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Concept - Jurisdiction of S.C

JURISDICTION OF S.C IN INDIA

The Supreme Court of India has wider jurisdiction than any other Supreme Court in any part of the world. The jurisdiction of the Court can be kept in four categories, viz., original, writ, appellate and advisory.

1. Original Jurisdiction:
A court is said to have original jurisdiction when it possesses the authority to hear and determine the case in the first instance. This type of jurisdiction has been dealt with in Article 131 of the Constitution.

The Supreme Court of India possesses original and exclusive jurisdiction in any dispute:

(a) Between the Government of India, and one or more states or
(b) Between the Government of India and any state or states on one side and one or more other states on the other or
(c) Between two or more states.

The dispute relating to the original jurisdiction of the Court must involve a question of fact or law on which the existences of a legal right depends. A legal right is defined “as any advantage or benefit which is in any manner conferred upon a person by a rule of law”.

The Supreme Court has no original jurisdiction in disputes between individuals or between associations or local bodies.

It is not authorized to investigate a dispute arising out of any treaty, covenant, engagement or agreement which was entered into before the commencement of the Constitution. These disputes may be referred by the President to the Supreme Court for its advisory opinion.

Parliament may, by law, exclude the jurisdiction of the Supreme Court in:
(i) Disputes between States regarding the use, distribution or control of waters of any inter-state river or river valley.
(ii) Matters referred to the Finance Commission
(iii) Adjustment of certain expenses between the Union and the states under Article 290.
(iv) Disputes specified in the provision to Articles 131 and 363(1).
(v) Adjustment of expenses between the Union and the states under Articles 257 (4) and 258(3).

Referring about the original jurisdiction of Supreme Court, D.D. Basu said, “Though our Federation is not in the nature of a treaty or compact between the component units, there is nevertheless a division of legislative as well as administrative powers between the Union and the states. Article 131 of our Constitution therefore vests the Supreme Court with original and exclusive jurisdiction to determine justiciable disputes between the Union and the states or between the States inter se”.

It may however by pointed out that during the first decade of the working of the Constitution, original jurisdiction of the Court was not invoked. Such disputes were resolved by the parties noted above by mutual agreement or negotiation, rather than by adjudication.

The West Bengal Government was the first to bring suit against Government of India in 1961 against the unconstitutionality of the Coal Bearing Areas Act 1957 before the Supreme Court. However, the same was dismissed by the Apex Court.

2. Writ Jurisdiction (Article 32):
Under Article 32, the Supreme Court can entertain an application for the issue of a constitutional writ for the enforcement of Fundamental Rights. This is termed as original jurisdiction as the aggrieved party can move the Apex court directly through a petition instead of coming through a High Court by way of an appeal. Basu is of the view, "…it should be treated as a separate jurisdiction since the dispute in such cases is not between the units of the Union but an aggrieved individual and the Government or any of its agencies." The jurisdiction under the article is not analogous to that of under Article 131.

3. Appellate Jurisdiction:
The Supreme Court, as the highest Court of Appeal, stands at the apex of the Indian judiciary. M.C. Setalved in his speech at the inauguration of the Supreme Court on January 28, 1950 said, "The writ of this court will run over territory extending to over two million square miles inhabited by a population of about 300 millions.

It can truly be said that the jurisdiction and powers of this Court in their nature and extent are wider than those exercised by the High Courts of any country in the Commonwealth or by the Supreme Court of the U.S.A." The appellate jurisdiction of the Court can be divided into four main categories of cases; Constitutional, Civil, Criminal and Special.

(a) Constitutional Cases:

According to Article 132(1) an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. If the High Court refuses to give such- a certificate, the Supreme Court can grant special leave to appeal, if the Court is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution. In **the Election Commission vs. Venkata Rao** (1953) a point was raised as to whether appeal lay to the Supreme Court in a constitutional matter under Article 132 from a decision of a single judge.
The Supreme Court answered the question in the affirmative. This makes the Court the ultimate interpreter and saviour of the Constitution.

