CHAPTER I

1.1 Introduction

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The study concerns one of the thorny aspects of the Supreme Court’s appellate jurisdiction conferred under article 136 of Constitution. The circumstances under which the Court can exercise extra-ordinary jurisdiction under article 136, is an important aspect of current debate in India.

Supremacy of justice has a wider connotation in socio-legal sphere. It upholds sanctity of the legal system in meting out justice to whoever knocks on its doors. Satyameva Jayate en-captures the essence of visions and ideals of the judicial system in India. Judiciary by punishing the guilty infuses faith in the citizens regarding the supremacy of law and the omnipotence of justice.

Judiciary has important role in interpreting and applying the law and adjudicating upon controversies between citizens, between a citizen and state, between states and between state and Union. The Court has to preserve Rule of Law in the country. It has to safeguard supremacy of the Constitution. India has a unified judicial system with the Supreme Court at the apex.

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1 Article 136 reads thus:
   (1) Notwithstanding anything in this chapter, the Supreme Court may, in its discretion, 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 in the territory of India.
   (2) Nothing in clause (1) shall apply to any judgment, determination, and sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.
   
2 Granville Austin, The Indian Constitution, Cornerstone of a Nation -The Judiciary and the social Revolution (Oxford University Press, 6th imp) p.185.
6 In Chief Settlement Commissioner v. Om Prakash, AIR 1969 SC 33, the Court observed thus: “In our Constitutional system, the central and most characteristic feature is the concept of rule of law which means, in the present context, the authority of law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the matter into notice”.
7 In Re : Shri. S. Mulgaokar v. Date of judgment AIR 1978 SC 727, the court observed thus: “In India, the principle of Supremacy of the Constitution is followed. This means that all public authorities, their orders or law must be in accordance with the Constitution. The Supreme Court, acts as the protector of the Constitution by exercising the power of judicial review. The power of judicial review denotes power of the court to declare null and void orders of the executive and those laws passed by the
On 28th January 1950, two days after India became a sovereign republic the Supreme Court came into being. The Chamber of Princes which had earlier been the seat of the Federal Court of India for twelve years before [1937 to 1950], became the seat of Supreme Court. The Constitution confers very broad jurisdiction on the Court. It is a multi-jurisdictional court and regarded as the most powerful court.

Article 32 and Article 124 to 147 of the Constitution of India lay down the composition and jurisdiction of Supreme Court. The Constitution ensures independence of judges of Supreme Court. The Supreme Court is primarily the last resort and highest appellate court which takes up appeals against judgments of the High Court. It accepts writ petitions in cases of serious human right violations or if a case involves a serious issue that need immediate resolution.

legislature, which violate the Constitution. It should be pointed out that power of judicial review is not expressly granted to the Supreme Court by the Constitution. However the court has derived this power from Article 13(2) through gradual enlargement under theory of implied powers.”

www.supremecourtofindia.nic.in accessed on 17-11-2010. After its inauguration on January 28, 1950, the Supreme Court commenced its sitting in a part of the Parliament house. The Court moved into the present building in 1958. The building shaped to project the image of scales of justice. The Central Wing of the Building is the Centre Beam of the Scales. In 1979, two new Wings- the East Wing and the West Wing- were added to the complex. In all there are 15 Court Rooms in the various wings of the building. The Chief justice’s Court is the largest located in the Centre of the Central Wing.

Right to Constitutional Remedies.

Part V, Chapter IV- The Union Judiciary, Constitution of India.

www.supremecourtofindia.nic.in accessed on 14-12-2010. The Supreme Court of India Comprises the Chief and 28 other Judges appointed by the President of India. Supreme Court judges retire at the age of 65. In order to be appointed as judge, a person must be a citizen of India, and must have been, for at-least five years a judge of a High Court, or an advocate of High Court or of two or more such courts in succession for at-least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for appointment of a judge of High Court as an ad-hoc judge of the Supreme Court to sit and act as Judge of that court.

www.supremecourtofindia.nic.in accessed on 17-12-2010The Constitution seeks to ensure the independence of Supreme Court judges. A judge of the Court cannot be removed from office except by an order of the President passed after an address in each house of Parliament supported by a majority of the total membership of that house and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same session for such removal on the ground of proven misbehavior or incapacity. A person who had been a Judge is debarred from practicing in any court of law or before any other authority in India.

Sakshi v. Union of India, AIR 2004 SC 3566.


