Chapter II

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It is proposed in this chapter to explain the Theory of the Jurisdictional Principle invoked by the Court for controlling the action of administrative authorities. In view of the complicated and controversial issues evolved in this theory, we are set forth at the outset the caution that

"The lines which discriminate jurisdictions are fine, but they are clear and distinct and if they are once effaced, endless and inextricable confusion must be the consequence".1

Keeping this in view, an attempt has been made in this Chapter, first, to discuss the role of the Court in keeping the administrative authorities within the statutory limits; secondly, to explain the concept of jurisdiction and thirdly, to set forth the Pure theory of Jurisdiction.

In discussing controversial issues, the English law, which forms the basis of Indian Administrative Law, is first discussed. Against the background of English law, the view of Indian courts are examined. Being a comparative study, overlapping of discussion may to some extent be inevitable. Due care has been taken, however, to avoid needless repetition.

Historical background of the Role of Court

The significant characteristic of the Anglo-Saxon Legal System

1) Quoted from Rubinstein : Jurisdiction and Illegality 1965 P. 194
is the supervisory power of the ordinary courts of law over public authorities. This has been established since the judgement of Lord Chief Justice Holt in Groenvelt v. Lurwell.\textsuperscript{1} This is a vital function of the judiciary.

The seventeenth century gave shape to the institution of judicial review of executive action. The theory of judicial review was part of one system of ideas which Coke called into being to curb the expanding power or an encroaching temper of the executive. The judicial power suffered a set-back for a time; but in the forties the judges began working once more on the problem. At the end of the seventeenth century Chief Justice Holt in the case of Government v. Lurwell and the Cardiff Bridge\textsuperscript{1} case, affirmed the role of the ordinary court in controlling subordinate authorities. From the role thus assumed by the courts it follows that it is for the court to determine the legal limits of the statutory powers entrusted to various authorities and to keep them within those limits.

Judicial review is exercised through prerogative writs and the action for damages. An attempt has been made here to discuss the former only. In tracing the growth of the writ remedies in the context of jurisdictional limitation we will find that a number of cases deal in one way or other with the activities of administrative authority. The common basis of the writ remedies is that the superior courts exercise an inherent jurisdiction to supervise the proceedings of tribunals and administrative

\textsuperscript{1) Jaffee & Henderson : 'Judicial Review and the Rule of Law', (1956) 72 L.Q.R. 348}
authorities. The supervisory court should scrutinise the legality of action taken by the subordinate authority. In 1643 the prerogative courts were abolished and a new chapter was opened. We find that the judges of King's Bench in the case of *Commins v. Nassam* were reasserting their power over the authorities not in the light of damages but in terms of certiorari.

Judicial review developed in terms of want of jurisdiction during the seventeenth century. The emphasis of the theory was on the concept of jurisdiction. We find that the doctrine of jurisdictional principle is interpreted in different ways. Thus, according to the classical theory of the eighteenth century and later, a man might be aggrieved by the action that was clearly illegal, but he was unable to challenge it in the court because the issue was not considered as jurisdictional. It has been rightly pointed out by Prof. de Smith

"Neither in magisterial law nor in Administrative Law have the superior courts applied a consistent theory of jurisdiction. In general they have refused to accept the doctrine that, whenever an inferior tribunal has jurisdiction to inquire into a matter for the purpose of giving a decision, its findings thereon, whether they be right or wrong, are conclusive; but it cannot be said that they have ever definitely rejected this doctrine. In order to maintain an effective supervisory jurisdiction they have distinguished between preliminary or collateral questions and questions going to the merits; they have generally given a broad interpretation to the meaning of a preliminary or collateral question, and they have been reluctant to conclude that an inferior tribunal has been empowered finally to determine such a question. In some cases they have virtually disregarded the analytical distinction between preliminary or collateral questions and questions going to the merits, and have been content to hold that a tribunal acts ultra vires, or exceeds its jurisdiction, by applying a wrong"

legal test or by taking irrelevant considerations into account in determining questions before it. A tribunal which has ignored relevant considerations may be held to have refused the jurisdiction by purporting to exercise a jurisdiction that it did not possess. And it has been asserted that if a tribunal were to make a palpable error, the courts would have power to interfere on the ground that it could be assumed that the tribunal had mistaken or misused its powers. There is no warrant of modern authority to draw upon when a court is inclined to hold that an erroneous finding by a statutory tribunal goes to jurisdiction. But although the courts are usually prepared to set aside decisions which in their opinion are wrong, and to justify their intervention on jurisdictional grounds it would be incorrect to say that the scope of jurisdictional control is exactly co-extensive with the powers of review that a court thinks it desirable to exercise in any particular case.²

This confused state of affairs arose because in the seventeenth century, in the early days of judicial review, the courts were inclined to take the view that every question of statutory construction was jurisdictional.

