

TRIBUNALIZATION OF JUSTICE IN INDIA

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INTRODUCTION

As we know the judiciary in India is working under immense pressure, the pendency of cases is one of the highest and the burden of cases is on all the layers of the judiciary whether it is lower courts, High Courts or the Supreme Court of India. The system of delivering justice under the constitution and its Tribunalization by the governments is one of the most debatable topics in the country. Over the years, the governments established in India have tried through various amendments to establish the various tribunals to reduce the burden on the judiciary in India. Though tribunals ensure justice, the credibility of these tribunals is always being questioned as there is an interference of the executive in the various appointments made by various tribunals and it is against the principle of the independent judiciary. The principle of the independent judiciary means separation of judiciary from the executive which is stated in the article 50 of the constitution which state that “the state shall take every step to separate the judiciary from the executive.”¹

Keywords: Tribunal, Judiciary, Constitution.

WHY THE MATTER IS IN RECENT HEADLINES?

CJI D.Y Chandrachud recently remarked while stating a judgment that a National Judicial Commission should be set up to oversee the selection processes of member and their criteria for appointment, salaries, and allowances introduction of common eligibility criteria for removal of chairpersons and members of a Tribunal². Another reason is that in the year 2021, the government of India came up with the Tribunal Reforms Act, and a PIL was filed against it stating it as unconstitutional.

WHAT DOES A TRIBUNAL MEANS?

As a part of the legal circle we have come across and encountered the word ‘tribunal’ frequently for example National Companies Tribunal, Railway Rate Tribunal, Industrial Tribunal, etc.

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¹ The Constitution of India 1950, art 50

² The CJI told ‘it is to comply to government to establish commission’.

The tribunals are made for special purposes to decide specific cases. The word 'Tribunal' is derived from the word 'Tribune' which means 'magistrate of the classical Roman Republic'³. The office of this Tribune was referred to as the 'Tribunal'.

A tribunal is a quasi-legal body established to address issues like the resolution of disputes involving administrative or tax matters. Tribunals are the partial judicial body that decides cases, resolution of disputes and resolves the problem. The tribunals came into existence because of special acts by the legislature. The word 'tribunal' means a set or a bench upon which judge or judges sit and decide disputes between the parties and exercise judicial powers and administrative functions. A tribunal is generally an institution having the authority to judge, adjudicate on or determine claims or disputes⁴.

Tribunals in India work as a supplement to the present judicial system but not as a substitute. The main motive for setting up this alternative body was to reduce the workload. Examples of tribunals Central Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), customs Excise and Service Tax Appellate Tribunal (CESTAT), National Green Tribunal (NGT), competition Appellate Tribunal (COMPAT) Securities Appellate Tribunal (SAT)⁵ etc.

HISTORY OF SETTING UP OF TRIBUNAL IN INDIA

The need for setting up of tribunal arose due to the pendency of cases in various courts, so domestic tribunals and other tribunals have been established under different statutes. The primary reason for setting up tribunals was to overcome backlogs and delays in the delivery of justice. The basic idea behind setting up of tribunal was to reduce the pendency of cases in the courts which is due to the huge population and years of continuing litigation to secure justice to the aggrieved parties and for securing speedy disposal, an alternate mechanism is needed.

Originally the Constitution of India⁶ did not contain any provisions regarding the tribunals. It was after the year 1976 that the concept of tribunal came up in India. The Income Tax Appellate Tribunal of India⁷ was the only tribunal that was established in the year 1941 before India gained Independence in the year 1947. The recommendation of setting up tribunals were first

³ The magistrate in roman kingdom were known as Tribunes.

