

STATUTORY TRIBUNALS IN INDIA- AN ANALYSIS

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INTRODUCTION

With increase in complexity and the variety of disputes arising in modern times, the system of dispute resolution has evolved significantly. The function of adjudicating disputes is normally vested in the courts. The Indian judicial system has an organized hierarchy provided for in the Constitution. However, in modern times, the functions of administration have expanded and administrative authorities are now vested with the power of adjudication. There has been a marked growth in the number of administrative bodies set up under several legislations which decide on a wide variety of claims. The number of such tribunals is growing fast, and the trend can also be observed in other democratic countries like U.K. and U.S.A. The reason behind the growth of these tribunals is the extension of administrative functions of governments, with the adoption of the concept of 'welfare state'. The socio-economic changes have led to the expansion in governmental operations, and this necessitates the vesting of adjudicatory functions in bodies outside the traditional court system.

The advantages of such a system are many, owing to the flexibility of approach, expertise of members and freedom from complicated procedures which leads to speedier, cheaper and easier access to justice. However, the tribunals have also attracted heavy criticism on account of having lack of transparency and uniformity in procedures adopted for appointment of members. Besides, certain members do not have formal training in law and do not provide sound reasoning for judgments. In spite of all the criticism, many of these tribunals have survived the test of constitutionality in courts, and continue to play a part in providing faster resolution of disputes.

Thus, with the gradual adoption of the concept of welfare state, governmental functions have increasingly blurred the boundaries between various organs of government. This article studies the various statutory tribunals existing in India, their powers, functions and procedures followed. Also, an analysis has been presented about the extent of success the tribunals have enjoyed.

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A prominent feature of the U.K. governmental machinery is the multitude of special tribunals created by Acts of the Parliament. Each of these is designed to be a part of a specific scheme of the administration. Tribunals are mainly a twentieth-century phenomenon in U.K., (for it was long part of the conception of the rule of law) that the determination of questions of law – that is to say, questions which require the finding of facts and the application of definite legal rules or principles- belonged to the courts exclusively.¹ In statutes dating from 1660, the Commissioners of Customs and Excise were given judicial powers. This was followed by giving similar powers to the General Commissioners of Income Tax, a tribunal which was established in 1799 and is functional in the present time.

The constituent members of tribunals vary greatly in accordance with the character of their business. A form frequently adopted is the 'balanced tribunal', consisting of an independent chairman, usually legally qualified and appointed by the Lord Chancellor, and two members representing opposed interest.²

No right of appeal from a tribunal exists unless conferred by a statute.³ There are different avenues of appeal from tribunals, and the British Parliament has not followed any consistent pattern for creating appellate procedures.⁴

After the Second World War, there was an intensive social legislative reform which was based on the attitude of positive hostility towards the courts of law. The rapid rise in the number of tribunals led to a mass of procedural anomalies. In order to improve the standards of justice meted out by the tribunals, the Committee on Administrative Tribunals and Enquiries (The Franks Committee) was appointed.⁵ The necessary reforms were made by the Tribunals and Enquiries Act 1958, which provided for the Council on Tribunals⁶ as an advisory body with a general oversight over tribunals.

1. CENTRAL AND STATE ADMINISTRATIVE TRIBUNALS

The Administrative Tribunals Act, 1985 provides for three types of tribunals:

- (i) The Central Government establishes an administrative tribunal called the Central Administrative Tribunal (CAT), which has jurisdiction to deal with service matters

¹C F Forsyth & H W R Wade, *Administrative Law* (8th Ed. (Reprint) 2003)885.

²*Ibid.*

³A *G v Sillem* [1864] 10 HLC 704.

⁴*Ibid* 1 at 894.

⁵*Ibid.*, 898.

⁶Tribunals and Enquiries Act 1958,s 1(3).

pertaining to the Central Government employees, or of any union territory, or local or other government under the control of the Government of India, or of a corporation owned or controlled by the Central Government.⁷

- (ii) The Central Government may, on receipt of a request in this behalf from any state government, establish an administrative tribunal for such state, which will be known as the State Administrative Tribunal (SAT) to deal with service matters pertaining to state employees.⁸
- (iii) Two or more states might ask for a joint tribunal, which is called the Joint Administrative Tribunal (JAT), which exercises powers of the administrative tribunals for such states.⁹

Each tribunal consists of a chairperson, vice-chairpersons and judicial and administrative members as the appropriate government might deem fit.¹⁰ A person aggrieved by an order pertaining to any matter within the jurisdiction of the tribunal may make an application to the tribunal for redressal of the grievance.¹¹

2. TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL

The TRAI Act, 1997 has included provisions for settlement of disputes and appeals against decisions of the TRAI.¹² The TRAI (Amendment) Act, 2000 provides for the establishment of an appellate tribunal called the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) to:

- (i) adjudicate any dispute:
 - (a) between a licensor and a licensee,
 - (b) between two or more service providers, and
 - (c) between a service provider and a group of consumers; and
- (ii) Hear and dispose of appeals against any direction, decision or order of the TRAI.¹³

⁷The Administrative Tribunals Act 1985, s 4(1) read with s 14.

