

VII. SAMUDRAMANTHAN OF ARTICLE 225: UNVEILING HIGH COURT'S JURISDICTIONAL POWER POST KUSUM INGOTS

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Abstract

The Indian judicial system balances constitutional governance through the Supreme Court and the High Courts. Despite a unified structure, the jurisdiction of High Court remains debated. This paper examines their binding authority, tracing their evolution from the colonial era to post-independence. A key focus is Kusum Ingots & Alloys Ltd. v. Union of India, where the Supreme Court's interpretation reshaped High Courts' jurisdictional reach.

The study explores how various High Courts have applied or extended this principle, raising questions about their territorial limits. By analysing historical precedents, legislative changes and judicial pronouncements, this research evaluates whether High Courts, in practice, wield authority comparable to the Supreme Court. It highlights their evolving role in maintaining constitutional balance and ensuring accessible justice.

Keywords: *High Court jurisdiction, Article 226, Precedent Value, Kusum Ingots, Evolution of High Courts, Supreme Court v. High Court*

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I. INTRODUCTION

The Republic of India has a three-fold structure to which rule of law is the basic norm¹. The legislature makes the laws which control the Council of Ministers and thereafter the Executive carries on administration within the Constitutional limits. The judiciary resolves disputes, upholds people's rights and restrains the misuse of power by the other two branches of government.

Bharat upon its independence from the British Raj in 1947, transformed from a centralised unitary state into a federal union. This union, comprising the central government and its constituent states (Provincial States), is governed by a parliamentary-federal constitution that precisely delineates the institutions, powers, and responsibilities of both tiers of government. It is incontestable that India's judicial system is unitary, even though it is questionable if its political system is federal with unitary aspects or unitary with federal elements.

We have in India a single, integrated court system with the Supreme Court functioning as the last appellate court.² The same judicial system

¹ *His Holiness Kesavananda Bharati Sripadagalvaru v State of Kerala* AIR 1973 SC 1461.

² Sukumar Dam, *Judiciary in India* (1964) 25 Indian Journal of Political Science 276, 276.

interprets both the union as well as state laws. The judicial roles and functions of union and state courts are not separated.³ The Indian judicial hierarchy is structured with the Supreme Court reigning at the apex (being the last court of appeal), followed by the High Courts, which stand on an equal footing across various states. Beneath them are the District Courts, serving as the principal courts of original jurisdiction at the district level. Further below, at the Taluka (Tehsil) level, lie the civil and criminal courts, which exercise jurisdiction over local disputes and offences, forming the grassroots of the judicial system.

The Indian judiciary operates as a unified system, where all levels of courts are bound by the legal precedents set by the Hon'ble Supreme Court, yet retain administrative discretion within the states, allowing the high courts and subordinate courts to function independently in matters of governance and administration. The authors of the Constitution of India have brought about a compromise between the extremes of judicial supremacy and legislative supremacy obtaining in the United States of America (USA) and United Kingdom (UK) respectively. Thus, a balance has been struck between full judicial review and full legislative control⁴.

³ AG Noorani, 'The Indian Judiciary Under The Constitution' (1976) 9 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 335, 336.

⁴ Dam (n 2) 278.

Article 226 and 32 may indeed be termed as the two symbols of this great democratic republic which the Indian people have given to themselves. Destroy these two and you will destroy the precious confidence of a free people⁵. Considering they are the only courts with the power to decide cases with constitutional implications, the Supreme Court and the High Courts can rightly be regarded as ‘Constitutional Courts’. As the highest appellate court, the Supreme Court has the final say on any matter pertaining to the interpretation of the law and the Constitution, although in terms of jurisdiction, the Supreme Court and the High courts have equal authority to decide intergovernmental issues. The Supreme Court, the highest authority and ultimate arbiter, produces a lesser quantity of judgements than the high courts⁶.

Since the landmark judgment of *Kesavananda Bharati*⁷, which established the judicial theory that the basic framework of the Constitution cannot be changed, the Supreme Court has greatly expanded the scope of its judicial review. It is no longer confined to overseeing legislative and executive actions, the Court now exercises authority over constitutional amendments as well. The Supreme Court is now perhaps the most powerful constitutional court in the world owing to this extraordinary expansion of its authority, to an extent

⁵ SM Sikri, *Does Article 226 Of The Constitution Need Any Amendment?* (1958) 1 Indian Law Institute 77.

⁶ Manish Tewari and Rekha Saxena, ‘*The Supreme Court of India: The Rise of Judicial Power and the Protection of Federalism*’ in Nicholas Aroney and John Kincaid (eds), *Courts in Federal Countries: Federalists or Unitarists?* (University of Toronto Press 2017).

⁷ *Kesavananda Bharati* (n 1).

wherein it becomes an altruistic example of a sovereign body in pragmatic sense.

However, one of the biggest criticisms of the Supreme Court of India can be highlighted with a renowned statement of Sir James Charles Mathew, Judge, Court of Appeal, ‘Justice is open to all - like the Grill-Room of the Ritz Hotel’. The Ritz hotel, a renowned symbol of luxury in the United Kingdom, is famous for its high security, strict dress codes, lavish and expensive lifestyle. Sir Mathew through this quote highlighted the hindrance in the path of access to justice, wherein many people stand in the way to achieve it, like police, lawyers, judges and the cost is very high. It certainly is expensive for a common man who could barely make the ends meet. It can further be co-related by analysing Indian jurisprudence that all the Constitution Bench judgements in India deciding a crucial point of law were filed and fought till the end by high-powered, influential people barring few, since litigation in the Supreme Court is not pocket friendly. Indeed, it is evident from the objective of Article 226 that it has been incorporated into the Constitution with the express purpose of broadening the scope of constitutional remedies and to overcome this problem of slow and expensive remedy under Article 32⁸.