⁴ Drishti IAS <www.drishtiiias.com>

⁵ The PRS legislative Research <prsindia.org>

⁶ The Constitution of India, 1950

⁷ Income Tax Act 1922, s 5A.

made by the 14th Law Commission of India⁸ under the reform of the judicial administration report of India. Thus, the Law Commission of India recommended a new system at the central and state levels to deal with the cases of services of civil servants and issues related to their services, but the commission also stated in their report that the role is “to supplement and not sub-plant”. The commission recommended the establishment of a tribunal in the following areas namely for the Motor Vehicles Act, Customs matters, Central Excise matters, and sales-related matters.⁹

The history of setting up the tribunal in India dated back to the year 1967 when an administrative reforms commission¹⁰ was set up by the government of India to recommend suitable areas in which tribunals could be set up. During the period of Emergency imposed in 1975 which turned out to be the darkest period of Indian democracy, in the name of speedy justice and rationalities, the purpose of the government at that date was to balance the power of the judiciary at that time the Swaran Singh committee was appointed which ultimately led to 42nd Amendment of the Constitution. Many amendments that were made in the 42nd constitutional amendments were reversed by the 44th constitutional amendment in the year 1978 and the High Court's power under 227 was restored but no amendment was made to 323a or 323b.

Swaran Singh's committee recommended the exclusion of jurisdiction of all courts concerning tribunals except for the Supreme Court in Article 136¹¹. It recommended limiting the High Court writ jurisdiction this may have resulted in High Courts losing their power to declare the law unconstitutional and it could not have exercised any power of any kind over administrative action or adjudication unless fundamental rights were involved.

THE IMPACT OF TRIBUNALIZATION ON INDIA'S LEGAL SYSTEM

The tribunals are established to provide speedy disposal of disputes and to reduce the workload of the courts. The traditional judicial system proved to be inadequate for deciding and settling disputes as it was slow, costly and complex.¹² In the early days, the judiciary in India was not in favour of setting up Tribunals as an alternate body to decide cases in India. The judiciary was of the view that the under Indian constitution it is their function to decide cases and with

⁸ 26 September 1958.

⁹ The report of 14 law commission

¹⁰ ARC (5 January 1966).

¹¹ The Constitution of India 1950, Art.136

¹² DRISTI IAS <www.drishtiias.com>

the setup of tribunals, this will amount to infringement of their rights and it will hamper judicial independence.

In India, it is like the wave of Tribunalization and it is being continued with various statutes. Many people have expressed views that the Tribunalization has failed in India because the 272nd report of the law commission came out with dependency figures and it said that the CAT had 44000 cases, SET had 90000 cases, ITAT had 90000 cases, and AFT had 10000 cases pending. The causes given in the report were as follows: 58% Failed hearings and tribunals another cause was absenteeism of the Tribunal member which was done on the 74th Parliamentary Standing Committee report also highlighted its concern over vacancies being a cause of the di-functional nature of the tribunals¹³, the report also analyzed the list of 13 tribunals wherein out of sanction strength of 352 posts across these tribunals 138 posts were lying vacant.

In the year 2017 also the government made another attempt that increased the role of the executive in Tribunals, in the finance bill of 2017 it was stated that the central government¹⁴ will have the power to make rules regarding Tribunals. And the year 2020 the rules were made. Many people who oppose the criminalisation also argue that the decisions of the tribunals are subject to appeal before the high court or the Supreme Court and are also subject to judicial review¹⁵ so it further delays and adds to the expenses of litigants. Thus instead of saving time, it has become a more time-consuming process.

FUNCTIONING OF THE TRIBUNAL

The functioning of the Tribunals: The Tribunals do not have to follow any uniform procedure as laid down under the civil procedure code¹⁶ or criminal procedure code¹⁷ and the Indian Evidence Act¹⁸ but they have to follow the principles of natural justice. The tribunals known as judicial bodies are distinct from courts in such nature that they have only a few judicial powers and many times tribunal is headed by the administrative officer i.e. executive, unlike the judiciary. The tribunals perform several functions adjudicating disputes, determining rights

¹³ The parliament standing committee report.

¹⁴ Union government of India.

¹⁵ Constitution of India 1950, art 13.

¹⁶ Civil Procedure Code 1908

¹⁷ Criminal Procedure Code 1973

¹⁸ Indian Evidence Act 1872

between contesting parties, making an administrative decision, reviewing an existing administrative decision, and so forth.