(b) Civil Cases:

The Supreme Court's appellate jurisdiction in civil cases is of limited character. In civil matters after passage of the 30th Constitutional Amendment Act of 1972 (where no constitutional question is involved), appeal could lie to the Supreme Court, if the High Court certified that any of the under-mentioned conditions were satisfied:

(i) That the amount or the value of the subject matter of the dispute is not less than Rs. 20,000,
(ii) That the case is a fit one for appeal to the Supreme Court irrespective of value.
It may be pointed out that the appellate jurisdiction of the Court in civil cases can be enlarged, if Parliament passes a law to that effect. Further if the court is hearing the appeal, it is open to any party to challenge a decision of the High Court as invalid sofar as it deals with the interpretation of the constitution.

(c) Criminal Cases:

The Draft Constitution had made no provision for the appellate jurisdiction of the Court in the criminal cases. Many members considered it a serious omission of the Constitution. Eventually the provision was incorporated in the Constitution, substantially conforming to the views of K.M. Munshi. There are only two modes by which appeals in the criminal matters lie from the decision of a High Court to the Supreme Court, i.e.,

(i) Without a certificate of High Court;
(ii) With a certificate of the High Court.

(i) Without Certificate:

An appeal lies to the Supreme Court without a certificate, if:
(i) The High Court has reversed an order of acquittal of an accused and sentenced him to death.
(ii) If the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such a trial convicted the accused person and sentenced him to death. For instance in **Tara Chand vs. State of Maharashtra** the accused charged for murder was acquitted by the Trial Court.

The High Court reversed the order and convicted the accused of murder and sentenced him to death. The Supreme Court rejecting the argument on behalf of the State said that the word acquittal meant complete acquittal and that the accused was entitled to a certificate under Section 134 (i) (a).

(ii) With Certificate:

An appeal lies to the Supreme Court from a decision of High Court in criminal proceedings, if the High Court certifies that the case is a fit one for appeal to the Supreme Court. Parliament can, by further passing an Act, extend the jurisdiction of the Supreme Court in criminal matters. But the enhancement of its jurisdiction "ought to be made, having regard to the enlightened conscience of the modern world and the Indian people."

In fact, if we go through hundreds of cases decided by the Court, under appellate jurisdiction, we feel enamored of the Fathers of our Constitution who incorporated these provisions in the constitution. According to Pylee, “It stands as a living testimony to the increasing recognition that is accorded to the sanctity of human life in recent times in contrast to the incredible frequency with which capital punishment was awarded for the most petty and trifling offences in the past. ”

(d) Special Appeals (Article 136):

Though Articles 132 to 134 of Indian Constitution provide for regular appeals to the Supreme Court from decisions of the High Courts, yet some cases may still crop up, where justice may be at stake. Hence, the interference of the Supreme Court with decisions not only of the High Courts outside purview of Articles 132 to 134 but also of other tribunals located within the territory of India may be indispensable. Such residuary power outside the ordinary law relating to appeals, is conferred upon the Supreme Court by Article 136. Article 136 states, “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 tribunal in the territory of India.”

(i) Military Tribunals are Exceptions:

The only exception to this all-embracing judicial review is the decisions of Courts constituted under any law relating to the Armed Forces. D.D. Basu opines “It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals by granting special

leave against any kind of judgment or order made by any Court or Tribunal (except a Military tribunal) in any proceeding and the exercise of this power is left entirely to the discretion of the Supreme Court unfettered by any restrictions and this power cannot be curtailed by any legislation short of amending the Article itself." It may, however, be pointed out that this special power vested with the Supreme Court is to be exercised only under exceptional circumstances.

In civil cases, for instance, the special leave to appeal under Article 136 would not be granted unless some substantial question of law or general public interest is involved. In criminal cases, the Supreme Court will not grant such special leave to appeal, unless exceptional circumstances exist or it is established that grave injustice has been done and that the case in question is sufficiently important to warrant a review of the decisions by the Supreme Court.

(ii) Special Appellate Power Extended to Election Tribunals:

The "special appellate" power of the Court was extended to the Election Tribunal as well. It has been a handy weapon with it to review the decision of Labour and Industrial Tribunals. In an election case, the Court held, "The jurisdiction with which Election Tribunal is endowed, is undoubtedly a special jurisdiction but once it is held that it is a judicial tribunal empowered and obliged to deal judicially with disputes arising out of or in connection with elections, the overriding power of this court to grant special leave, in proper cases, would certainly be attracted and this power cannot be excluded by parliamentary legislation."