Until the early nineteenth century the court seemed to find that almost any error made by an authority related to the limits of its jurisdiction and therefore rendered its decision ultra vires. Then the judicial attitude changed and a very narrow approach to jurisdictional principle was taken in a number of cases,² by this new approach under the "Pure theory of Jurisdiction", the question whether a body has jurisdiction is determined "on the commencement, not at the conclusion, of the inquiry". So that if an enquiry is undertaken by the persons authorised, and is of the nature or kind authorised, the tribunal concerned must be found to have acted

2) Britian V. Kinnaird (1819) 1 E. & B. 432 A V. Bolton (1841) 1 E. & B. 66.
within its jurisdiction. According to this view if a tribunal has jurisdiction to enter upon an inquiry, error committed in the course of that inquiry will not deprive it of jurisdiction.

The concept of jurisdiction

At this stage, it is necessary to see the meaning of jurisdiction and its limits. Jurisdiction means the power of a court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it. In other words, by jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. Many cases attempted to define the term 'jurisdiction' which has been stated to be the power to hear and determine issues of law and fact, the power or authority which is conferred by legislature to hear and determine cases between parties and to carry the judgement into effect, the power to enquire into the facts, to apply the law, to pronounce the judgement and to carry it into execution. This jurisdiction of the court may be qualified or restricted by a variety of circumstances. Thus jurisdiction may have to be considered with reference to place, value and nature of subject matter. The power of a tribunal may be exercised within defined territorial limits. Its cognisance may be restricted to subject matters of prescribed value. It may be competent to deal with controversies of a specified character; for instance, matters testamentary, acquisition of land for a public purpose etc. This is of a fundamental character. If these conditions are not complied with the
determination is a nullity. The person authorised to decide
must form an opinion whether each of these is complied with, in
order to embark on and to proceed with the inquiry and to make
the determination. As Lord Wilberforce observed that

"In every case the tribunal has a derived authority,
derived, that is, from statute. The field within
which the tribunal acts is marked out and limited.
There are certain fundamental assumptions which
necessarily underlie the remission of power to decide,
such as the requirement that a decision must be made
in accordance with the principles of natural justice.
The principle that failure to fulfil these assumptions
may be equivalent to a departure from the remitted area".

A statute gives power or jurisdiction to determine whether a
described situation exists. It is to be distinguished from an
additional authority which is often conferred on the same person.
Once jurisdiction or authority is given by a statute, to exercise
it is incident to it. Any error committed in the exercise of the
authority does not amount to error of jurisdiction. It is error
within jurisdiction. This view is taken in R.V. Bolton and
strongly advocated by D.M. Gordon; and it will be critically
examined in Chapter - III.

As pointed out earlier, jurisdiction means authority to
determine the issue presented to the tribunal by the parties.
A determination made pursuant to such statutory authority is
thus a statement made by a person to whose opinion effect will
be given that a situation of the kind described in the statute
exists. A construction of a statute is always a matter of law.

1) Avisminic Ltd. v. Foreign Compensation Commission (1969) 1
All E.R. 208 at F.243 (H.L.)
The determination will always be or include a statement of legal consequences of particular facts which in the opinion of maker of the statement exist. Authority to make such a determination thus always includes authority to decide some question of law. The question of law i.e. application of law to fact is incidental to their jurisdiction to determine whether a claim made in an application is established or not. Any error in the application of law is an error within the jurisdiction and not subject to review. In *Davis v. Price* Parker L.J. observed that an error by the inferior tribunal in construing the statutory description of the matters on which it was to be satisfied was an error within the jurisdiction and could not be corrected by the High Court if it disagreed with that construction.