CONSTITUTIONALITY OF TRIBUNALS IN INDIA

Part 14A of the Constitution of India was added by the 42 amendments of the constitution of India. Article 323 of the constitution deals with the central and state tribunals. Article 323 deals with administrative tribunals and Article 323b deals with tribunals for other matters.¹⁹ The constitutional validity of the tribunal and the constitutional status of the tribunals were given by the 42nd Amendment Act of 1976²⁰ by the insertion of articles 323A and 323B in the constitution of India by which the parliament has been authorized to constitute administrative and other tribunals to decide and adjudicate the matter specific therein.

ADMINISTRATIVE TRIBUNALS

Administrative tribunals were set by an act of parliament, the Administrative Tribunal Act, 1985²¹ under article 323A of the constitution. The tribunals created under 323A will not have any hierarchy. The tribunals created under 323B the tribunals which are created by state legislature there can be a hierarchy. It oversees and resolves disagreements and grievances related to the hiring process and terms of employment for individuals appointed to public positions and roles in both central and state government affairs. The Administrative Tribunals Act 1985²² provides for three types of tribunals. The central government establishes an administrative tribunal called the Central Administrative Tribunal (CAT).

The primary authority of the Central Administrative Tribunal encompasses the following categories:

1. Members of the All India services;
2. Individuals appointed to any civil service or civil position under the central government;
3. Civilians appointed to any defence services or defense-related positions;
4. Employees of public sector enterprises or organizations as designated by the government.

¹⁹ Indian Constitution 1950, art 323A & 323 B

²⁰ Constitutional Amendment Act 1976

²¹ The Administrative Tribunal Act 1985.

²² Administrative Tribunal Act 1985.

The central government²³ may, upon receipt of a request on this behalf from any state government, establish an administrative tribunal for such employees it also includes central government employees like civil servants like IAS. CAT is a multi-member body headed by a chairman and other people are present in it, after Central Administrative Tribunal Amendment Act 2006, the post of vice chairman was removed.

Two or more states might ask for a joint tribunal, which is called the Joint Administrative Tribunal (JAT), which exercises the powers of the administrative tribunals for such states. The Central Administrative Tribunals became the forum for the redressal of issues of the employees of the central government. Thus, no litigation that it may have caused was saved in lower courts and the High courts and the Supreme Court. There are 17 benches of the central administrative tribunal are there in total of which the principal bench is located in Delhi and other places include Jaipur, Lucknow, and other benches located at principal seats of the High Court of the respective state.

The members of the Central Administrative Tribunal are from both fields i.e. judicial as well as administrative, they are appointed by the president of India as the head of the Republic. There are a total of 65 members in the tribunal. They are appointed for 5 years. The chairman of the tribunal retires at the age of 65 and member at the age of 62 years.

For the appointment of the member of the tribunal, the committee has been setup which is headed by the sitting judge of the Supreme Court on recommendation of the chief justice of India. Article 323b²⁴ empowers the parliament or the state legislature to set up tribunals for the following matters:

- (a) Imposition, evaluation, gathering, and enforcement of taxation.
- (b) Transactions involving foreign currency, imports, and exports at customs borders.
- (c) Conflicts related to industry and labour.
- (d) Concerns associated with land reforms outlined in Article 31A.
- (e) Ceiling on urban property holdings.

²³ Union government of India.

²⁴ Constitution of India art 323b

(f) Manufacture, acquisition, provision, and allocation of food items and vital commodities.

(g) Election to either the Parliament or state legislature.

STATE ADMINISTRATIVE TRIBUNAL

The Administrative Tribunal Act 1985²⁵ empowers the central government to establish the State Administrative Tribunals (SATs) at the specific request of the concerned state governments. Up to 2019, SATs have been established in nine states, namely Andhra Pradesh, Himachal Pradesh, Odisha, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal, and Kerala. However, the Madhya Pradesh State Administrative Tribunal has been abolished. The chairman and the members of the SATs are appointed by the President²⁶ after consultation with the Governor²⁷ of the state concerned.

TRIBUNAL REFORM (RATIONALIZATION AND CONDITIONS SERVICE) ACT 2021

Appointment: the act speaks about the search and selection committee which will contain a Judge or CJI having the casting vote.

