CONCLUSION

The Supreme Court has enormous appellate jurisdiction under article 136. This appellate power in its fullest amplitude is visible only in direct appeals from tribunals. A controversy exists regarding the exercise of this jurisdiction after *L.Chandrakumar v. Union of India*¹. The Supreme Court at present does not entertain appeals directly from tribunals. For more than one decade the apex Court is abiding by the self-imposed restriction in entertaining direct appeals from tribunals. It only entertains appeals from the division bench of the High Courts. An order of a tribunal has to pass through an ordinary judicial hierarchy so as to bear fruits. Thus immediate relief which the founding fathers of the constitution intended fails in *toto*. Judiciary may not restrict or limit a jurisdiction conferred by the Constitution especially if it happens to be the basic feature of the Constitution.

The ever increasing pendency of litigation in courts and tribunals across the country has been a matter of concern in the last few decades. Because of the increasing population and also a simultaneous increase in the awareness among citizens regarding legal rights, the pendency in the courts has been increasing. It is natural that pendency of cases in the courts, tribunals as well as High Courts would result in the increasing pendency of cases in the Supreme Court. In such circumstances, it is being suggested that special leave petitions under article 136 should be restricted by proper guidelines. There is also a view that the Supreme Court under article 136 should only concentrate on matters of constitutional importance. Here the question arises as to whether it is legally permissible to do so? Non entertaining of the special leave petition in non-constitutional matters will go against the very spirit of the constitution .These questions are crucial with respect to special leave petitions arising directly from orders of tribunals. It is high time that the matter is properly discussed in public.

The apex court though anxious to do justice in appropriate cases, is aware of the increasing backlog of cases. In many of the situations the Court held that it was never intended to be a regular court of appeal against orders made by courts and tribunals. It

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¹ AIR 1997 SC 1125.
was created as an apex court for the purpose of laying down the law for the entire country and extra ordinary jurisdiction for special leave was conferred under article 136 so that it could interfere whenever it found that law was not correctly enunciated by lower courts or tribunals, and it was necessary to pronounce the correct law on the subject. This extra ordinary jurisdiction could also be availed by the apex court for the purpose of correcting grave miscarriage of justice, but such cases would be exceptional by its very nature.

A critical evaluation of the case law directly from orders of tribunals under special leave jurisdiction testifies that the policies and guidelines laid down by the Court are often not followed. Exercise of wide discretionary power varies from one judge to another or from one case to another without any uniform pattern.² A strict observance could only save the Court from alarming backlog of cases and serve the purpose for which the tribunals are constituted. The justifications for the constitution of administrative tribunals like in expertise, delay, cumbersome and costly procedure of ordinary courts are broken down by permitting to entertain special leave appeals in exercise of wide discretionary powers. Articles 323A and 323B empower the Parliament to constitute tribunals for speedy and expert disposal of disputes relating to matters of public importance, such as public service, taxation, foreign exchange and customs, labour, land reforms, urban land ceiling, election and supply of essential commodities.

Statutes constituting tribunals are helpless to limit the special leave appeal jurisdiction. Devices such as providing that orders passed under it are final are not helpful in this respect. It would abrogate a constitutional mandate³. The exercise of the power of the Supreme Court is not circumscribed by any limitation as to who may invoke it. Where a judgment of acquittal by the High Court has led to serious miscarriage of justice, the Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the state has invoked the Courts jurisdiction⁴.

The tendency of the Court to interfere with the orders of tribunals without adherence to basic norms affects the smooth functioning of administrative adjudication. The

² See supra Chapter II, para 2.6 and 2.7
³ Ibid. para 2.8
⁴ Ibid. para 2.7.1.
jurisdiction should be tailored in a befitting manner to achieve the goal of constituting tribunals. The study shows that Court has often tried to correct jurisdictional errors of industrial tribunals. Such interference often facilitates victimization by employer. Such victimization by employer occurs by dragging employees to the Supreme Court. The entertainment of such appeals at the instance of employers often results in abuse of judicial process. Moreover, excessive interference disrupts the very objective of industrial adjudication. The welfare of employees brings industrial harmony resulting in industrial growth. It should be the policy of the Court to interfere with industrial disputes when their rights are violated. Some instances show that the employee is rewarded towards the fag end of the life and even reinstatement orders are passed long after the retirement.

Appeals from tribunals should lie to appellate tribunals and from there to a national tribunal constituted with experts. Apex Court should not entertain appeals on the notion that its wisdom cannot be wrong. The apex court also commits error, but since there is no further appeal, what the apex court says is final. Thus finality of a decision is not a attribute of wisdom or correctness. Hence it is better to constitute a national tribunal for appeals which would be in a position to entertain appeals from of various appellate tribunals in the country, and the apex court should concern itself with cases involving manifest injustice only. When the law regarding a matter is laid down by the apex court, any further interference in the matter is not warranted. The Supreme Court was not meant for correcting injustice in individual cases. Experience shows that any self-imposed restrictions placed as fetters on discretionary power have not hindered the Court from leaping into resolution of individual controversies. The conscience of the Court may prick it or its heart bleed for imparting justice or undoing injustice. But such ventures will only result in docket explosion, and the delay causing problems of denial of justice.