In every statute the jurisdiction of a tribunal is made dependent or subject to some conditions. Parliament may enact that, if a certain fact exists, then there will be jurisdiction. If, in such a case, it appears that fact did not exist, then it follows that there would be no jurisdiction. Sometimes a tribunal might undertake the task of considering whether the state of affairs existed. If it makes an error in that task such error would be regarded as a matter preliminary to the existence of jurisdiction. It would not be an error within the limited jurisdiction intended to be conferred. This is the basis of the distinction between the existence of jurisdiction and exercise of jurisdiction. One must be very careful about the distinction.

between existence and exercise of jurisdiction for fundamentally different are the consequences of failure to comply with statutory requirements in the assumption and in the exercise of jurisdiction. The authority to decide a case at all and not the decision rendered therein is what makes up jurisdiction. When there is jurisdiction over the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. The extent to which the conditions essential for creating and raising the jurisdiction of a court or the restraints attaching to the mode of exercise of that jurisdiction, should be included in the conception of jurisdiction.

Since jurisdiction is the power to hear and determine, it does not depend either on the regularity of the exercise of that power or upon the correctness of the decision. The power to decide necessarily carries with it the power to decide wrongly as well as rightly. In *R v. Bolton* it has been stated that truth or untruth of a complaint does not affect jurisdiction to investigate and decide on it. The view that jurisdiction is entirely independent of the manner of its exercise and involves the power to decide either way upon the facts presented to the court is well founded on principle. No doubt there is a clear distinction between the jurisdiction of the court to try and determine a matter, and erroneous action of such court in the exercise of that jurisdiction. The former

1) (1941) I.Q.B. P. 66
involves the power to act at all, while the latter involves the authority to act in the particular way in which the court does act. The boundary between an error of judgement and the usurpa-
tion of power is this: The former is reversible only by an appel-
late court, where an appeal lies and is therefore only voidable; So far as the jurisdiction itself is concerned, it is wholly
immaterial whether the decision upon the particular question be
correct or incorrect. Thus when jurisdiction exists in any case,
all that follows is the exercise of jurisdiction and continuance
of jurisdiction is not dependent upon the correctness of the
determination. The finding by a competent authority, that cer-
tain facts exist is "conclusive" as to their existence. ¹

According to Griffith and Street,²

"properly defined, jurisdiction is the marking off
of the area of power: Something ascertainable at
the outset of process, the conditions on which the
right of a body to act depends". These conditions
may be founded either on the character and constitu-
tion of the tribunal, or upon the nature of the sub-
ject matter of the inquiry or upon certain proceed-
ing which have been made essential preliminaries to
the inquiry"

The whole problem has been to determine what are those
preliminary conditions. What are the limits of the jurisdic-
tional principle. The debate is still raging between two
theories, viz. "the conditional jurisdictional theory" and
"the pure jurisdictional theory".

The jurists would regard errors as to the character and
constitution of the tribunal, the subject-matter of inquiry, and

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1) Brittain v. Kinnaird (1919) 1 B & B 432
   R v. Net Bell Liquors Ltd. (1922) 2 A.C. 128
2) Griffith & Street: Principles of Administrative Law
   4th Edn. 1970, P. 216
certain essential preliminary proceedings as the sole 'facts' reviewable by a writ or court.

The conditionalists would maintain in practice that in addition, error as to the truth or falseness of the facts inquired into, the correctness of finding on these facts as well as the amount of evidence given on these facts would be reviewable.

The jurists would object that in these cases corrections can be made only when there is a provision for appeal.

But the conditionalists classify these facts as 'jurisdictional' i.e. going to jurisdiction.

It is generally supposed that the conditionalist theory is a pure invention of the courts of the Nineteenth Century as a substitute for the withdrawal of the writ of error of fact. There is an element of truth in it. The question arises whether the jurisdiction of a tribunal is to be determined at the commencement of the proceeding (i.e. at the outset) or at the conclusion of the inquiry. This creates a great confusion in drawing a distinction between want of jurisdiction and excess of jurisdiction. Thus when a tribunal has been given the power to decide a case and its jurisdiction depends upon place, subject-matter etc., any non-compliance with it will amount to want of jurisdiction.