Special Appellate jurisdiction of the Court over the Industrial Tribunals is obvious from **Bharat Bank v. Employees of Bharat Bank and Muir Mills v. Suti -Mills Mazdoor Union** cases. In the former case, the Court held that the functions and the duties of the Industrial Tribunal resemble that of judicial body although it is not a court having all the attributes of a court of justice. In the latter case, the Court reiterated the same view and held that it possessed the overriding powers to interfere in a matter where a Court or Tribunal had dealt with a person arbitrarily or had not given a fair deal to the litigant.
Likewise in a 1971 case, the Supreme Court issued stay orders on an appeal by the Congress (O) against the decision of the Election Commission allotting the original Congress symbol—two bullocks and yoke—to the Congress faction led by Mr. Jagjiwan Ram.

In **Chandra Kumari's** case, the Apex court clearly re-established the fact that judicial review is the basic feature of the Constitution. As such, the Tribunals will act like courts of first instance. The Tribunal Act which enabled the Tribunals to bypass the High Courts was declared unconstitutional.

In the words of Rao "The judgment in the recent **Chandra Kumari's** case will be remembered not only for its unequivocal declaration that the power of judicial review vested in the Supreme Court and the High Court constitutes part of the basic structure of the Constitution which cannot be abridged but also the craftsmanship with which the original jurisdiction of the tribunal, the writ jurisdiction of the High Court and the jurisdiction of the Supreme Court under Article 136 have been restructured by the judicial process. The Tribunals have lost their status but not jurisdiction and the Supreme Court has curtailed its own power under Article 134 by disallowing a direct appeal to it from the Tribunal.

Thus, it is quite evident that Article 136 is formidable and has proved to be a very convenient instrument at the disposal of the Apex Court to check arbitrary acts and unjust decisions of administrative tribunals established both at the Centre and in the states.

4. Advisory Jurisdiction:

A salient feature of the Supreme Court is its consultative role. In fact, it is a legacy of the past. A similar role was assigned to the Federal Court according to Section 213 of the Act of 1935. According to Article 143, (i) the President of India is empowered to refer to the Supreme Court any question of law or fact of public importance. There is no constitutional compulsion for the Court to give its advice.

In **Keraka Education Bill**, 1957 S.R. Das Chief Justice observed. "This Court has under Clause (1) a discretion in the matter and may in a proper case and for good reason decline to express any opinion on the questions submitted to it." Evidently the Supreme Court may refuse to express its advisory opinion, if it is satisfied that it should not express its opinion keeping in view the nature of questions forwarded to it and having regard to other relevant facts and circumstances, e.g., if the questions referred for advisory opinion are purely socio-economic or political questions having no relation with the provisions of the Constitution or having no constitutional significance.
Moreover, it is left to the Court to decide as to what type of hearing it will adopt. Eventually, the Court has adopted the same procedure, as in the case of a regular dispute brought before it. The advice of the Court is not binding on the President.

Under section (2) of Article 142, the President is empowered to refer to the Supreme Court for its opinion, disputes arising out of any treaty, agreement etc., entered into or executed before the commencement of the Constitution. In such cases, it is obligatory for the Court to give its opinion to the President. The treaties, agreements etc., referred to above, are those which the Government of India have executed with the former princely states and their rulers between 1947 and 1950.

(a) Examples of References for Supreme Court Advice:

To quote a few examples the President referred the following questions to Supreme Court for its advice e.g.,

(i) In 1951, the Court was asked to determine the validity or otherwise of certain provisions of three enactments—the Delhi Laws Act, 1912, the Ajmer Marwar (Extension of Laws) Act, 1947, and the Part C States (Laws) Act. 1950. Though the Court failed to render a unanimous opinion, yet the different opinions expressed by the judges are hailed as momentous on the subject of delegation of legislative power.