⁸s 4(2) read with s 15, *ibid*.

⁹s 4(3) read with s 16, *ibid*.

¹⁰s 5, *ibid*.

¹¹s 19, *ibid*

¹²See The Telecom Regulatory Authority of India Act 1997, s 14.

¹³The Telecom Regulatory Authority of India Act, 1997 as amended by The Telecom Regulatory Authority of India (Amendment) Act, 1997, s 14.

The appellate tribunal consists of a chairperson and not more than two members to be appointed by notification by the Central Government.¹⁴ The Central Government or a state government or a local authority, or any person may file an application to the appellate tribunal for adjudication of any dispute referred above.¹⁵

3. INDUSTRIAL TRIBUNALS

The Industrial Disputes Act, 1947 makes provision for creation of three kinds of tribunals: labour courts, industrial tribunals and national tribunals.¹⁶ The appropriate government (central or state as the case may be) is authorized to constitute one or more labour courts for the adjudication of industrial disputes relating to matters specified in the second schedule to the statute¹⁷ and industrial tribunals for adjudication of disputes specified in the second or third schedule.¹⁸

Each of these bodies is to consist of one person only.¹⁹ These tribunals get their jurisdiction to decide a case only when it is referred to them by the government which has discretion in the matter.²⁰ These tribunals are vested with the powers of a civil court with regards to enforcing the attendance of any person and examining him on oath; compelling the production of documents and material objects; issuing commissions for the examination of witnesses etc.²¹

APPEALS FROM TRIBUNALS

The orders, determinations and decisions of various statutory tribunals are very often final. The decision of the Tax Appellate Tribunal on a question of fact²², an award of an Industrial Tribunal²³ an order off the Custodian of Evacuee Property under the Administration of Evacuee Property Act, 1950²⁴ have been declared to be final in their respective statutes.

¹⁴s 14-A(7), *ibid.*

¹⁵s 14-A(1), *ibid.*

¹⁶See Industrial Disputes Act 1947,s 7-21.

¹⁷See s 7(1), *ibid.*

¹⁸See s 7A, *ibid.*

¹⁹See s 7(2) and 7A(2), *ibid.*

²⁰See s 10(1), *ibid.*

²¹See s 11(3), *ibid.*

²²See Income-tax Act 1961,s 256(1).

²³See Industrial Disputes Act 1947,s 10.

²⁴See Administration of Evacuee Property Act 1950,s 27.

Under the Employees' Compensation Act, 1923, the commissioner is a 'tribunal' for settling claims for compensation. The Act expressly forbids any court jurisdiction to settle, decide, or deal with any question, which is, by or under this Act required to be settled, decided or dealt with by a commissioner.²⁵ An appeal to High Court is provided from the commissioner's decision on 'a substantial question of law'.²⁶ Appeal against the national commission's decision under the Consumer Protection Act, 1986²⁷, the telecom disputes settlement and appellate tribunal under the TRAI Act, 1997²⁸, the national environmental tribunal under the National Environmental Tribunal Act, 1995²⁹ or the appellate tribunal under the Electricity Act, 2003³⁰ lies to the Supreme Court.

Art. 136 of the Constitution provides for appeal by special leave to the Supreme Court from decisions of any court or tribunal. In *Bharat Bank v Employees of Bharat Bank*³¹, the Supreme Court held that a body or authority vested with certain functions of a Court of justice and having some of its trappings would fall within the ambit of the word 'tribunal' as used in Art.136 of the Constitution. The Court held in a later case that in order to be a tribunal, such a body must have the trappings of a court.³¹

In *Engineering Mazdoor Sabha v Hind Cycles*³², Gajendragadkar, CJ laid down three essential requisites of a tribunal:

- (i) It must have the trappings of a court;
- (ii) It should be essentially constituted by a statute; and
- (iii) It should be invested with the state's inherent judicial power.

In the above case, the Supreme Court held that an arbitrator appointed under s.10-A of the Industrial Disputes Act, 1947 is not a 'tribunal' for the purposes of art.136. The Supreme Court, however, changed its view in *Rohtas Industries Ltd v Rohtas Industries Staff Union*³³ and decided that an arbitrator under s.10-A of the IDA is a tribunal. It has

²⁵See Employees' Compensation Act 1923,s 19(2).

²⁶See s 30(1),*id.*

²⁷See The Consumer Protection Act 1986,s 23.

²⁸See Telecom Regulatory Authority of India Act 1997,s 18(1).

²⁹See The National Environment Tribunal Act 1995,s 24(1).