M.C Metha v. Union of India, AIR 1987 SC 1086, 1091.
The Supreme Court enjoys three types of jurisdiction:

A. Original jurisdiction\(^\text{17}\) (articles 131 and 32);

B. Appellate jurisdiction\(^\text{18}\) (articles 132-134, 136) and

C. Advisory jurisdiction\(^\text{19}\) (article 143)

Extraordinary appellate jurisdiction of the Court to entertain appeals from courts and tribunals is significant due to its wide discretionary power.\(^\text{20}\) Special leave appellate jurisdiction to hear appeals directly from orders of tribunals makes it unique among appellate courts.\(^\text{21}\) The use of the term ‘tribunal’ in article 136 has an everwidening connotation and makes it a general appellate court in administrative matters. A vast extension of governmental operations occurred in twentieth century. This resulted in disputes needing adjudication which led to creation of various adjudicatory bodies outside the regular judicial hierarchy. Side by side with courts these bodies carry on adjudicatory functions and powers conferred by legislation to adjudicate disputes between individuals \textit{inter se}, or between individuals and administration.

As innumerable adjudicatory bodies function outside the judicial hierarchy it is extremely desirable to constitute a forum to correct misuse of power or procedural irregularities committed by such bodies. In this context the role played by the Court under article 136 is significant\(^\text{22}\). The article empowers the Court to entertain in its

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\(^{17}\) It basically means that a case directly goes to the Supreme Court. It has exclusive original jurisdiction over any dispute between the Government of India and one or more states or between the Government of India and any state or states on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. Article 32 grants original jurisdiction in regard to enforcement of fundamental rights. It is empowered to issue directions, orders, or writs, including writs in the nature of Habeas corpus, mandamus, prohibition, \textit{quo warranto} and \textit{certiorari}.

\(^{18}\) The appellate jurisdiction may be invoked by a certificate granted by High Court under articles 132(1), 133(1) or 134 in respect of any judgment, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretations of the Constitution. The Court can also grant special leave to appeal from a judgment or order under article 136.

\(^{19}\) The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under article 143.


\(^{22}\) See M.P Jain. \textit{Supra} n. 5 at 239.
discretion appeals from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.  

The Constituent Assembly left the matter to the good sense of the Court to define and delineate the province of the jurisdiction. The Court characterized the power as “untrammeled reservoir of power incapable of being confined to definitional bounds; the discretion conferred on the Supreme Court being subjected to only one limitation, that is, the wisdom and good sense of justice of the Judges”. The power to hear appeal is full-fledged on facts, law and discretion. The power may even be exercised with respect to interlocutory orders. The non-obstante clause makes it special by making it unlimitable by other provisions in the chapter.

Notwithstanding the provisions for regular appeals from proceedings before the High Court in articles 132 -134, there may still remain some cases, where justice might require the interference of the Court with decisions not only of the High Court but also of any other court or of tribunal of the land. Accordingly a person aggrieved by any order or judgment may appeal to the Supreme Court by filing special leave petition notwithstanding provisions for regular appeals. The power to grant special leave to appeal from the decision of any court or tribunal save military tribunal is subject only to constitutional limitation.

Special leave may be granted from orders of any court or tribunal even if an appeal lies to the High Court. The jurisdiction conferred on the Court is a plenary jurisdiction in the matter of entertaining and hearing appeals by granting special leave against any kind of the judgment or order made by any court or tribunal in any case or

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23 Literally interpreted, the jurisdiction of the court extends even over the International Court of Justice if it happens to sit in India. The apprehension was raised in the Constituent Assembly by Pandit Thakur Das Bhargava. See Constitutional Assembly Debates Vol. 8, p. 638.
25 Ibid.
26 Article 136 begins with the non obstante clause, viz. “Notwithstanding anything in this chapter” which means all the provisions in Chapter IV, part V of the Constitution.
27 Appellate jurisdiction under articles 132, 133 and 134.
28 Article 132: Appellate jurisdiction of Court in appeals from High Courts where case involves substantial question as to the interpretation of the Constitution.
Article 133: Appellate jurisdiction of Court in appeals from High Courts in regard to civil matters.
Article 134: Appellate jurisdiction of Court in regard to criminal matters.
matter and the jurisdiction may be exercised in spite of other specific provision for appeal contained in the Constitution or other laws.\(^\text{29}\)

The appellate jurisdiction under article 136 is immense and cannot be whittled down by any statutory provision.\(^\text{30}\) Though the Court agrees that appellate jurisdiction under article 136 cannot be whittled down by any statutory provisions, the Court itself has limited the jurisdiction in \textit{L. Chandrakumar v. Union of India}.\(^\text{31}\) The reason for such negation is that an appeal by special leave is too costly and inaccessible and the docket of the Supreme Court is crowded with decisions of tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court.\(^\text{32}\) Thus the Court has overburdened the High Courts with appeals from various tribunals and defeated the very purpose for which the tribunals constituted. The power under article 136 is a basic feature of the Constitution. Such an extensive appellate power in respect of tribunals exists in no other comparable jurisdiction.\(^\text{33}\)

The Constitution under article 136 conferred a full-fledged appellate power on the Court directly from orders of tribunals. Being an appeal from experts to non-experts it is a reversal of administrative ideology. The justifications for the constitution of

\(^{29}\) \textit{Durga Sankar v. Reghuraj}, AIR 1954 SC 520.


