can be preferred from any judgment, decree or final order of the high court, made in civil, criminal or other proceedings, only if the high court certifies that a case involves a 'substantial question of law as to the interpretation of the Constitution' and not otherwise. Under Article 133, an appeal shall lie to the Supreme Court from any judgment, decree or final order of the High Court in civil proceedings only if a bench consisting of at least two judges of the high court certifies that 'a case involves a substantial question of law of general importance" and that "in the opinion of the High Court the said question needs to be decided by the Supreme Court.' Article 134 of the Constitution provides for an appeal to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a high court only in three classes of cases:

(i) Cases where the high court on appeal reversed an acquittal and sentenced the accused person to death;[17] or

(ii) Cases where the high court itself, after withdrawing the case from the trial court, conducted the trial, convicted and sentenced the convict to death;[18] or

(iii) Cases where the high court grants the certificate under Article 134A stating that "the case is a fit one for appeal to the Supreme Court."[19]

Thus, except in clause (a) and (b) of Article 134, no appeal can be filed in the Supreme Court without the certification by the high court. It shall be noted that the Supreme Court, in addition to appellate jurisdictions under Articles 132, 133 and 134, also has residuary appellate jurisdiction under Article 136 of the Constitution. It is very wide compared to other provisions in the Constitution dealing with its appellate jurisdiction. Under Article 136, the Supreme Court has the discretion to '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'. Of course, no one can claim to file an appeal under this provision as a matter of right. The Supreme Court has the discretion to grant or refuse special leave to appeal. It has been the stated policy of the apex court to exercise this jurisdiction very sparingly and in exceptional cases only and the court, in several cases, emphasised the need to adopt more or less a uniform standard in granting special leave.[20] Unfortunately, so far no such uniform standard has been laid down. As a

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[17] INDIA CONST. art. 134 (1) (a).

[18] INDIA CONST. art. 134 (1) (b).

[19] INDIA CONST. art. 134 (1) (c).

[20] *Pritam Singh* v. *State*, AIR 1950 SC 169.

result, nowadays, as pointed out by the apex court itself,[21] it has become a common practice to file special leave petitions against all kinds of orders of the high courts or other authorities. More than eighty percent of the cases filed in the Supreme Court are under this provision.[22] It has often been said that unless uniform standards are evolved and adopted to guide the exercise of discretionary power under Article 136 of the Constitution, the caseload on it would increase to a breaking point. Further, if the apex court of the country gets deeply entangled in dealing with regular appeals, it would not be possible for it to effectively discharge its constitutional obligations.

It is in this background that the desirability of providing regular statutory appeal to the Supreme Court from the decisions or orders of every tribunal shall be examined. As per the *Indian Judiciary: Annual Report 2019 - 2020* published by the Supreme Court of India,[23] there are twenty six statutes that provide (statutory) appeal to the Supreme Court of India. Most of them provide appeal from the alternative courts/ tribunals. The data on the number or percentage of statutory appeals filed in the Supreme Court is not readily available. The Annual Report referred to above does not contain such details. In the absence of such data, it is difficult to ascertain the actual increase in workload on the Supreme Court by virtue of such provisions.

However, it can certainly be stated that when the number of appeals filed, with leave of the court under Article 136, is increasing its workload to the breaking point, providing statutory appeal to the Supreme Court as a matter of right would be totally undesirable. An increase in the number of statutory appeals would convert the Supreme Court into a regular court of (first) appeal leaving no time for it to

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[21] *Mathai* v. *George* (2010) 4 SCC 358.

[22] Supreme Court of India, *Indian Judiciary: Annual Report 2019 – 2020*, (July 5, 2021, 2:30 PM) https://main.sci.gov.in/pdf/AnnualReports/28062021_113716.pdf .

[23] *Id.*

discharge earnestly its constitutional duties. One cannot overlook the fact that many important matters, which require the attention of the constitutional benches, are pending for a long time.[24] Some petitions have actually become infructuous even before being taken up for hearing.[25] If these trends continue, it would lead to a situation where the Constitution is "more honored in the breach than in the observance."

Another important aspect to be noted is that even if one considers that the provisions providing direct appeal to the Supreme Court from the decisions of the tribunals may be justified under Article 138 and Article 246 read with Entry 77 of List – I, Schedule – VII of the Constitution, such a practice would lead to an anomaly. A party aggrieved by a decision of any tribunal would have easier access to the Supreme Court than the one aggrieved by a decision of any high court, which is superior to tribunals. To elaborate further, under the Constitution, decisions of the high courts can be appealed in the Supreme Court only if the case involves 'substantial question of law as to the interpretation of this Constitution (Article 132) or "substantial question of law of general importance" (Article 133) or in criminal cases, where the high court itself imposes death penalty in certain scenarios or issues certificate of appeal (Article 134). Even under Articles 132 and 133, no appeal can be filed without the certificate of the high court concerned. As regards the extraordinary appellate jurisdiction of the Supreme Court under Article 136 is concerned, no appeal can be filed thereunder as a matter of right. One needs to seek and obtain the special leave of the Supreme Court in the first place to file an appeal. Decisions of the tribunals, on the other

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[24] Seema Chishti, *'India Needs Closure on These Five Big Cases Pending Before the SC'*, (July 5, 2021, 10:15 AM) https://www.thequint.com/voices/opinion/five-cases-pending-before-the-supreme-court-pendency-caa-electoral-bonds-money-bill-jammu-kashmir .

