

(b) The high court is consulted, along with the State Public Service Commission, by the Governor in appointing persons (other than District Judges) to the judicial service of the State [Article 234].

(c) The control over district courts and courts subordinate thereto, including the posting and promotion of, and the grant of leave to, transfers of, disciplinary control over including inquiries, suspension and punishment, and compulsory retirement of, persons belonging to the judicial service and holding any post inferior to the post of a district judge is vested in high court [Article 235].

(d) Every high court has power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction except over a court or tribunal constituted by or under any law relating to the Armed Forces. [Article 227].

Control over the subordinate courts is the collective and individual responsibility of the high court.<sup>23</sup>

The foregoing survey of the jurisdiction of a high court under the original Constitution was drastically curtailed in various ways, by the Constitution (42nd Amendment) Act, 1976, which has been referred to at the end of chapter 22 *ante*, in the context of the Supreme Court, but the new provisions in Articles 226A and 228A which had been inserted by the Constitution (42nd Amendment) Act, 1976, have all been omitted by the 43rd Amendment Act, 1977, and the original position has been restored.

In this context, we must mention Articles 323A–323B, inserted by the 42nd Amendment Act.

Parliament has passed the Administrative Tribunals Act, 1985, implementing Article 323A, under which the Central Government has set up Central Administrative Tribunals with respect to services under the Union.

As a result, all courts of law including the high court shall cease to have any jurisdiction to entertain any litigation relating to the recruitment and other service matters relating to persons appointed to the public services of the Union, whether in its original or appellate jurisdiction. The Supreme Court has, however, been spared its special leave jurisdiction of appeals from these Tribunals, under Article 136 of the Constitution. But subsequently, the position turned out to be otherwise as the Supreme Court declared the Article 323A, clause 2(d) and Article 323B, clause 3(d) and also the “exclusion of jurisdiction” clauses in all the legislations enacted in pursuance of these Articles, unconstitutional to the extent they excluded the jurisdiction of the high courts and the Supreme Court under Articles 226/227 and 32.<sup>24</sup>

The 18th Law Commission in its 215th Report in December, 2008 recommended the Supreme Court to reconsider its decision in *L Chandra Kumar*<sup>24</sup> especially in the light of the facts that the Supreme Court in *SP Sampath Kumar*<sup>25</sup>, wherein the Supreme Court directed the carrying out of certain measures with a view to ensuring the functioning of the Administrative Tribunals along constitutionally sound principles. The changes were brought about in the Act by an amending Act (Act 19 of 1986). Jurisdiction of the Supreme Court under Article 32 was restored. Constitutional validity of the Act was finally upheld in *SP Sampath Kumar* subject, of course, to certain amendments relating to the form and content of the Administrative Tribunals. Thus became the Administrative Tribunals an effective and real substitute for the high courts. However, in 1997, a seven-judge Bench of the Supreme Court in *L Chandra Kumar* held that clause 2(d) of Article 323A and clause 3(d) of Article 323B, to the extent they empower Parliament to exclude the jurisdiction of the high