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TRIBUNALS IN INDIA

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"Nothing is more remarkable in our present social and administrative arrangements than the proliferation of Tribunals of many different kinds. There is scarcely a new statute of social or economic complexion which does not add to the number." - Sir C.K. Allen

Preamble of the Indian Constitution presents principles of our Constitution and guides people of our nation. It is clearly written in the preamble that all citizens of India are ensured JUSTICE- social, economic and political all three type of justice. But due to large population, scarcity of judges and courts- this very idea of justice is in danger. William Ewart Gladstonerightly said "justice delayed is justice denied". To wait for more than 20 years to get your right enforced is clearly a denial of justice. To circumvent this problem India adopted Tribunals. They seem like a perfect solution for problem at first glance- speedy, inexpensive alternate, courts.

The Franks' Report (1957) described the advantages of Tribunals as 'cheapness (cost effectiveness), accessibility, and freedom from technicality, expedition and expert knowledge of their particular subject.'[1]

According to Neil Hawke, "Administrative Tribunals might well be referred to as 'administrative courts' since usually their task is to adjudicate disputes which arise from the statutory regulation of a wide variety of situations, some of which will involve decisions or other action by administrative agencies, or relationship between private individuals."[2]

[1]vin, "The Judicialisation of Administrative Tribunals in the UK: From Hewart to Leggatt" 28 TRAS 51 (2009).
[2]Drewry, Ga Hawke, Neil, Introduction to Administrative Law, Cavendish Publishing Limited, United Kingdom, 1st edn., 1998 at p. 65.

In 1958, Law Commission of India in its report recommended the establishment of Tribunals for service matters to relive the courts from the burden of service litigation.[3]

In 1969 a Committee formed under chairmanship of Justice JC Shah by Central Government also recommended for establishment of Tribunals[4]. Similar recommendation were given by Swaran Singh Committee in 1975.[5]

The idea of Tribunals found favour in Supreme Court also in case of K.K. Dutta vs Union of India.[6]

Thus finally parliament passed the Constitution (42nd Amendment) Act, 1976 which added Part XIV – A to the Constitution and inserted two Articles to the Constitution- Article 323-A and Article 323-B.[7]

Features of Article 322-A and Article 323-B-[8]

These two Articles were added by the 42nd Amendment Act,1976 and it started a whole new chapter in the Indian administrative law. Both articles shared some common features which are-

- They allow the legislature to set up administrative Tribunal for resolution of dispute between state and individual relating to specified matter, and lay down power and jurisdiction of such Tribunals.

[3] Law Commission of India, XIV REPORT OF REFORM OF JUDICIAL ADMINISTRATION (1958), available at http://lawCommissionofindia.nic.in/1-50/Report14Vol1.pdf Last accessed on 8 June 2020
[4] Law Commission of India, 215 REPORT L. CHANDRA KUMAR BE REVISITED BY LARGER BENCH OF SUPREME COURT SHAH COMMISSION REPORT (1977), available at http://lawCommissionofindia.nic.in/reports/report215.pdf Last accessed on 8 June 2020
[5] Id.
[6] A.I.R. 1980 S.C. 2056.
[7] CONSTITUTION OF INDIA, art. 323-A (2) (d), 323-B (3) (d).
[8] Durga Das Basu, Commentary on the Constitution of India, Lexis Nexis Butterworths Wadhwa Nagpur, 8th Edition 2011, Vol. 9, Part XIV-A: Tribunals, p.2085- 2086.

- They empower legislature to law down rules to follow in Tribunal regarding procedure, limitation and evidence. They also allow legislature to transfer cases which may be pending before court at the time of establishment of Tribunals.
- They allow legislatures to exclude jurisdiction of all courts except the jurisdiction of Supreme Court under Article 32 or Article 136. The provision of both these articles also override any contrary provision in the Constitution.

However, both articles significantly differ on some points such as-

- Subject matter of Article 323-A is limited to public services. However, subject matter of Article 323-B relates to whole range of matters listed in clause (2) of the article such as labour dispute, taxation, land reforms, essentials goods etcetera.
- Article 323-A gives exclusive power to Union whereas in Article 323-B, the legislative power is divided between both union and state subject their respective legislative competence.