In contemplating the jurisdictional scope of High Courts, particularly post-Kusum Ingots case, it becomes imperative to undertake a

⁸ D. D Basu, *Commentary on Constitution of India* (9th edn, LexisNexis 2018) vol 10, 10416.

Samudramanathan, a metaphorical churning of legal principles to unveil the true extent of their power. *Samudramanathan*, derived from ancient Indian scriptures such as the *Mahabharata* and the *Vishnu Purana*, describes the cosmic struggle between the Gods and the Demons. Stripped of their power due to a curse, the Gods sought Lord Vishnu's guidance, who devised the legendary Churning of the Ocean of Milk. Using mount *Mandara* as the churning rod and *Vasuki*, the divine serpent, as the rope, both celestial and demonic forces engaged in a strenuous process that eventually yielded fourteen treasures, including the elixir of immortality, *Amrit*⁹.

This ancient event finds a striking parallel in the evolution of High Court jurisdiction under Article 225 of the Constitution of India. A closer examination of the historical development of the High Courts' jurisdiction reveals diverse and sometimes divergent trajectories, akin to the mythological churning of the ocean. Just as that monumental event produced varied, unforeseen circumstances, the judicial understanding of High Court powers has unfolded through competing interpretations, at times restrictive, at times expansive. However, critical questions remain, what is the true precedent value of High Court judgements? How binding is their authority? Can High Courts exercise sufficient power to achieve complete justice? And, in practice, do all High Courts stand on an equal footing?

⁹ VR Patil, '*Samudra Manthan: Story of Hindu Mythology in Present Perspective*' (2018).

This paper undertakes an exhaustive examination of these questions, navigating through historical, doctrinal and comparative perspectives. It aims to uncover the hidden dimensions of High Court jurisdiction, assessing the precedential weight of their pronouncements, exploring exceptions to the general principles and analysing their implications on the broader legal landscape. Ultimately, this structured discourse will culminate in a comprehensive conclusion that synthesizes these diverse elements, providing a better understanding of the evolving jurisdictional contours of High Courts in India, right from its emergence.

II. FROM CROWN COURTS TO CONFUSION - WHERE HIGH COURTS GO HIGH AND SOMETIMES HIGHER

To understand the journey of Crown Courts of India to ‘High Courts of India’, analysis of the history of Indian Judiciary is quintessential. The British had authority over the administration of justice in India for the last few centuries, therefore it seems to be a natural starting point. The administration of justice in British India can be traced back to the reign of James I. In 1622, he granted a charter to the East India Company, giving them the authority to enforce discipline and punish English settlers for any misconduct, using martial law or other means. However, it was Charles II who laid the foundation for British Crown legislation in India. Through the Royal Charter of 1661, he officially

granted the authority to introduce and implement British laws in the region¹⁰.

Thereafter, for more speedy, better and effectual administration, a Royal Charter was granted by the King George I in 1726 to establish Mayor Courts in Calcutta, Bombay and Madras. The first Mayor Court was established in 1728¹¹ in Calcutta and then subsequently in other presidency towns. This introduced Indian Judiciary to its first 'Court of Record'. However, initially the Mayor Courts till the Royal Charter of 1753 was introduced, were only limited to people working in the factories within the territorial jurisdiction of the three towns. The amendment brought through the Royal Charter of 1753, included the power to adjudicate the *lis* between natives and non-natives with their prior consent.

To overcome the defects of the Mayor Courts, Royal Charter of 1773, Regulating Act of 1773 (aka East India Company Act, 1773) was brought, wherein Section 13 gave the power to the British Crown to establish Supreme Court of Judicature at Fort Williams in Calcutta in 1774, Madras-Patnam in 1801, and Bombay on the Island of Bombay in 1823. All three Supreme Courts were established with identical

¹⁰ William Morley, *The Administration of Justice in British India: Its Past History and Present State, Comprising an Account of the Laws Peculiar to India* (Williams and Norgate, London 1858), 5.

¹¹ 'History | City Sessions Court, Calcutta | India'

<https://citysessions.dcourts.gov.in/about-department/history/> accessed 21 February 2026.

jurisdiction, powers, and limitations. Under Section 13 of the enactment, they were granted extensive authority to oversee civil, criminal, admiralty, and ecclesiastical matters without restriction. An appeal from all the Supreme Courts lied with her Majesty in Council. However, it was challenging to define the exact powers and jurisdictions of the Supreme Courts in India, given by various statutes and charters, although, the Supreme Courts were empowered to go beyond the local limits of presidency towns. Therefore, to overthrow this problem, the British Crown came with the Indian High Courts Act, 1861, redefining each Indian Supreme Court's authority and jurisdiction by abolishing them and the *Sudder Courts*, by bringing into force the High Courts in their place.