(ii) In 1957, on Kerala Education Bill, such a necessity of Court's advice arose. The said Bill contained provisions authorizing the State Government to take over schools managed by private agencies. Hence, it involved the right to property, the acquisition of which through a bill needed the assent of the President. Since the Bill was controversial and representations were made to the President not to give his assent to such an unconstitutional piece of legislation, the President thought it advisable to seek the advice of the Supreme Court, before signing over the Bill.

(iii) Regarding procedure for implementation of the Indo Pakistan Agreement relating to Berubari Union, reference was made to the Supreme Court in 1960.
(iv) Again with reference to Article 259 constitutionality of the sea custom amending Bill necessitated such advice
(v) special reference in 1964 regarding Uttar Pradesh Legislature.
(vi) Reference regarding Presidential Election 1974
(vii) Reference regarding Special Courts Bill 1978;
(viii) Reference regarding Cauvery waters disputes tribunal (1992); and
(ix) reference regarding Faruqui vs. Union of India (1994) was made to the Supreme Court. On October 24, 1994 the Supreme Court returned to the President the reference made to it whether a temple originally existed at the site where the Babri Masjid stood. Such a Presidential reference was described as unnecessary and superfluous.

(b) Reference Regarding SYL on July 22, 2004:

On July 22, 2004, the Central Government filed a presidential reference under Article 143 in the Supreme Court in the matter of construction of the **Sutlej Yamuna Link canal** seeking the court's opinion on the Punjab Government's enactment of the Punjab Termination of Agreement Act 2004. In his reference President A.P.J. Abdul Kalam sought to know whether (a) Act is constitutionally valid (b) really discharges the State Government from the water agreements, (c) it affects the agreement on sharing of the waters of the—Ravi, Beas and Sutlej among Punjab, Haryana, Rajasthan and Himachal Pradesh.

Opinions of the Court in the above cases are enough to prove the beneficent results of an advisory jurisdiction. "So long as the independence and integrity of the judiciary can be maintained intact, and at the same time it can materially contribute to the lessening of the evils of enormous litigation, advisory opinions are eminently worth-while...Advisory opinions are a help to preventing litigation or reducing it to a considerable extent."

(c) Jurisdiction Enhanced:

With the passage of time, jurisdiction of the Apex court has enhanced. In the enhanced jurisdiction we may refer to the appeals which can be taken to the Supreme Court under the representation of the People Act, Monopolies and Restrictive Trade Practices Act, Advocates Act, Contempt of Court Act, Customs Act,Central Excise and Salt Act, Terrorist Affected Areas Act 1984 and Terrorist and the Disruptive Activities Act, 1985. Election Petition under Part III of the Presidential and Vice Presidential Election Act (1952) can be filed directly in the Supreme Court.

(d) 42nd 43rd Amendments and a Curb on the, Apex Courts Jurisdiction:

The jurisdiction of the Supreme Court was curtailed to some extent by 42nd Amendment Act, 1976. However part of such curtailment was undone by the 43rd Amendment Act 1977. Articles 32 A and 144A were repealed.

Still some of the provision of the amendments could not be undone by the then Janata Government at the Centre as the Congress opposed their move in the Rajya Sabha viz., Articles 323A-323B which deprived Supreme Court of jurisdiction and Article 368(4)-5 which prevented the Supreme Court from invalidating any Constitutional Amendment—the basic feature of the Constitution. These clauses were in fact emasculated by the Apex court itself, as they violated basic feature of the constitution.

The functioning of the tribunals constituted under Articles 323A and 323B of the Constitution, proved exasperating. Hence in 'Chandra Kumar case', the Apex court restored partly the jurisdiction of the High Court under Articles 226 and 227 and downgraded the role of tribunals from 'substitutional' to 'supplemental' to the High Courts. The person aggrieved by the decision of the tribunal will not directly go to the Apex court.

They have to appeal first to the High Court. This amounts to the curtailment of its own jurisdiction under Article 136 and adding to the prestige and authority of High Court vis-a-vis tribunals.