³⁰See The Electricity Act 2003,s 125.

³¹AIR 1950 SC 188.

³¹*Harinagar Sugar Mills Ltd v Shyam Sunder* AIR 1961 SC 1669.

³²AIR 1963 SC 874.

³³AIR 1976 SC 425.

since been reiterated in *Gujarat Steel Tubes v Mazdoor Sabha*.³⁴ In recent years, emphasis has shifted from the requirement of proving 'trappings of a court' to the view that a body must be endowed with the inherent judicial power of the state.

ADVANTAGES OF TRIBUNALS

Statutory tribunals offer speedier redressals. They are more accessible and are cheaper, whereas the litigation process in courts is time-consuming and expensive. The complexities of legal procedures are avoided in case of tribunals, leading to efficient dispute-resolution. With the courts in India already facing a huge backlog of cases³⁵, entrusting the task of adjudicating new disputes arising out of the newly enacted socio-economic legislations would lead to further clogging of the system.

A judge is a generalist, while many cases arising out of the modern administrative process need an expert knowledge of particular subjects to which these cases relate.³⁶ Since the tribunals are specialized bodies, they usually have persons who are experts in a particular area, and this leads to better understanding of disputes of technical nature. Qualified persons with technical expertise sitting in tribunals reduce the time taken to resolve the issue, wherein the high Court may take time to understand how some statutory scheme is designed to operate.

Even without technical expertise, a specialized tribunal quickly builds up expertise in its own field.³⁷ Where there is a continuous flow of claims of a particular class, there is every advantage in a specialized jurisdiction.³⁸

In spite of the suggestions made by responsible quarters to abolish the Income Tax Appellate Tribunal, it has survived because it provides expeditious, and at a lesser cost, justice to the income tax payers as compared with the dilatory and expensive relief which can be obtained through a regular court of law.³⁹ Every year the tribunal decides around 45,000 cases and only 10% of these go to the High Courts.⁴⁰

³⁴(1980) 2 SCC 593.

³⁵*India has world's largest backlog of court cases: PM* <http://www.ndtv.com/news/india/india_has_worlds_largest_backlog_of_court_cases_pm.php> accessed August 16, 2009 ;

³⁶*Courts will take 320 years to clear backlog cases: Justice Rao* (THE TIMES OF INDIA ,March 6 2010) <<http://timesofindia.indiatimes.com/india/Courts-will-take-320-years-to-clear-backlog-cases-Justice-Rao/articleshow/5651782.cms>.> accessed December 2010.

³⁶M P Jain & S N Jain, *Principles of Indian Administrative Law* (Fourth Ed. (Reprint) 2005)181.

³⁷*Ibid* 1 at.887.

³⁸*Ibid*.

³⁹*Ibid* 38.

⁴⁰*Ibid*.

A CRITICISM OF THE TRIBUNALISATION OF JUSTICE SYSTEM

The procedures followed by tribunals are not uniform. While the Industrial Tribunal has no power to regulate its own procedure; the Tax Appellate Tribunal is free to regulate its own procedure. The Copyright Board can regulate its own procedure, subject to the Copyright Act and Rules framed under it.

There is no consistency in the provisions for appeals to courts. Although some Acts do provide for appellate administrative tribunals, such provisions are rare. Whenever tribunals need to be given the power of final decision-making, such finality should be vested in an appellate tribunal. The Law Commission of India has recommended that the quasi-judicial determination of the tribunals should not be made final.⁴¹ It recommended an appeal on questions of facts to an independent tribunal presided over by a judge of a High Court and assisted by persons well versed in the knowledge of the administrative process and the technical aspects of the subject-matter. On questions of law an appeal to the High Court was recommended.⁴²

There is no uniformity in the mode of appointment or qualifications of members of tribunals. The courts have recognized this, as the constitutionality of some of the statutory tribunals has been challenged a number of times.⁴³ The constitutionality of the Company (Second Amendment) Act, 2002 providing for the constitution of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) was challenged in the Madras High Court on various grounds.⁴⁴ The Madras High Court by its order dated March 30, 2004 held that establishment of NCLT and NCLAT and vesting in them the powers hitherto exercised by the High Courts and CLB was not unconstitutional.⁴⁵ Nevertheless, the Madras High Court concluded that various provisions of Parts 1B and 1C suffered from constitutional infirmities which had to be sufficiently amended to establish NCLT and NCLAT.⁴⁶

⁴¹Ibid 37.

⁴²Ibid.

⁴³SC paves way for setting up NCLT to deal with company matters' (BUSINESS STANDARD, May 11 2010) <<http://bsl.co.in/india/news/sc-paves-way-for-settingnclt-to-dealcompany-matters/05/26/93897/on>> as accessed on 13 December 2010.