The Indian High Courts Act of 1861, primarily functioned as an enabling legislation, while it was the Letters Patent that formally established the Presidency High Courts. A significant milestone was the issuance of the Letters Patent for the Calcutta High Court in 1862, which led to the establishment of the first High Court of Judicature at Bengal. Notably, Section 13 of the Letters Patent endowed the High Court with Extraordinary Original Jurisdiction, allowing it to adjudicate the *lis* beyond its ordinary territorial jurisdiction, either with the agreement of the parties or for the purposes of justice. Interestingly, this provision bears a conceptual resemblance to Article 142 of the Indian Constitution, which empowers the Supreme Court to go beyond statutory confines to ensure complete justice. Sir Charles Wood, the

then Secretary of State for India, in his correspondence with Lord James Bruce, 8th Earl of Elgin and Governor General of India, referred to the High Courts as the 'Chief Court of Justice in India'. The British Crown's initial vision for these courts was to establish them as the highest judicial authorities in the country.

The first crucial development in Indian Judiciary was bringing into operation, a Federal Court of India as an appellate court for all the High Courts instead of the Privy Council. Furthermore, an appeal from the federal court lies to the Privy Council, which was later abolished when the Constitution was enforced. This Federal Court was transitioned into the Supreme Court of India on 26 January 1950, when the Constitution of India was enforced.

When we talk about the jurisdiction of High Courts in India, Article 225 of the Constitution states that they will retain the same jurisdiction as they had immediately before the Constitution came into effect. Now, the legislation discussing the jurisdiction of the high courts before the Constitution was the Government of India Act, 1935. However, Article 223 of the 1935 Act has somewhat a similar provision, and therefore it takes us back to the Government of India Act, 1915. This incessant loop doesn't stop here, Article 106 of the 1915 Act, again has a similar provision which eventually takes us to the appropriate Letters Patent and then ultimately to the Regulating Act of 1773.

The comparative historical analysis summarises the powers of High Courts in India and its evolution from 1726 with the establishment of Mayor Court to the omnipotent High Court that we see today. It can be deduced that the high courts were habituated to be the apex court within their jurisdiction. The Letters Patent and Section 8 of the Indian High Courts Act, 1861, states that the records, documents and the jurisprudence of the Supreme Courts established under the 1773 Act will be continued by the High Courts who are replacing them. Hence, the High Courts currently going beyond their territorial jurisdiction and deciding the law of the land is not a new practice for them. It can also be said that they derive this controversial power from the said provisions as explained above.

However, there appears to be a contradictory discussion, that Article 395 repealed all the enactments which are either amending or supplementing the Government of India Act, 1935. Therefore, the whole argument becomes infructuous making the Constitution, a sole authority holder and power-definer for High Courts in India. Although, Article 372 provides for continuation of those provisions. It is only through an express reference within a particular provision to its continued operation that it shall be preserved from the mighty force of the repealing article. Now, when we peruse Article 225, there appears to be an express provision for the continuation of the existing laws. Hence, this discussion fails to see the light of the day.

The Comparative historical analysis of both Supreme Court and High Court suggests that Supreme Court of India was established on 1 October 1937, as Federal Court of India seated at New Delhi, when the Government of India Act, 1935, was enforced. However, the first High Court was established in Calcutta in 1728, as the Mayor Court under the Royal Charter of 1726.

This was all about the history, however, to extrapolate the altruistic jurisdiction of a High Court, it is pertinent to determine the powers of the High Courts.

III. HIGH COURT & ITS POWERS

Chief Justice S. M. Sikri, while explaining the importance of a high court gracefully put it as, ‘Remove Art. 226 and you will see a gradual deterioration in the legal standards of administration’¹². Article 226 is influenced by the traditional approach of the law in England. The Constitution of India maintains a *status quo* in respect of jurisdiction and authority of High Court. They have a long and respected history, existing well before the Constitution came into effect, as stated in the previous chapter. They were not newly formed by the Constitution but had already been established and functioning. The authority and scope of a High Court is determined by the Indian High Courts Act of 1861,

¹² Sikri (n 5).

along with all laws passed up until the enforcement of the Constitution of India, 1950. Article 225 ensures and retains the power and jurisdiction they previously held, while Article 226 grants them expanded authority to issue writs, powers that were not available to them before¹³.

Dr Ambedkar, Chairman of the Drafting Committee, the principal architect of the Constitution, referred to Article 32 as ‘...It is the very Soul of the Constitution and the very Heart of it...’¹⁴ during the debates in the Constituent Assembly. However, for many Indians, particularly those without the financial resources for approaching the Supreme Court, the High Courts represent to be ‘Supreme’ for access to justice. Both, Article 32 and Article 226 are a part of the basic structure of the Constitution¹⁵, however, a plain reading of both the Articles will show that the power to grant relief by the High Court is broader than that of the Supreme Court under Article 32. Furthermore, the right to approach the Apex Court is confined to the violation of fundamental rights. The High Court has wider jurisdiction because the aggrieved can allege violation of not only fundamental rights but also any legal rights or expectations¹⁶.

¹³ *National Sewing Thread Co Ltd v James Chadwick & Bros Ltd* (1953) 1 SCC 794.

¹⁴ *Constituent Assembly Debates*, vol VII, 953.

¹⁵ *L Chandrakumar v Union of India* (1997) 3 SCC 261.

¹⁶ *India's Constitution Origin and Evolution*, vol 7, 255.