When the tribunal fulfills all conditions for the exercise of its jurisdiction laid down by the statute but commits an error in the exercise of power, then it will amount to excess of jurisdiction.
From this viewpoint, the two theories of jurisdiction are advanced in order to determine the jurisdiction of inferior authority. The basis of the pure theory of jurisdiction is that the jurisdiction of an inferior tribunal must be determined at the commencement of the proceeding and not at the conclusion of inquiry. According to D.N. Gordon, 'the fact in absolute' is the backbone of the Pure Theory of Jurisdiction which accepts want of jurisdiction as a ground for judicial review. D.N. Gordon is referring the term 'Fact in absolute' in the context of existence of jurisdiction i.e., initial jurisdiction given at the outset. According to him, once the jurisdiction is given under the statute to the authority, an exercise of it is incidental to it. And any error committed in the exercise of this initial jurisdiction is not reviewable. It is an error within the jurisdiction of the inferior authority and hence not subject to the judicial review.

The foundation of the Jurisdictional Fact theory is that when findings of facts of the inferior tribunal depend upon the decision of a collateral fact and if such decision is wrong, the assumption of jurisdiction by a wrong decision on such collateral facts would amount to excess of jurisdiction. And such decision would be ultra vires of the statute confirming the power. This theory is discussed in Chapter 11.

The supervision of courts goes to two points:

1) the area of inferior jurisdiction and qualifications and conditions of its exercise.

2) The observance of the law in the course of its exercise.\(^1\)

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1) R v. Not Bell Liquors Ltd. (1922) 2 A.C. 122 at p.156
The question is how to define the scope of inferior court's jurisdiction. Is it at the outset of inquiry or during the proceeding of inquiry?

The Pure Theory of Jurisdiction

If the meaning of jurisdiction is taken as an entitlement 'to enter upon the inquiry in question' then any subsequent error could only be regarded as an error within the jurisdiction. This view had currency in the Nineteenth Century cases and its formulation is to be found in the statement of Lord Denman, J, in *R v. Bolton* where he said that 'the question of jurisdiction is determinable at the commencement of, not at the conclusion of inquiry'. For example a tribunal could begin an inquiry which was within its power to undertake but it exceeds its limit during the course of its exercise of power. According to theory of jurisdiction involved in *R v. Bolton*, it means that such errors are within the jurisdiction of the tribunal. D.N. Gordon calls this theory the Pure Theory of Jurisdiction.

The Pure Theory of Jurisdiction is defined by Dr. de Smith in the following words.

"Jurisdiction means authority to decide. Whenever a judicial tribunal is empowered or required to

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1) *R v. Bolton* (1941) 1 Q.B. 66
2) D.N. Gordon: The Relation of Fact to Jurisdiction (1929) 46 L.Q.R. 269
   Observance of Law as a condition of Jurisdiction (1931) 47 L.Q.R. 286, 351.
   The Redemption Commission *v. Guyne* (1944) 60 L.Q.R. 250
inquire into a question of fact or law for the purpose for the purpose of giving a decision on it, its find-
ings therein cannot be impeached collaterally or on application for certiorari but are binding until reversed on appeal. "Where a court has jurisdiction to entertain an application, it does not lose its jurisdiction by coming to a wrong conclusion, whether it was wrong in law or in fact." It does not lose its jurisdiction even if its conclusion on any aspect of its proper field of inquiry is entirely without evi-
dential support." The question whether a tribunal has jurisdiction depends not on the truth or false-
hood of the facts into which it has to inquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinable "at the commencement, not at the conclusion, of the inquiry." Thus, a tribunal empowered to determine claims for compensation for loss of office has jurisdiction to determine all questions of law and fact relating to the measure of compensation and the tenure of the office, and it does not exceed its jurisdiction by determining any of those questions incorrectly; but it has no implied jurisdiction to entertain a claim for reinstatement or damages for wrongful dismissal, and it will exceed its jurisdiction if it makes an order in such terms, for it has no legal power to give any decision whatsoever on those matters. A tribunal may also lack jurisdiction if it is im-
properly constituted, or (possibly) if it fails to observe certain essential preliminaries to the inquiry, but it does not exceed its jurisdiction by basing its decision upon an incorrect determina-
tion of any question that it is empowered or required (i.e. has jurisdiction) to determine." 1