\(^{31}\) AIR 1997 SC 1125, In \textit{L. Chandrakumar}, the Court declared cl. 2(d) of article 323A and 3(d) of 323B of the Constitution unconstitutional compelling the aggrieved party to approach the division bench of High Court under articles 226/227 and from there to the Supreme Court under article 136 thus restricting the scope of article 136 to approach the Court directly from the orders of tribunals which was vested in it by the Constitution.

\(^{32}\) \textit{Ibid.} at 1154, Tribunals are special courts and presiding officers are experts in certain jurisdictions. The primary reason for creation of tribunals is the lack of expertise of judges of ordinary courts. On this very reason \textit{L. Chandrakumar} is suspect and ought to be rejected.

\(^{33}\) The Supreme Court of Canada has wide powers, including the power to grant special leave to appeal. But it seems that the jurisdiction as regards tribunals is available only in respect of certain specified categories. See J. Noel Lyon and Ronald G. Atkey (eds.), \textit{Canadian Constitutional Law in A Modern Perspective} (2\textsuperscript{nd} ed., 1970), p. 287. The Privy Council has power to grant special leave to appeal from ‘any judgments, sentences, decrees or orders’ or ‘any court of justice within any British colony or possession’ under section I of Judicial Committee Act, 1844. But its jurisdiction could be taken away by express words or necessary intention in a statute. See \textit{Theberga v. Laudry} (1878) 2 App. Case. 102. Moreover, Privy Council seldom exercises the power. See \textit{Senanayake v. Navaratna}, (1954) 2 All E. R. 805 (election appeal). For the view that special leave to appeal will not be granted from the decision of a statutory tribunal if it was never the intention to create a tribunal with the ordinary incident of appeal to the Crown, See \textit{Halsbury’s laws of England} (1IV edn.) vol. 10, p. 365.
administrative tribunals like in-expertise, delay, cumbersome and costly procedure of the ordinary courts, break down when Constitution confers full appellate power on an ordinary court, however high in status it may be. In this context it has become necessary to analyze the exercise of the jurisdiction while admitting and hearing the appeals directly from tribunals. The study is mainly focused on how such a jurisdiction is exercised by the Court in entertaining appeals from tribunals. This could only be achieved by analyzing the judgments pronounced by the apex court since its inception.

1.2 The Primary object of the study

A study of operational dynamics in respect of the exercise of the jurisdiction over tribunals has been undertaken with certain obvious suggestions. The study, as the theme demands is exclusively confined to direct appeals from tribunals and never examines cases reaching the Court through High Courts. Such a course is necessary because when the Court hears appeals from decisions of High Courts, the power is restricted to that of the High Courts. The enormity of the appellate power in its full amplitude and stature may be observed only in appeals directly from decisions of tribunals. An appeal directly from the order of a tribunal is much different from an appeal from the decision of High Court. In the former case the Court gets an opportunity of analyzing the order of the tribunal to the full extent. The merits of the case can be looked into. The Court can peruse the entire case, even the evidence taken. But in the latter instance the Court will examine the legality of the order passed by the High Court. While hearing an appeal, the appellate court can re-examine both questions of fact as well as of law. It can appreciate evidence for itself on merits and substitute its own findings of fact for those of the lower adjudicatory body. A right of appeal is entirely a creature of a statute. The Supreme Court observed that the appellate power vested in the Court under article 136 of the Constitution was not to be confused with ordinary appellate power exercised by appellate courts and tribunals. It is plenary and exercisable outside the purview of ordinary law, to meet the pressing demands of justice. But after the decision in L. Chandra Kumar the

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35 Arunachalam v. P.S. R. Setha Rathnam, AIR 1979 SC 1284
36 Supra n.31.
Court hears appeals from the judgments of the division bench of the High Court, which means that it examines whether the High Courts decision was correct.