Justice, Patanjali Shastri, in *Election Commission of India v. Saka Venkata Rao*¹⁷, held that the seat of the government or authority that a writ is intended to be issued against must be situated within the High Court of the State, or the High Court's territorial jurisdiction, and literally interpreted Article 226, thereby limiting the jurisdiction of the High Courts in India. Furthermore, Justice B. P. Sinha speaking for the majority in *Khajoor Singh v. Union of India*¹⁸, opined that any inconvenience that might be caused by this interpretation could be remedied only by an appropriate constitutional amendment to Article 226. The following example will elucidate the scenario in a better way - if the validity of a parliamentary law is challenged or is being read down, then the jurisdictional high court would be High Court of Delhi (High Court of Punjab and Haryana before the establishment of High Court of Delhi), citing the seat of Central Government. The parliament to resolve this issue brought the 15th Constitutional Amendment¹⁹. The amendment expanded the High Court's territorial jurisdiction, enabling them to issue writs to authorities or governments outside of their jurisdiction as long as the cause of action originates entirely or in part within their jurisdiction.

It may be inferred that, as articulated in Article 227, the drafters of the Constitution envisaged the High Court as an exercising overarching supervisory authority over all trial courts and subordinate judicial

¹⁷ *Election Commission of India v Saka Venkata Rao* 1953 AIR 210.

¹⁸ *Khajoor Singh v Union of India* (1961) 2 SCR 828.

¹⁹ Constitution (Fifteenth Amendment) Act 1963.

bodies. However, historical practice diverged from this intention. Before the commencement of the Constitution, High Courts never had unfettered supervisory powers. Previously, the power was limited to reviewing decisions of lower courts that were not subject to appeal or revision. However, this restriction was not carried over into Article 227 of the Constitution of India, giving it broader and more dynamic authority. In this regard, Article 227 provides an unprecedented scope²⁰. A comparison shows that the power of High Courts under Article 227 are similar to those of the Supreme Court under Article 141, though they remain within the High Court's specific jurisdiction.

For many years, there has been an extensive debate concerning the potential abuse of the supervisory authority vested under Article 227, where litigants have employed this power to circumvent the requisite exhaustion of appellate or revisional remedies. To address and mitigate such misuse, Parliament enacted an amendment to the provision, thereby constraining the High Court's supervisory jurisdiction to be exercised in conjunction with its appellate jurisdiction. The said amendment was brought through the 42nd Amendment²¹, which also happens to be one of the most criticised amendments to the constitution. The Amendment, although ostensibly driven by political motivations, arguably served a practical function by curbing the potential misuse of the High Court's supervisory powers. Regrettably,

²⁰ *Surya Dev Rai v Ram Chander Rai* (2003) 6 SCC 675.

²¹ Constitution (Forty-second Amendment) Act 1976.

this provision was repealed by the 44th Constitutional Amendment²², in a move perceived as politically motivated to reverse the controversial changes enacted by the 42nd Amendment during the infamous Emergency period in India.

IV. PRECEDENT VALUE OF A HIGH COURT'S JUDICIAL PRONOUNCEMENT

The Hon'ble Supreme Court has consistently ruled that a decision made by one High Court does not serve as a binding precedent for another. However, such rulings may carry persuasive value, influencing decisions without holding mandatory authority²³. The application of *Stare Decisis* doctrine to other high courts is limited to distinct benches within the same high court and cannot be extended beyond that point. As per Article 227, the law established by the highest court in a state is binding on all authorities and tribunals under its jurisdiction²⁴. Additionally, a Single Judge of a High Court is required to follow previous rulings by another Single Judge or a Division Bench of the same High Court. However, if the judge believes that the earlier

²² Constitution (Forty-Fourth Amendment) Act 1979.

²³ *Valliama Champaka Pillai v Sivathanu Pillai & Ors* (1979) 4 SCC 429, para 21.

²⁴ *East India Commercial Co Ltd v Collector of Customs* 1962 AIR 1893, para 19.

decision is incorrect, the matter should be referred to the Chief Justice, who may form a larger bench to reconsider the issue²⁵.

Thereafter, if there are conflicting decisions of various High Courts, then the later decision is to be preferred if it has taken into consideration all the jurisprudence on that issue. The Bombay High Court in *Commissioner of Income Tax v. Thana Electricity Supply Ltd.*²⁶, has summarised all the jurisprudence on the precedent value of a High Court's judgements. The Bombay high court judgement, has been unanimously affirmed, cited and relied upon in numerous pronouncements by the Supreme Court as well as various other High Courts. In summation, the abovementioned judgement affirms that a High Court serves as the paramount adjudicatory authority within its respective territorial jurisdiction, subordinate only to the Supreme Court.

In conclusion, a High Court's ruling does not hold legal authority over other High Courts, though it may serve as a persuasive reference. This means that while another High Court may consider it, there is no obligation to follow it. The same principle applies to High Court judgements that declare a law void. The Law Commission of India in

²⁵ *Mahadeolal Kanodia v Administrator-General of West Bengal* 1960 AIR 936, para 19.

²⁶ *Commissioner of Income Tax v Thana Electricity Supply Ltd* [1993] SCC OnLine Bom 591.

its report²⁷ recommended that if a High Court encounters an issue related to a central law on which another High Court has already ruled but holds a differing opinion, it may refer the matter to the Supreme Court along with its own reasoned perspective.