1) Dr. S.A. de Smith : Judicial Review of Administrative Action, (1973) 3rd Edn. P.96-7

Here one can see the identical definition by Prof. Sower. He agrees with Dr. de Smith's "Pure Theory of Jurisdiction" which is also affirmed by Gorden. Prof. Sower says,

"But the common law judges have never accepted so restricted a concept, and it is plain enough that the question is at bottom one of policy, not of logic. Jurisdiction fails to be defined here in
order to delimit the function of superior courts when controlling inferior courts; in its broadest statement, keeping the inferior tribunal within its "jurisdiction" may be equated with compelling the inferior tribunal to observe 'the law', i.e., what the superior tribunal considers the law to be. The objection to so wide a concept is not logical, but practical; it is generally desired, for reasons of expediency, to give the inferior court's decision some degree of finality, or as is often said, some jurisdiction to go wrong. But it is almost never the case that the sovereign power is content to define only the nature of the dispute which the tribunal is to decide on the threshold question. It usually requires also that the tribunal shall be restricted to solutions arrived at within a certain range, by reference to certain standards of judgment, or for certain purposes. The limits of the control to be exercised can vary in many ways, and whether you choose to describe the types of limitation separately or include them all within the term 'jurisdiction' is a semantic, not a logical problem.

In 

In 

In the justices had made an order for possession of a 'parish house'. The affidavit on which Mr. Bolton sought to rely before the Court of Queen's Bench, and which that court held to be inadmissible, stated "that he had not occupied the house as a pauper, but had paid parish rates in respect of it, and done repairs; that he had not been chargeable to the parish during the time of his occupation; and that he had, during that time, served the office of head of the borough; it also contained statements throwing doubt upon the title of the parish, and tending to discredit some of the evidence given before the justices". Lord Denman, C.J., in delivering the judgement of the court, said:

1) Prof. Sayer: Error in law on the face of an Administrative Record: 3 Uni. of W. Aus. Rev. P.24 at P.34,45.
"Two points were made in support of the order; the first, that 
the proceedings being all regular on the face of them, and dis-
closing a case within the jurisdiction of the magistrates, this 
court could not look at affidavits for the purpose of impeaching 
their decision; the second, that, even if those affidavits were 
looked at, the case would be found to be one of conflicting 
evidence, in which there was much to support the conclusion to 
which the magistrate had come. Now to receive affidavits for 
the purpose of showing this is clearly in effect to show that 
the magistrate's decision was wrong if he affirms the charge, 
and not to show that he acted without jurisdiction; for they 
would admit that, in every stage of enquiry up to the conclu-
sion, he could not have given a binding judgement, and barred 
another proceeding for the same offence. Upon principle, there-
fore, affidavits cannot be received under such circumstances. 
The question of jurisdiction does not depend on the truth or 
 falseness of the charge, but upon its nature: it is determinable 
on the commencement, not at the conclusion, of the enquiry; and 
 affidavits, to be receivable, must be directed to what appears 
at the former stage, and not the facts disclosed in the progress 
of the inquiry."

The Pure Theory of Jurisdiction advocated by Gordon accept 
that the conditional jurisdiction and jurisdictional fact are 
not valid concept. The Pure Theory of Jurisdiction follows only 
"Fact in absolute". The Pure Theory of Jurisdiction allows the 
existence of only one jurisdictional question: was the tribunal 
the right one? Gordon says that there is no logical way to
distinguish so called jurisdictional issues from issues "going to merits". My attempt to distinguish between merit and preliminary fact is irrational, arbitrary, and illogical.¹

Lord Sumner in the King v. Nat. Bell Liquors Ltd.² express the above view. He said, "to say that there is no jurisdiction to convict without evidence is the same things as saying that there is jurisdiction if the decision is right, and none if it is wrong".

In Armah's case³ before the House of Lords, Imbens Coryns was sought for the fugitive offender on the ground that the evidence produced by the Government of Ghana did not satisfy the test of raising a "strong or probable presumption" of guilt within the meaning of the Fugitive Offenders Act, 1881. Lord Reid, however, pointed out that "Jurisdiction has nothing to do with this matter. If a magistrate or any other tribunal has jurisdiction to enter on the enquiry and to decide a particular issue, and there is no irregularity in the procedure, he does not destroy his jurisdiction by reaching a wrong decision. If he has jurisdiction to go right he has jurisdiction to go wrong. Neither an error in fact nor an error in law will destroy his jurisdiction".