In this study it is necessary to distinguish between ‘judicial review’ and ‘appellate power’. Judicial review is supervisory rather than corrective in nature. Appellate power, on the other hand, denotes a much broader concept. Judicial review is radically different from the system of appeals. While hearing an appeal the court is concerned with the merits of a decision. But in judicial review, the court is concerned with the legality of the order, i.e. whether it is within the limits of the powers granted. In an appeal the question is whether the order is ‘right or wrong and in judicial review whether it is ‘lawful or unlawful’. The rights of appeal are always statutory. Judicial review on the other hand, is the exercise of the courts inherent power to determine whether action is lawful or not. Instead of substituting it’s own decisions for that of some other body, as on appeal, the court on review is concerned only with the question whether the order should be allowed to stand or not.

The study is purely doctrinal. A serious attempt was made to analyze all the reported decisions of the Supreme Court arising directly from the tribunals to find out how often the Court interfered with the verdict of the specialist adjudicatory bodies. For the successful completion of the work a visit was made to the Supreme Court in August 2009. The methods adopted by the Supreme Court Registry for registering special leave petitions and the procedure adopted for admission were examined. The matter was discussed with the Registrar of the Supreme Court. The libraries of the Supreme Court, the Parliament and that of Indian law Institute at New Delhi were accessed for the study.

The research is to identify the post era of extra-ordinary Appellate Jurisdiction of Supreme Court under article 136. The vision of Constituent Assembly and the Supreme Court’s power to interpret article 136 allowing special leave from orders of tribunal and the pros and cons, merits and limitations of the extraordinary jurisdiction, necessity to reform article 136, the impact of L. Chandrakumar and aftermath of the decision were looked into

The entire lay out of the thesis is spread out in eleven chapters. The Introductory Chapter examines the scope and objective of the study. The importance of extraordinary jurisdiction especially while dealing with orders of tribunals is discussed. Admission policy laid down by the Court\textsuperscript{38} and other statutory restraints\textsuperscript{39} is the object of study in Chapter II.

The meaning of ‘tribunal’ under article 136 is analyzed in Chapter III. The Court in its decisions is curious to distinguish a tribunal from court. The special features of tribunals, purpose of formation and functioning are the focus of study in Chapter IV. The intervention of the Court with the decisions of Industrial Tribunal and Labour Court is critically evaluated in Chapter V. Victimization of employee by dragging him to the apex court by the employer who can afford the cumbersome expenses has come across very often. It is interesting to note that in majority of appeals the petitioner happened to be the management or the employer. In Chapter VI appeals directly from administrative tribunals are discussed. The Court though considered the administrative tribunals supplemental to the High Court, the power, infrastructure, independence and dignity provided to them are totally different. By equating them with High Court to entertain writs, they are also treated as court of first instance. The case law from other tribunals like income tax, sales tax, land tribunal, consumer forum, railway tribunal etc is examined in Chapter VII.

The concept of judicial review and jurisdiction to re-decide is analyzed in Chapter VIII. The parliamentary debates, object and reasons for the insertion of articles 343A and 343B which excluded the jurisdiction of all courts except that of Supreme Court under article 136 are also discussed. In Chapter IX two landmark judgments, viz. Sampathkumar and Chandrakumar are critically analyzed to disclose the vagaries of judicial attitude. The decision in L. Chandrakumar has strangulated the jurisdiction of the Court under article 136. At present it can only accommodate appeals from the division bench of the High Court. The enormous power to deal with appeals directly from the tribunal extirpated. The aftermath of L. Chandrakumar is also discussed in Chapter X.

\footnotesize{\textsuperscript{38} Reported Case Law from 1950 onwards. \textsuperscript{39} Supreme Court Rules, 1966.}
the concluding Chapter XI the suggestion of the *Law Commission Report* to re-decide *L. Chandrakumar* is examined. The inferences arrived at in different chapters are summarized and solutions and suggestions are given for the healthy functioning of the tribunals with a minimum interference of the Court under the special leave jurisdiction which is only to redress grave miscarriage of justice.

The study is to explore the new and more complex procedure for the special leave petitions from tribunals and to see whether it protect the constitutional powers of the Court. Previous research evidences exist to identify the power of Supreme Court under article 136. The dissertation highlights the key provisions of the extraordinary Jurisdiction under article 136, the petitions from the tribunal, the judicial interpretations and the new procedure laid down by Supreme Court in *L. Chandrakumar*. The new role of High Court in new dimension, and how far the power given to Supreme Court is curtailed and the difficulties faced by the citizen are also looked into.

In order to study the impact of the current position, various cases decided before *L. Chandrakumar* and after that, various articles, journals, debates etc. were referred. The purpose of the research is to generate insight into the powers of the Court under article 136, in extra-ordinary jurisdiction, the procedural issues, current problems, with the hope that the insight may then be usefully applied to restore the jurisdiction as a corrective one.