V. EXCEPTION TO THE GENERAL RULE

This has been the standpoint of the Apex Court which has been upheld by the judiciary and reaffirmed in several pronouncements. It was uncontroversial until April 2004, at which point the Supreme Court pronounced its contentious ruling in *Kusum Ingots & Alloys Ltd. v. Union of India & Anr.*²⁸, wherein it opined that a decision of the High Court declaring a parliamentary statute to be unconstitutional will be the law of the land as under Article 141 and it will have a bearing across India's whole territory. This expanded the High Court's jurisdiction and granted it unrestricted authority on par with the Supreme Court with respect to the constitutionality of the statute. The relevant para is as follows:

‘22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether

²⁷ Law Commission of India, *136th Report: Conflicts in High Court Decisions on Central Laws - How to Foreclose and How to Resolve* (1990).

²⁸ *Kusum Ingots & Alloys Ltd v Union of India & Anr* (2004) 6 SCC 254.

interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.’

The genesis of the aforementioned principle can be traced to a judicial pronouncement by the Nagpur Bench of the Bombay High Court approximately twenty-six years prior to *Kusum Ingots*²⁹. In the case of *Commissioner of Income Tax, Vidarbha v. Smt. Godavari Devi Saraf*³⁰, the Bombay high court established this principle, thereby affirming and binding itself to a previous judgement of Madras High Court in *A. M Salt Maricar*³¹, declaring section 140A(3) of the Income Tax Act, 1961, as non est from the book of law. The relevant para is read as follows:

‘9. Until a contrary decision is given by any other competent High Court, which is binding on a tribunal in the state of Bombay, it has to proceed on the footing that the law declared by High the Court, though of another state, is the final law of the land.’

²⁹ *ibid.*

³⁰ *Commissioner of Income Tax, Vidarbha v Smt Godavari Devi Saraf* [1977] SCC OnLine Bom 215.

³¹ *A M Salt Maricar v Income Tax Officer* [1972] SCC OnLine Mad 236.

Interestingly, Supreme Court in *Kusum Ingots*³² does not make any reference to this case of Bombay high court.

VI. THE CLOG OF KUSUM INGOTS ERA

*Kusum Ingots*³³ has sparked extensive debate regarding the nature and binding authority of certain judicial observations, particularly the controversial paragraph deemed by some as *obiter dicta*. The jurisprudence suggests that *obiter dicta* of the Supreme court is binding on all high courts³⁴, whereas some judgements opine that *obiter dicta* is not supposed to bind all lower courts *verbatim*, due to its subjective nature³⁵. Thereafter, some stated that for a *dictum* in a judgement to be binding, it must at least be one of the questions raised before the bench³⁶. However, the precedent value of high court's order binding throughout India has never been raised by any party during the course of arguments and deliberations in the Supreme Court. Thereafter, another debate deduced that it is a casual observation of the bench which is not binding at all³⁷. The discourse continues to intensify as one explores the subject matter further; however, such considerations

³² *Kusum Ingots* (n 28).

³³ *ibid*.

³⁴ *Municipal Committee, Amritsar v Hazara Singh* 1975 AIR 1083.

³⁵ *State of Orissa v Sudhansu Sekhar Misra* (1968) 2 SCR 154.

³⁶ *Prakash Amichand Shah v State of Gujarat* (1986) 1 SCC 581.

³⁷ *Gerard v Worth of Paris* [1936] 2 All ER 905 (CA); *MCD v Gurnam Kaur* (1989) 1 SCC 101.

are extraneous and outside the scope of this research paper. It is obvious that not everything can be examined in a paper this length, thus certain boundaries will need to be self-imposed for avoidance of deviation from the issue at hand.

VII. THE ENDURING IMPACT OF KUSUM INGOTS

After the pronouncement of *Kusum Ingots*³⁸, various High Courts started quoting it while applying another High Court's decision on the constitutionality of a statute. This complex issue was presented to the Madras High Court in the year 2010 in *Textile Technical Tradesmen Association & Ors. v. Union of India & Ors.*³⁹, wherein the validity of Section 17A of the Industrial Disputes Act, 1947⁴⁰, was an issue, since the Andhra Pradesh High Court in *Telugunadu Workcharged Employees State Federation, Nalgonda District Unit v. Government of India*⁴¹, had already struck down the provision in the year 1997. The Madras High Court, placing substantial reliance on the precedent established in *Kusum Ingots*⁴², declared that the contested provision has

³⁸ *Kusum Ingots* (n 28).

³⁹ *Textile Technical Tradesmen Association v. Union of India*, 2010 SCC OnLine Mad 6515.

⁴⁰ Industrial Disputes Act 1947.

⁴¹ *Telugunadu Work-charged Employees State Federation v. Government of India*, 1997 SCC OnLine AP 313.

⁴² *Kusum Ingots* (n 28).

been effectively nullified following the Andhra Pradesh High Court's adjudication, rendering it *non est*.

Thereafter, the constitutionality of Section 10A of the Indian Divorce Act, 1869⁴³, was in question before the Karnataka High Court in *Shiv Kumar v. Union of India*⁴⁴, wherein. Justice Nagarathna bound herself to a Kerala High Court's Division Bench judgement, *Saumya Ann Thomas v. Union of India*⁴⁵, in which the impugned provision was read down in a different manner. A heavy reliance was placed on *Kusum Ingots*⁴⁶ to make the Kerala high court's judgement binding across India.