⁴⁴Vyapak Desai 'Supreme Court upholds the constitutionality of National Company Law Tribunal' (INDIA LAW JOURNAL) <http://www.indialawjournal.com/volume3/issue_3/article_by_vyapak_desai.html> as accessed on 13 December 2010.

⁴⁵R Gandhi v Union of India (2004) 120 Comp. Cas. 510 (Mad).

⁴⁶Ibid.

The order of the Madras High Court was challenged in the Supreme Court on the grounds that the parliament does not have the legislative competence to vest intrinsic judicial functions that have been traditionally performed by the High Courts for nearly a century in any tribunal outside the Judiciary.⁴⁷ It was argued that the constitution of NCLT and transferring the entire company jurisdiction of the High Court to the tribunal are violative of the doctrine of Rule of Law, Separation of Powers and Independence of the Judiciary.⁴⁸ The Court acknowledged and upheld the constitutional power of the Parliament to constitute tribunals for adjudication of disputes. However, the court held that Parts 1B and 1C of the Act as presently structured, are unconstitutional (and) may be made operational by making suitable amendments.⁴⁹

Very recently, the constitutionality of Intellectual Property Appellate Board⁵⁰ as well as that of Copyright Board⁴⁸ has been challenged before the Madras High Court, while the constitutional validity of the National Green Tribunal was challenged by a law student from the Ambedkar School of Excellence in Law, Chennai.⁵¹ The constitutionality of the Electricity Appellate Tribunal was also challenged earlier by a Kolkata based law student, which is being heard by the Supreme Court.⁵²

The lack of standard procedure and qualifications for appointment of members of the tribunals has led to questions being raised about their legality. It was suggested by Chief Justice Ahmadi in *L Chandrakumar v Union of India*⁵³ that an independent nodal agency should be set up by government to oversee the work of tribunals.

⁴⁷*Union of India v R Gandhi* MANU/SC/0378/2010.

⁴⁸*Ibid.*

⁴⁹*Ibid.*

⁵⁰Khomba Singh 'Writ petition says IP tribunal incompetent'(THE ECONOMIC TIMES January 21 2011) <<http://economictimes.indiatimes.com/news/news-by-industry/services/consultancy/-audit/writ-petition-says-ip-tribunal-incompetent/articleshow/7331247.cms>> accessed December 2010.

⁴⁸Neha Chauhan, 'Spicy IP bloggers file writ against IP Appellate Board 'infirmities'' (LEGALLY INDIA January 28 2011)<<http://www.legallyindia.com/201101281738/Intellectual-property-IP/spicy-ip-bloggers-file-writ-against-ip-appellate-board-infirmities>> accessed on December 2010.

⁵¹ShamnadBasheer, 'Constitutionally Defective Tribunalisation of Justice' (LAW AND OTHER THINGS February 6 2011) <<http://lawandotherthings.blogspot.com/2011/02/constitutionally-defective.html>> accessed on December 2010.

⁵²In Brief, FINANCIAL EXPRESS, January 5, 2010)<<http://www.financialexpress.com/news/in-brief/563336/0>> accessed on December 2010.

⁵³(1995) 1 SCC 400.

CONCLUSION

The statutory tribunals help to settle the disputes quickly, which results in saving time and money of the parties to dispute, and also helps the general public. The undoubted fact remains that these tribunals have helped to greatly reduce the backlog of cases in courts, and are an indispensable part of the modern-day dispute resolution system.

The growth of tribunals in India has been sporadic, and devoid of a uniform pattern. This rise has been accompanied by many challenges. The decisions given by these tribunals as well as their constitutional validity have been questioned in a number of cases. This has led to doubts being raised about the transparency in their working as well as fairness in the approach adopted by these tribunals. The method of appointment of the members as well as the structure of the tribunals has been struck down by the Courts from time to time.

It must be accepted that the tribunals have come to stay, as the Supreme Court has pointed out that it is well within the power of the legislature to constitute such bodies and these are not *per se* violative of the doctrine of separation of powers. However, efforts must be made to regularize the procedures, compositions, and review / appeal of decisions of tribunals. The qualifications for the membership for these tribunals must be laid down so as to ensure their independence from the executive.

A need is felt to have a single legislation on the lines of Tribunals and Enquiries Act 1971 in England to lay down the standard norms for functioning of the tribunals. Besides, their working must be systematized and reviewed from time to time by an independent regulatory body. The recent spur in litigation relating to the constitutional validity of some of the statutory tribunals has once again raised the question as to whether the constitution of these tribunals is against the basic tenets of the constitution, and whether this is done in consonance with the doctrine of 'due process of law'. A balance needs to be struck between the two conflicting views with regards to the tribunalisation of the justice system. It must be realised that this tribunalisation is not inherently flawed. At the same time, ensuring uniformity in standards relating to appointment of members as well as the procedures adopted will go a long way in bringing the benefits of tribunalisation to the country.