The jurisdictional principle, therefore, grants a tribunal the liberty to decide wrongly, as well as rightly, within the sphere of its jurisdiction. It is inherent in every discretionary

¹) de Smith : P. 96-100  
²) (1922) 2 A.C. 128  
³) R v. Governor of Brixton Prison, Ex-Parte Armah (1968) A.C. 192
power that it includes the power to make mistakes. A statement as to the extent of a tribunal's immunity, acting intra vires appears in Halsbury's Law of England.¹

"Where the proceedings are regular on their face and the inferior tribunal and jurisdiction, the superior court will not grant the order of certiorari on the ground that the inferior tribunal and jurisdiction to decide a matter, it cannot (merely because it incidentally misconstrues a statute, or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence, or convicts without evidence) be deemed to exceed or abuse its jurisdiction."

"The reason is that if Parliament has chosen to make the lower tribunal or body the absolute judges of the matter before it and to give no appeal, this court cannot interfere in a matter regarding which the lower court has been clothed with jurisdiction by Parliament."

In the absence of appeal provision in the statute the possibility of judicial review hinges on the question whether there can be an excess of jurisdiction. Absence of evidence and insufficiency, thereof do not constitute want of jurisdiction.

Prof. H.W. R. Wade says "it is sometimes said that the only logical way of escape from the problem of deciding whether any question is "jurisdictional" is to be found in the theory of jurisdiction. According to this, an authority or tribunal ought to have jurisdiction to determine conclusively any question which is a necessary element in its final decision."³

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² Per Lord Goddard in R v. Ludov (1947) K.B. 634 at 639
³ H.W.R. Wade: Administrative Law, 3rd Edn. 1971, p. 92

Prof. Wade says neither Dr. de Smith nor Dr. Abbelein advocated the theory. See D.M. Gordon L.Q.R. (1960) p. 76 says that it need not be inferred that this present his own view."
It is necessary to examine the meaning of the term 'Jurisdiction' as interpreted by the Indian courts prior to the Constitution and after the Constitution.

In the pre-constitution era, the courts in India made numerous attempts to define the term 'Jurisdiction'. It was observed in Hariday Nath v. Rambhander that,

"It was stated that jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it; in other words, by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. An examination of the cases in the books discloses numerous attempts to define the term "jurisdiction" which has been stated to be the power to hear and determine issues of law and fact", "the authority by which the judicial officers take cognizance of and decide causes", "the authority to hear and decide legal controversy", "the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudicate of exercise any judicial power over them", "the power to hear determine and pronounce judgment on the issues before the Court", "the power or authority which is conferred upon a Court by the legislature to hear and determine causes between parties and the power to enquire into the facts, to apply the law, to pronounce the judgement and to carry it into execution".

This jurisdiction of the court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value, and nature of the subject-matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial cause acquisition of lands for landlords and tenants. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject-matter is obviously of a fundamental character."

1) A.I.R. 1921, Calcutta, P.36
One must be very careful in distinguishing exercise of jurisdiction and the existence of jurisdiction. The reason why there should be careful distinction is that there are different consequences of failure to comply with statutory requirements in the assumption and in the exercise of jurisdiction. The authority to decide a case at all and not the decision rendered therein is what makes up jurisdiction. According to this theory when there is jurisdiction over the person and the subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. The question is as to where the conditions essential for creating and raising the jurisdiction of a court, the restraints attaching to the mode of exercise of that jurisdiction, should be included in the conception of jurisdiction.

Since jurisdiction is the power to hear and determine, it does not depend either upon the regularly of the exercise of that power or upon the correctness of the decision, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. This English view had a great impact on the judicial reasoning in India.

As an authority for this proposition reference may be made to the celebrated dictum of Lord Hobhouse in *Malkariun Valleranid*, "A court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting the matters right; and if that course is not taken, the decision, however wrong, cannot be disturbed".
Lord Hobhouse then added, that "it was true that the court made a sad mistake in following the procedure adopted still in so doing the court was exercising its jurisdiction; and to treat such an error as destroying the jurisdiction of the court was calculated to introduce great confusion into the administration of the law. The view that jurisdiction is entirely independent of the manner of its exercise, and involves the power to decide either way upon the facts presented to the court, it manifestly wellfounded on principle, and has been recognised and applied elsewhere.