Furthermore, Madras High Court in *Dr. T. Rajakumari v. Government of Tamil Nadu*⁴⁷, while deciding the constitutionality of Section 2(p) of the Pre-Conception and Prenatal Diagnostic Technique Act, 1994⁴⁸ (PC & PNDT), again cited *Kusum Ingots*⁴⁹ and made itself bound by the law laid down by the Delhi High Court in *Indian Radiological and Imaging Association v. Union of India*⁵⁰, which declared the impugned provision to be unconstitutional. Justice Sanjay Kishan Kaul, explicitly

⁴³ Indian Divorce Act 1869.

⁴⁴ *Shiv Kumar v Union of India* [2014] SCC OnLine 10121.

⁴⁵ *Saumya Ann Thomas v Union of India* (2010) 1 KLT 869.

⁴⁶ *Kusum Ingots* (n 28).

⁴⁷ *Dr T Rajakumari v Government of Tamil Nadu* AIR 2016 MADRAS 177.

⁴⁸ Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994.

⁴⁹ *Kusum Ingots* (n 28).

⁵⁰ *Indian Radiological and Imaging Association v Union of India* [2016] SCC OnLine 950.

stated that since during the pendency of *Dr. T. Rajakumari's*⁵¹ case, the Supreme Court has not stayed the Delhi High Court order, therefore it is a binding precedent. Unfortunately, the Delhi High Court order was stayed later in 2018 by the Supreme Court in *Union of India v. Indian Radiological and Imaging Association*⁵², thereby opening the gateway for further arguments in *Dr. T Rajakumari's*⁵³ case.

Hereafter, the Calcutta High Court, dealt with similar issue in the case of *Partha Protim Datta v. Union of India*⁵⁴, wherein a notification issued by the Ministry of Environment, Forest and Climate Change, Government of India was challenged. According to Justice Dipankar Datta, the Calcutta High Court will be bound by the Gujarat High Court's and Karnataka High Court's orders deferring the implementation of the impugned notification because of the legal precedent established in *Kusum Ingots*⁵⁵.

Similarly, the Orissa High Court in *Susanta Kumar Tripathy v. Union of India*⁵⁶, made itself bound by a previous decision of Madras High Court in *Chennai City Auto Ootunargal Sangam v. Union of India*⁵⁷, which struck down notifications imposing additional fee for renewal of

⁵¹ *Dr T Rajakumari* (n 47).

⁵² *Union of India v Indian Radiological and Imaging Association* (2018) 5 SCC 773.

⁵³ *Dr T Rajakumari* (n 47).

⁵⁴ *Partha Protim Datta v Union of India* [2016] SCC OnLine 8511.

⁵⁵ *Kusum Ingots* (n 28).

⁵⁶ *Susanta Kumar Tripathy v Union of India* [2019] SCC OnLine 81.

⁵⁷ *Chennai City Auto Ootunargal Sangam v Union of India* (2017) 3 LJ 769.

fitness certificate issued under Central Motor Vehicle Rules, 1989⁵⁸. Again, the court heavily relied on *Kusum Ingots*⁵⁹.

Recently, Madras High Court in *V. Sundararaj v. Registrar General, High Court of Judicature, Madras*⁶⁰, reiterated the same when the Bombay High Court in *Vijaykumar Dighe v. Union of India*⁶¹, declared Rules 3(2)(b), 4(2)(c) and 6(9) of the Consumer Protection Rules, 2020⁶², as unconstitutional. Madras High Court opined that the impugned rules were deleted from the statute book by the Nagpur Bench of the Bombay High Court, therefore the impugned rules are *non-est*. Furthermore, the Supreme Court upheld the Bombay High Court judgement in *Secretary Ministry of Consumer Affairs v. Mahindra Limaye*⁶³, thereby fortifying the legal stance in *Vijaykumar Dighe's*⁶⁴ case further.

Lastly, the Supreme Court also acknowledged the principle laid down in *Kusum Ingots*⁶⁵ in *All India Jamiatul Quresh Action Committee v.*

⁵⁸ Central Motor Vehicles Rules 1989.

⁵⁹ *Kusum Ingots* (n 28).

⁶⁰ *V Sundararaj v Registrar General, High Court of Judicature, Madras* 2023 243 AIR.

⁶¹ *Vijaykumar Dighe v Union of India* [2021] SCC OnLine 2933.

⁶² Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of president and members of the state commission and district commission) Rules 2020.

⁶³ *Secretary Ministry of Consumer Affairs v Mahindra Limaye* [2023] SCC Online 231.

⁶⁴ *Vijaykumar Dighe* (n 61).

⁶⁵ *Kusum Ingots* (n 28).

*Union of India*⁶⁶, wherein the then Additional Solicitor General of India, P. S. Narsimha, made a statement on behalf of the Union of India which was recorded and acknowledged by the Supreme Court. The recorded statement is read as follows:

‘1. We understand the position to be that the interim order shall apply across the whole country.’⁶⁷

The interim order in the cited quotation was passed by the Madras High Court in *S. Selvagomathy v. Union of India*⁶⁸, it granted an interim relief of stay of the Rules 22(b)(iii) and Rule 22(e) of the Prevention of Cruelty to Animals Rules, 2017⁶⁹, as *ultra vires* the principal Act. The aforementioned order’s observation demonstrates that even the Supreme Court is in consonance with the *obiter dicta* made in Para 22 of *Kusum Ingots*⁷⁰ that interim or final orders in writ petitions contesting the constitutional validity of Central Legislations apply nationwide. As a result, one must question if the Supreme Court has given the stamp of approval to the *Obiter Dictum* of *Kusum Ingots*⁷¹.