Justices Markandey Katju and R.M. Lodha in Mathai @ Joby v. George opined that it had become a practice of filing special leave petitions against all kinds of orders of High Courts or other authorities without realizing the scope of article 136. According to

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5 See supra Chapter v, para 5.1
6 See supra Chapter v para 5.3
7 See supra Chapter II, para 2.6, See also K.K. Venugopal, a senior Advocate, in R.K. Jain Memorial Lecture, Towards a Holistic Restructuring of the Supreme Court of India on 30-1-2010. www.hindu.com accessed on 25-03-2010.
the learned justices, ordinarily the apex court was meant to deal with important issues like constitutional questions, questions of law of general importance or grave injustice. In the year 1997 there were only 19,000 pending cases in the court but now there are over 55,000 pending cases and in a few years the pendency will cross one lakh cases. In 2009 almost 70,000 cases were filed in this court of which an overwhelming number were special leave petitions under article 136. Inspite, US Supreme Court has to hear only about 100-120 cases every year and the Canadian Supreme Court hears only 60 cases per year. Further such an approach may lead to reasonable complaint that the Court acts as speed breaker in the area of administrative adjudications.\(^8\)

In this connection Paul Freund has set out the opinion of Mr. Justice Brandeis’s, the celebrated judge of US Supreme Court in the following words:

> he was a firm believer in limiting the jurisdiction of the Supreme Court on every front as he would not be seduced by the quixotic temptation to right every fancied wrong which was paraded before him. Husbanding his time and energies as if the next day were to be his last, he steeled himself, like a scientist in the service of man, against the enervating distraction of the countless tragedies he was not mend to relive. The only way found practicable or acceptable in this country for keeping the volume of cases with in the capacity of a court of last resort is to allow the intermediate courts of appeal finally to settle all cases that are of consequence only to party. These reserves to the court of last resort only questions on which lower courts are in conflict or those of general importance to the law.\(^9\)

Supreme Court referred the matter to a constitutional bench to decide what were the kind of cases in which discretion under article 136 should be exercised.\(^10\)

Though, as per the various judgments of the apex court pronounced from time to time the scope of interference under article 136 of the constitution is very limited, the Supreme Court had a very practical approach in certain decisions, since this power is a positive

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\(^8\) Ibid.
\(^10\) Supra n. 7.
power and not a negative one. The learned judges of the Supreme Court were right in holding that technicalities should not come in the way of imparting justice or in preventing miscarriage of justice. The courts are meant for doing justice, and if that is not done by the court administration of justice will suffer. It is the duty of the apex court to do justice and to ensure that injustice done by the courts below is corrected\textsuperscript{11}.

The cases discussed throughout the work\textsuperscript{12} show how a sense of liberality triggered the growth of appeals resulting in a situation compelling a rethinking on the continued existence of the jurisdiction. In order to avoid such grave situation the Court should only admit under article 136 a dispute where conflicting decisions of different High Courts or tribunals exist. If there is no specific law covering the situation is available, it is always better to have a pronouncement in the matter by the Court. In such situation judicial legislation could only obviate chances of future conflicts.

In a constitutional context it is imperative that the Court should exercise the jurisdiction with extreme caution so as to maintain the balance between the two different systems of adjudications, namely adjudication by the tribunals as well as the ordinary Courts. Hence the Supreme Court should make sure that the presence of article 136, the most powerful judicial instrument, should be made known more by its mere presence than by its actual exercise.

According to the law commission\textsuperscript{13} the reasons for which administrative tribunals were constituted still persists. In respect of grave concern with the increasing tendency of litigation before the High Courts, the theory of alternative institutional mechanisms has also been propounded to defend the establishment of administrative tribunals. These administrative tribunals are expected to function as a viable substitute for the High Courts. Taking into account the excellent rate of disposal of cases, the parliamentary standing committee found no coherent reason to favour the abolition of administrative tribunals. The committee noted that the record of disposal of cases of administrative tribunals has been excellent as compared to that of subordinate courts and High Courts.

\[11\text{ See Chapter II para 2.6.}\]
\[12\text{ Appeals directly from industrial, labour and administrative tribunals as discussed in Part II - Chapter V, VI, VII.}\]
\[13\text{ See Chapter X.}\]
The committee unanimously opined that if an appeal is to be provided, it should be provided to the Supreme Court only.

The purpose of formation of tribunals will best be served by restructuring it with hierarchy of appellate tribunals with a National Tribunal at the apex. In order to reduce the mounting arrears of the Supreme Court it is suggested that a National Tribunal is required at the apex of the various specialized tribunals. This would help to achieve uniformity in diversified opinions of various appellate tribunals and High Courts. The systematic study of decisions of the Supreme Court under article 136 directly from tribunals suggests that the following categories of issues should only be entertained under its extraordinary jurisdiction for a better administrative adjudication.

1. Matters involving constitutional interpretation.
2. Matters of public importance.
3. Uniformity in the decisions of High Courts and various appellate tribunals.
4. When there is a grave violation of fundamental rights.

Strict compliance of the guidelines will inculcate confidence in the litigants and that will help to elevate the dignity of the apex court to its maximum.

14 Ibid.