[25] Apoorva Mandhani, *'With no Constitution bench set up yet, challenges to demonetization now an 'academic exercise'*, (July 5, 2021, 03:20 PM) https://theprint.in/judiciary/with-no-constitution-bench-set-up-yet-challenges-to-demonetisation-now-an-academic-exercise/579203/ .

hand, can be appealed even if the case involves 'substantial question of law' or mere 'question of law' or, in some cases, even on a question of fact. In most cases, no certificate from the tribunal concerned is required to file an appeal. Even the Supreme Court does not have discretion as in the case of Article 136 of the Constitution. An aggrieved person can file an appeal as a matter of statutory right. Appeals from tribunals on such questions would, thus, get precedence over appeals from the judgments of high courts.

There are at least two other aspects that also need to be taken into account while examining the question of the desirability of providing direct statutory appeal to the Supreme Court. One, the possibility of rendering decisions on such appeals within a reasonable time and the *second*, affordability and accessibility of appellate remedy. Having regard to the fact that the number of tribunals created is increasing constantly if direct appeals are provided to the Supreme Court, the possibility of rendering decisions on such appeals within a reasonable time is very bleak. Delay at the appellate level defeats the very objective of establishing tribunals i.e., expeditious adjudication of cases. Further, the remedy provided in the form of statutory appeal directly to the Supreme Court is too costly and inaccessible for it to be real and effective. Under many legislations (which have not provided for the hierarchy of tribunals), the Supreme Court is the first (and also the final) court of appeal. The Supreme Court sits in Delhi and as of today, it has no other benches elsewhere. The difficulty in accessing the Supreme Court has always been an issue of serious concern. Owing to this reason, there have been some discussions, in the recent past, on setting up a National Court of Appeal (NCA) in four zones to hear appeals from high courts. The idea is still being mooted. But it is most unlikely to see the light of the day. Some even feel that the idea itself is ill-conceived. What is pertinent here is that when an alternative is being explored for dealing with appeals from high courts, how appropriate is it to provide direct appeal to the Supreme Court from the decisions of 'tribunals'? If the appeal is

provided only to the Supreme Court, an aggrieved party, without sufficient means, may not be able to avail the only appellate remedy available.[26]

Thus, it is not desirable to provide appeals directly and routinely to the Supreme Court from the decisions or orders of tribunals.

Conclusion

The Supreme Court is the highest court of the land. It is the final interpreter and upholder of the Constitution and the laws. A holistic overview of the constitutional scheme clearly indicates that it was not intended to be a regular court of appeal. Its appellate jurisdiction is well defined. Though it has also been invested with the discretionary power to grant special leave to file appeals from the decisions of any court or tribunal, it was intended to be used very sparingly. It's most important constitutional role includes protecting and upholding fundamental rights of citizens and others, resolving federal disputes, advising the President of India – the highest constitutional authority, and authoritatively interpreting and declaring laws. The apex court will not be well placed to discharge its constitutional functions expeditiously if it is converted into a regular court of appeal to hear, in most cases, the first appeal from the decisions of tribunals. Delay in the adjudication of constitutional questions would, as stated before, gradually lead to a situation where the Constitution is 'more honoured in the breach than in the observance'. Thus, it is important to revisit provisions providing direct appeal, as a matter of right, to the Supreme Court from the decisions of tribunals. It does not, however, mean that the appeals shall be provided to the high courts. That might defeat the very *raison d'etre* of establishing tribunals. What is astonishing about the recommendation of the Law Commission is that even after noting that "[I]f appeals against the decision of Appellate Tribunals are brought before the concerned High Courts in a

[26] *Supra* note 3, as seen in 272nd Law Commission report at 10.6.

routine manner, then the entire purpose of establishing Tribunals will get frustrated",[27] it had finally recommended that decisions of the tribunal may be allowed to be challenged before the division bench of the concerned High Court.[28] It does not solve the problem that is plaguing the Indian judicial system.

It is no one's argument that the decisions of the tribunals shall be made final without provision for any appeal. There must be a provision for at least one appeal. Thus, an alternative mechanism, which is consistent with the overall constitutional scheme and does not defeat the *raison d'etre* of tribunals, shall be evolved for providing appeals from the decisions of tribunals. That might also require revisiting the decision of the Supreme Court in *L. Chandra Kumar*. In view of all the other associated problems, it seems rethinking the entire tribunal system in India is the need of the hour.

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[27] *Id*. at 8.23.

[28] *Supra* note 5.