⁶⁶ *All India Jamiatul Quresh Action Committee v Union of India* WP (C) No 422 of 2017 Order dt. 11/07/2017.

⁶⁷ *ibid.*

⁶⁸ *S Selvagomathy v Union of India* [2017] SCC OnLine 2350.

⁶⁹ Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2017.

⁷⁰ *Kusum Ingots* (n 28).

⁷¹ *ibid.*

VIII. DEBATES ON THE PRINCIPLE OF KUSUM INGOTS

There have been numerous debates and discussions questioning or supplementing the principle laid down in para 22 of *Kusum Ingots*⁷², which can be summarised and explained herein below:

1. Misinterpretation of Kusum Ingots
2. Amendments to Article 226
3. Conjunctive Reading of Articles 226 and 13
4. Judicial Activism
5. Caution Against Misapplication

A. Misinterpretation of Kusum Ingots:

One discussion arose wherein it was contended that various high courts started misinterpreting para 22 of *Kusum Ingots*⁷³ and thereby applied the principle to executive actions, and general interpretations of any provision. This misinterpretation gave the high courts unlimited power, making them the ‘High Courts of India’. Although, a different interpretation of para 22 was laid down by a Maharashtra Real Estate Appellate Tribunal, Mumbai, in *Sriram Krishnan v. CCI Projects*⁷⁴. The Appellate Tribunal concluded that *Kusum Ingots* arises out of an issue regarding cause of action and

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *Sriram Krishnan v CCI Projects* Appeal No AT00600000021150 (Maharashtra Real Estate Appellate Tribunal).

territorial jurisdiction to entertain a writ petition challenging the constitutional validity of a parliamentary legislation, therefore it will not apply to any other matter unless the validity of a central enactment is questioned. Thereafter, the Delhi High Court gave a similar interpretation of *kusum ingots* affirming the interpretation in *Sachin Waze v. Union of India*⁷⁵, and dismissed the writ petition for lack of territorial jurisdiction.

B. Amendments to Article 226:

A different perspective in favour of Kusum Ingots is about the amendments to Article 226, more particularly 15th and 42nd amendment. As explained earlier, 15th Amendment was brought to resolve an issue in the 1960's, however, in today's context, the same Amendment has created a problem since it enlarged the jurisdiction of High Courts in India, thereby making them 'High Court of India'⁷⁶. Now, if we look at the controversial 42nd Amendment with pragmatic lens, then we can come to a conclusion that it solved this whole issue by usurping the High Court's power to declare a parliamentary legislation to be constitutionally invalid. The 42nd amendment brought Article 226A, which took away the abovementioned power and brought Article 131A, thereby granting the Supreme Court sole authority to determine whether central enactments

⁷⁵ *Sachin Waze v Union of India* [2022] SCC OnLine 3287.

⁷⁶ Shraddha Kulhari and Sujoy Chatterjee, 'The Emergence of a 'High Court of India': Separating the Myth from the Substance' 3 Journal of Indian Law Society 320.

are constitutional. This would have never led to the current issue of the High Court possessing powers equivalent to those of the Supreme Court, with respect to territorial jurisdiction. However, these troubleshooting provisions, were put to an end by the 43rd Amendment⁷⁷, by repealing the provisions. This may be one of the underlying reasons for Parliament's repeated inability to fulfil its objectives, primarily due to political obstructions.

C. Conjunctive Reading of Articles 226 and 13:

A new angle discussing the power of the High Court declaring the constitutional validity of the Central enactment is with respect to the High Court emanating its abovementioned power from not only Article 226 but also Article 13. If we read the last line of Article 226(1) 'for any other purpose' and Art 13 conjunctively, then we can conclude that the High Court can declare any law to be invalid if it is violating any of the rights in Part III of the Constitution, irrespective of its territorial jurisdiction. Article 13(2) does not encompass a territorial limitation and High Court being a court of record and a constitutional court like the Supreme Court, it does not require any explicit power to declare any law *ultra vires* the fundamental rights⁷⁸.

⁷⁷ Constitution (Forty-third Amendment) Act 1977.

⁷⁸ Shivprasad Swaminathan, *Schrodinger's Constitutional Cat: Limits of the High Court's Declaration of Unconstitutionality* (2013) 25 National Law School of India Review 103.

D. Judicial Activism:

A separate claim about the interpretation of *Kusum Ingots* is that the Supreme Court under Article 142 has done complete justice by giving the High Courts the requisite power so as to put an end to the issue of affordability in the Supreme Court, as mentioned earlier. Furthermore, it can also be said that the Supreme Court is putting Article 32(3) into operation so as to achieve the objective of making litigation inexpensive. It may be asserted that the Supreme Court is making a mountain out of a molehill. However, this can only be achieved through a constitutional amendment, although under the garb of Judicial Activism, the judiciary has been taking matters into their hands time and again.