(1) It also has the power to merge tribunal

(2) It speaks about 2 secretaries

(3) Sitting or outgoing chairperson depends on

1. It will have 1 departmental secretary under whose department the tribunal is created.

Age: the minimum age criteria are 50 years should be a minimum age of the person

Transfer or removal of the person the search committee will only have the power.

In this act, as of now, 9 tribunals have been scrapped down like the Movie certification tribunal and, Intellectual Property Appellate Board (IPAB).

²⁵ The administrative tribunals act 1985.

²⁶ President of India

²⁷ Constitution of India 1950, Art 155

THE APPEAL AGAINST THE DECISION OF THE TRIBUNAL

Before the year 1997, the appeal against the the decision of tribunal could only be filed in the Supreme Court. Due to the provisions mentioned in the statute but after the case of S.P Sampat Kumar v Union of India,²⁸ The tribunal appeals came in the ambit of the High Court. Thus, section 28(1) of the Administrative Tribunal Act²⁹ was struck down by the courts and the power given to the High Courts under 226 and 227 articles³⁰ was re-emphasized.

CASE LAWS

The word 'Tribunal' was defined by the Supreme Court in the case of Durga Shankar Mehta v Raghu Raj Singh³¹. The Supreme Court defined tribunal in the following words: In this case, the issue was regarding the election and disqualification of the elected candidate in that constituency thus a case was filed in the Election tribunal. The expressional 'tribunal' as used in article 136³² does not mean the same thing as 'court' but includes, within its ambit, all adjudicating bodies, provided they are constituted by the state and are vested with judicial functions as distinguished from administrative or executive functions.

In the case Bharat Bank Ltd v/s employees Bharat Bank Ltd,³³ The court stated that the tribunals are adjudicating bodies that decide controversies between the parties and exercise judicial functions as distinguished from administrative functions.

Sakinala Harinath v the state of Andhra Pradesh,³⁴ The 3-judge bench of the Highcourt struck down the 2d of 323a and 3d of 323b for violating the power of judicial review of the Highcourt. Later it went to appeal in the Supreme Court and 7 judge bench was constituted. The questions which arose in this case and were considered for consideration were whether the provision of article 323a and 323b³⁵ allowing the ouster of jurisdiction of the high court except Supreme Court under 136³⁶ ran counter to the High Court and Supreme Court inevitable powers of judicial review 226 and 32³⁷ whether the tribunals are effective substitutes for high court

²⁸ S.P. Sampat kumar v UOI 1987 SCR(3)223 1987 SCC

²⁹ Administrative Tribunal Act sec 28 (1)

³⁰ Constitution of India art 226 and 227.

³¹ Durga Shankar Mehta v Raghuraj Singh [1954] AIR 520

³² Constitution of India 1950,art 136

³³ Bharat bank ltd v/s employees Bharat bank ltd [1950] AIR 188

³⁴ Sakinala harinath vs. the state of Andhra Pradesh [1993] (3) ALT 471.

³⁵ Constitution of India 1950, art 323 a 323 b.

³⁶ Constitution of India 1950,Art 136

³⁷ Constitution of India 1950,Art 32,226

jurisdiction possess sufficient competence to invalidate statutory provisions and executive orders.

The SC upheld the decision of the high court and struck down the provision of the 323a and 323b. The SC also stated in this judgment that no tribunal could abrogate the power of the high courts ever replaced the high courts in any manner and could not take away the jurisdiction under articles 226 and 227³⁸ and also concluded that the powers that are conferred upon the courts in article 226 and 32³⁹ were part of the basic structure of the constitution .and could never be ousted through tribunalization.

But the court did provide a levy to the executive of India by holding that noting in the constitution prescribed the creation of tribunals that supplement the high court without the High court substituting them after L Chandrakumar v Union of India⁴⁰.

In this case Supreme Court of India held that the appeal against the decision of the cat may be filed as the first appeal in the high court nearest to that bench in the Supreme Court of India Earlier it was that the appeal could not be filed in the high court which was held unconstitutional. With this decision, the court paved the way for tribunals from an alternative constitutional mechanism to one integrated within the judicial system and subject to the power of judicial review by the high courts under Article 227⁴¹.