There is a clear distinction between the jurisdiction of the court to try and determine a matter, and the erroneous action of such court in the exercise of that jurisdiction.

The former involves the power to act at all, while the latter involves the authority to act in the particular way in which the court does act. The boundary between an error of judgement and the usurpation of power is this: the former is reversible by an Appellate Court within a certain fixed time and is therefore only voidable, the latter is an absolute nullity. When parties are before the court and present to it a controversy which the court has authority to decide, a decision not necessarily correct but appropriate to that question is an exercise of judicial power or jurisdiction. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. Were it held that a court had jurisdiction to render only correct decisions, then each time it made an
erroneous ruling or decision the court would be without jurisdiction and the ruling itself void. Such is not the law, and it matters not what may be the particular question presented for adjudication, whether it relates to the jurisdiction of the court itself or affects substantive rights of the parties litigating; it cannot be held that the ruling or decision itself is without jurisdiction or is beyond the jurisdiction of the court. The decision may be erroneous, but it cannot be held to be void for want of jurisdiction. A court may have the right and power to determine the status of a thing and yet may exercise its authority erroneously; after jurisdiction attaches in any case, all that follows is exercise of jurisdiction, and continuance of jurisdiction is not dependent upon the correctness of the determination.¹

This view of the courts in the pre-constitution era, take us very near to the theory of jurisdiction given in R.V. Bolton and Net Ball Liquor Company Ltd.

After the commencement of the Indian Constitution the same view is expressed by the Supreme Court in Aboo Baker's case.² The Supreme Court observes that, "It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Want of jurisdiction may arise from the nature of the subject-matter, so

1) Balkarjun V. Narhari (1900) 25 Bombay 337

2) (1952) A I R 1952 S 3 (3)
that the inferior court might not have authority to enter on
the inquiry or upon some part of it. It may also arise from
the absence of some essential preliminary or upon the existence
of some particular facts collateral to the actual matter which
the court has to try and which are conditions precedent to the
assumption of jurisdiction by it. But once it is held, that
the court has jurisdiction but while exercising it, it made a
mistake, the wronged party can only take the course prescribed
by law for setting matters right in as much as a court has
jurisdiction to decide rightly as well as wrongly.3

The Supreme Court affirmed, in this case, 'want of juris-
diction' as the ground of review and stated that it may arise
from (1) the nature of subject-matter or (2) the absence of
some essential preliminary or (3) owing to the existence of
some facts collateral to the actual matter which the court has
to try and which are conditions precedent to the assumption of
jurisdiction by it.

A recent decision of the Supreme Court, in Swaran Singh v.
State of Punjab, which followed the earlier decision in
Syed Yakoob v. K.S. Ramakrishnan,3 states that, "it is well
settled that Certiorari jurisdiction can be exercised only for

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1) Ibrahim Aboob Bakar v. Custodian general of India,
A.I.R. 1962, S.C. 519
3) A.I.R. 1964 S.C. 477; Nageshara Nath Bora v. Commissioner
for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of Certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The court exercising special jurisdiction under Art. 226 is not entitled to act as an appellate court. As pointed out by this Court in Syed Iakoob's case (AIR 1964 SC 477) (supra) "this limitation necessarily means that findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be re-opened or questioned in writ proceedings. An error of law which is apparent on the face of record can be corrected by a writ, but not an error of fact, however grave it may appear to be."

Thus the power of the supervisory court is to see whether the inferior court is acting within the Act and further to see that whether limitations laid down by the statute are strictly followed or not. If these limitations on the power of an inferior tribunal are violated, in such a case the reviewing court will interfere and declare such decision as ultra vires and void. Mere misconstruction of statute or of a notification does not go to jurisdiction.¹ Thus the statement of law is that if an inferior court acts without jurisdiction, its decision is liable to be reviewed by a superior court. But if it has jurisdiction to adjudicate upon an issue and commits any error in the exercise of its powers of jurisdiction, its decision is valid until it is set aside by any course prescribed by law.²

2) Passare V. Narhari 27 Indian App. 216