E. Caution Against Misapplication:

Another line of reasoning laid down by the Calcutta High Court before deciding the earlier mentioned *Partha Protim Datta*⁷⁹ in the timeline, was the case of *Durgapur Steel Town Cable TV Operator's Association v. Union of India*⁸⁰, which not only dissented but also questioned the principle of *Kusum Ingots*. Justice Dipankar Datta issued a cautionary note against other High Courts indiscriminately applying para 22 of *Kusum Ingots*. He further highlighted that the Sikkim High

⁷⁹ *Partha Protim Datta* (n 54).

⁸⁰ *Durgapur Steel Town Cable TV Operator's Association v Union of India* [2016] SCC OnLine 3025.

Court's *status quo* order in *All Sikkim Cable Operators Association v. Union of India*⁸¹, based on the unique circumstances of the writ petition, should not have been used by other High Courts to assume that the *status quo* against the Central Government's notification extended nationwide.

IX. CONCLUSION

The concept of *Samudramanthan*, an ancient Indian event where gods and demons together churned the ocean to obtain the ultimate elixir of immortality, *Amruta*, serves as an apt metaphor for the pursuit undertaken in this paper. In the same way that the churning of the ocean brought forth fourteen elements before revealing the priced elixir, the examination of the jurisdictional powers of the High Courts similarly necessitates delving into a vast and intricate chain of legislative layers that span centuries. Each law traces back to a prior one, creating a complex, interconnected framework. This relentless effort to sift through and interpret these layers of legislation reflects the mythical churning process, as it seeks to reveal the true scope and essence of the High Court's powers.

In Summation, it can be said that the High Court existed before the promulgation of the Constitution and the establishment of the Supreme

⁸¹ *All Sikkim Cable Operators Association v Union of India* [2016] SCC OnLine 27.

Court or the federal court under Government of India Act, 1935, it follows that the precedential authority of a High Court's judgement is substantially akin to that of the Supreme Court. As per the previous historical comparative analysis, it can be said that this rationale supports the whys and wherefores of Para 22 of *Kusum Ingots*⁸². The main objective of a central law is to ensure uniform application across the whole territory of India, and this concept of uniformity has been upheld by *Kusum Ingots*.

Recently in 2023, the Division bench of the Hon'ble Supreme Court, presided over a Special Leave Petition which was seeking a relief to make a case in the Patna High Court to be time-bound. However, the Supreme Court division bench dismissed the petition citing the autonomy of the High Court making it an independent body and also opined that 'the High Court is also a Constitutional Court and is not subordinate to the Supreme Court'⁸³. Both the constitutional courts wield analogous powers, including the doctrine of precedent enshrined under Article 141, and the authority to transcend statutory provisions when necessary to secure complete justice, as delineated in Article 142. These judicial prerogatives empower them to not only maintain and reinforce legal principles, but also to address the complexities of equitable resolution, thereby ensuring that justice is administered in a manner that is both comprehensive and nuanced.

⁸² *Kusum Ingots* (n 28).

⁸³ *Shankar Kumar Jha v State of Bihar* [2023] Live Law 114.

The appointment and removal of judges highlight the concurrent authority of the Supreme Court and High Courts. Judges for both courts are appointed by the President in consultation with the Chief Justice of India. In the case of High Court judges, the Governor of the respective state and the Chief Justice of the High Court are also consulted. The removal of judges from either court is solely at the President's discretion, based on an order passed by both Houses of Parliament. This order must be supported by a majority of the total membership of each House and by at least a two-thirds majority of those present and voting. Such a request must be made during the session on the grounds of proven misconduct or incapacity.

Furthermore, the Supreme Court has time and again upheld the independent status of the High Courts as an institution. High Courts are autonomous bodies in the Indian Judiciary. The Supreme Court in *Mahesh Chandra Gupta v. Union of India*⁸⁴, upheld this principle and opined that 'Supreme Court Collegium does not sit in appeal over the High Court Collegium'. The High Court is empowered to make its own rules and procedure and is not bound by Supreme Court for that matter. Thereafter, recently in September 2024, Supreme Court in *Chirag Bhanu Singh v. High Court of Himachal Pradesh*⁸⁵, asked the Himachal Pradesh High Court Collegium to reconsider the names for elevation of

⁸⁴ *Mahesh Chandra Gupta v Union of India* (2009) 8 SCC 273.

⁸⁵ *Chirag Bhanu Singh v High Court of Himachal Pradesh* [2024] SCC OnLine 2418.

judges to the High Court keeping in mind that the Supreme Court does not sit in an appellate jurisdiction over High Courts in India.

To conclude, it can be said that the High Courts not only have a wider scope but also are equal to the Supreme Court with respect to their powers. This gives rise to two pivotal questions. First, can a judgement delivered by one High Court be cited and relied upon as precedent in another High Court, considering its similar jurisdictional powers as to the Supreme Court? Second, who holds the authority to amend the jurisdictional powers of the High Courts if the Indian judiciary continues to operate within the framework of colonial era principles established under British rule? Would such an amendment, in theory, still necessitate approval from the British Parliament?

It can be asserted and interpreted that the full bench of CJI Khare, Justice Sinha and Justice Kapadia have given effect to the archaic powers of the High Court by imbedding it into para 22 of the *Kusum Ingots*' judgement, manifesting equal powers of both the constitutional courts. Although, the way of functioning of both, the Supreme Court and High Courts and all the subordinate courts in India is identical. India in its true sense follows 'Unified Judiciary in Federal India' and upholds the altruistic commitment to legal consistency and justice across the nation.