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Madras Bar Association & Anr v Union of India,⁴² In this case, the SC states that the member of the tribunal should be appointed the same as the judges of the Supreme Court of India and must be provided with the same security and tenure. And made few observations were made by the Supreme Court related to 50 years of minimum age which was inserted in the rules. SC stated that it violates the principle and will not be able to provide stability and said that advocates who are practising for more than 10 years must be also considered for an appointment regarding the tenure of 5 years +70 years of the age for chairperson and 67 age for the other member of the tribunal.

³⁸ Constitution of India 1950, Art 226, 227

³⁹ Constitution of India 1950, Art 226 & 32

⁴⁰ L. Chandrakumar v UOI 1997

⁴¹ Constitution of India 1950, Art 227.

⁴² Madras bar association & Anr v UOI 2015.

In *R Gandhi v Union of India*,⁴³ In this case, the division bench of the High Court struck down the various provisions of the appointment of members to the tribunal as well as their conditions of service. the High Court pointed out that the government of India should generate a set of minimal standards which any judicatory body should have it was also upheld by the SC. The chairmen of NCLT would be retired judges of the High Court all tribunals need not all technical members. The post of judicial member can be only filled by an advocate of 10 years or more at the bar or district judges with experience of 5 years or more and not with bureaucrats.

Justice Jai Simha Babu judge of the honorable Madras High Court had said: “apprehensive that growing tribunalization of justice in the country accompanied as it is by the executive agreement of power inter-area relating to composition tenure of the tribunal's members and their selection will result in the gradual erosion of judicial independence in the special areas for which tribunals are created and will ultimately lead to the civilization of justice”⁴⁴.

In *Roger Matthews v South Bank* ⁴⁵in year 2019, the Supreme Court unanimously struck down the rules made in section 184 of the act stating that the search and selection committee has formulated under the rules is an attempt to keep the judiciary away. No appeals, revision or reference against the decision of any tribunal al is maintained if the said right is not conferred by the relevant statute. Many times provisions can also be made out of the jurisdiction of civil court, and the decision rendered by these tribunals will be treated as final⁴⁶.

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CONCLUSION

Judiciary being one of the important pillars of every democracy it is also important that the judiciary must act independently for a country like India which is the largest democracy in the world, it is very important, though judicial jurisdiction has been curtailed to some extent by the means of Tribunalization. We also have to see that justice is being delivered to citizens of the India without any compromise with the principle of natural justice. The system of the Tribunal brings with it various advantages, the tribunals are usually quick in hearing cases and deal with them with speed as compared to the courts, usually, the atmosphere of the tribunals is quite normal as compared to the courts its functioning is like administrative in the nature unlike

⁴³ *R Gandhi vs UOI* 2010

⁴⁴ Justice jai simha babu “ stated regarding excessive Tribunalization of the justice”

⁴⁵ *Roger Matthews v south bank & others* 2019.

⁴⁶ <www.scobserver.in>

courts where due procedure is followed with various set of rules, the tribunals are cheap does the heavy load on the pocket of the litigants is saved.

The advantage of the tribunals is that the staff in the tribunals are specialised experts in the particular area, as the administrative appointments are also made in the tribunals the person with the knowledge of that field can also be appointed and justice for the purpose which that tribunal is established can be done by that person so appointed with the growing population of the country the speedy redressal of cases is also necessary and for that, we need to look towards various alternative modes. The tribunals being one of them, as we know law does not remain static it changes with the changing times and changing nature of the society. So though the concept of tribunals was not there at the date of the commencement of the Constitution⁴⁷ it was later introduced with the amendments. So far the various tribunals in the country have successfully decided various cases and also given the landmark judgement. Any organisation becomes successful when it works Integration with all. Thus for a successful democracy, the integrated working of all the organs including the judiciary is very important so far the tribunals in the country instead of substituting have acted as sub-plans to the courts and worked integrated. It also needs to be noted that the excessive tribunalisation of the justice-delivering mechanism need not be done will exploring the alternative mode of dispute resolution.

⁴⁷ Constitution of India 26 Nov 1950.