(e) A Court of Record:

Article 129 makes the Supreme Court 'a Court of Record.' The significance of such a Court is two-fold; (i) Its records are retained for perpetual memory and testimony. (ii) Once a Court is deemed to be a Court of Record, its power to punish for contempt follows from that position. The Constitution has, however, specifically made a provision empowering the Supreme Court to punish for contempt of itself. In the words of Dr. Ambedkar, "…the Court of a Record is a Court, the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any Court. As a matter of fact, the power to punish for contempt necessarily follows from that position…"

(f) Court of Rules:

According to Article 145, the Supreme Court is fully authorized with the approval of the President and subject to any legislation by the Parliament, to frame rules for regulating the practice and procedure of the court.

(g) Guardian of Fundamental Rights:

The Supreme Court is also the guardian of the liberties and Fundamental Rights of citizens. Article 32 (i) specifies the writ jurisdiction of the Supreme Court. The Article lays down that any person whose rights are abrogated or affected adversely can move the Supreme Court by appropriate proceedings for their enforcement.
The Supreme Court can issue orders or writs in the nature of Habeas Corpus, Certiorari, Mandamus, Prohibition and Quo Warranto whichever is appropriate for the enforcement of these rights. The Court is authorised to declare a law passed by the legislature null and void, if it encroaches upon the Fundamental Rights. This happened when Clause 14 of the Preventive Detention Act was nullified by the Supreme Court and the President had to issue an ordinance, deleting this clause. At a later stage, the Supreme Court nullified a few laws conflicting with Articles 19 and 31 of the Constitution as well.

It will not be out of place to mention a few cases as under:
(i) Examples of Cases, Freedom of Speech and Expression:

In the case of Brij Bhusan v. Delhi State Government the Court held that the imposition of pre-censorship of a journal was a restriction on the liberty of the press which is guaranteed by Article 91(l)(a).
(ii) In another case Soren v. State, Justice Das opined that it was necessary to protect the right to free speech. He said, “Speeches made must be considered as a whole and interpreted in a fair, free and liberal manner. Not too much of importance should be given to isolated passages or to strong expressions of opinion here and there.”

Hence the Court held that the alleged speech of the accused was not falling within the orbit of statutory prohibition, therefore the appeal was allowed.

(ii) Right to Religion:
In a case, the Court held that Section 56 of the Madras Hindu Religious and Charitable Acts 1951 empowering the Commissioner to deprive the Mahant of his right to administer the trust property was opposed to the provisions of Article 26(1).

(iii) Cultural and Educational Rights:
The Supreme Court has guarded Cultural and Educational rights of the minorities effectively. In the **State of Bombay v. The Bombay Education Society**, it held that a minority like the 'Anglo Indians' had the fundamental right to conserve its language by establishing the educational institutions of its choice.

(iv) Right to Property:
The Court maintained a balance between the legitimate right of propertied class and the need of a welfare state. In **State of Bihar v. Kameshwar Singh**, it held that a law aiming at elevating the status of tenants by conferring on them "Bhumidharl rights" fulfilled a public purpose. Likewise the presidential order seeking the de-recognition of the rulers and thus the abolition of their privy purses was struck down by the Supreme Court, partially on the plea that it abrogated the right to property of the rulers who were also entitled to such a right, being the citizens of India.

(h) Saviour of the Constitution (Judicial Reviews):

Whether the Court is entitled to act as the custodian of the Constitution and adjudicate upon the constitutionality of laws depends upon the question whether the constitution supports the theory of legislative supremacy or the supremacy of the Constitution. If the constitutional supremacy is to be asserted, the courts are apt to refuse to apply a statute that is repugnant to fundamental law—the supreme law of the Constitution. The Indian Constitution does not make a specific mention of its supremacy, in its provisions.
In fact, such a declaration was deemed superfluous by the Fathers of the Constitution, since the organs of the state derive power from the Constitution and the Constitution is not alterable, till the procedure of amendment provided in the Constitution, is followed. Of course, the Courts have not been empowered to invalidate laws, by some express provision in the constitution, yet the Constitution does impose definite limitations upon each of the organs. Hence any transgression of those limitations would make the Act void.
The Courts would not apply void laws. “The powers of the Courts to avoid laws made in excess of the legislative powers of the legislature are inherent in any Constitution which provides Government by defined or limited powers.” Since we have established a federal polity and imposed constitutional limitations both on the Central and State organs of the government, it is for the Courts to determine whether any of the constitutional limitation has been bypassed or not.