It should be noted that none of the Articles take away legislative competence of legislature to establish Tribunal for subject-matter not listed in the article.[9]

A shift from S.P. Sampath Kumar to L Chandra Kumar

The 42nd Amendment itself did not contain any procedural guideline for Tribunals however they had been since laid down by administrative Tribunal act, 1985

When Administrative Tribunal Act, 1985 was enacted, its constitutional validity was challenged before Hon'ble Supreme Court in the case of S.P. Sampath Kumar vs UOI[10]. The Constitutional Bench upheld the validity of the Act. Speaking for majority Justice Raganath Mishra observed:

"We have already seen that judicial review by this Court is left wholly unaffected and thus there is a forum where matters of importance and grave injustice can be brought for determination or rectification. Thus, exclusion of the jurisdiction of the High- Courts does not totally bar judicial review... It is possible to set up an alternative institution in place of the High Court for providing judicial review... The

[9]State of Karnataka v. Vishwabharthi House Building Co-op. Society [(2003) 2 SCC 412 (Para 36, 37 and 49): AIR 2003 SC 1043]
[10] (1987) 1 SCC 124: AIR 1987 SC 386: (1987) 1 SCR 435.

Tribunalhas been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice... What, however, has to be kept in view is that the Tribunal should be a real substitute for the High- Court not only in form and de jure but in content and de facto... Under Sections 14 and 15 of the Actall powers of the Court in regard to matters specified therein vest in the Tribunal—either Central or State. Thus, the Tribunal is the substitute of the High Court and is entitled to exercise the powers thereof."

A Division Bench of Supreme Court led by Justice Kuldip Singh in case of L. Chandra Kumar held that decision given in Sampath Kumar need to reconsidered with fresh look and referred the case to larger bench of seven judges. This whole question of constitutional validity of Administrative Tribunal act, 1985 once again came under scrutiny of Hon'ble Supreme Court in L. Chandra Kumar vs UOI.[11]

In this case, apex court reasoned that fundamental constitutional safeguards which ensure the independence of judges of High Courts and Supreme Court are not available to the members sitting in Tribunal. Thus, they cannot be considered as an effective substitute for High Courts in function of constitutional interpretation and hence came to conclusion that Tribunal can only play a supplemental role to High Court, not substitutional role. Apex court held that Section 28 of the Administrative Tribunals Act, 1985, Cause (3) (d) of Article 323-B and clause (2) (d) of Article 323-A to the extent that they exclude jurisdiction of High Courts and Supreme Court under article 32, 226, 227 of constitution were held unconstitutional.Chief justice Ahmadi speaking unanimously held:

"Administrative Tribunals under Article 323-A could examine the constitutional validity of various statutes or rules. There would be one exception to this rule: the administrative Tribunals would not be competent to examine the validity of the statute under which they are created. In such cases, the appropriate High Court would have to be approached directly. Barring cases where the constitutionality of the parent Act is challenged, all questions regarding services must be raised only before an administrative Tribunal and only writ appeals could go to a Division Bench of a High Court. From a decision of a High Court's Division Bench, an appeal could be preferred under Article 136 of the Constitution of India to the Supreme Court".

Features of Tribunals

A Tribunal is not a court per se but it is also not an administrative department of government. Functions of Tribunal are both judicial and functional hence Tribunal are quasi-judicial in nature.

[11] (1997) 3 SCC 261

Tribunal cannot delegate its function to other authority. It has to follow principles of natural justice and cannot give decision without giving opportunity of being heard to both parties.

Tribunal must record finding of facts and give reasons for its decisions. Tribunals can take preventive measure such as rate-fixing etcetera.

Tribunals have right to initiative where they do not have to wait like regular courts for parties to come with their disputes. It is evident that sometime preventive actions are more important and effective than punishing a person after breach of any legal provision

Tribunals have inherent power to regulate their procedure subject to the requirement in their parent statue. This is done so that they can expedite the proceeding by bypassing cumbersome procedure. The proceeding of Tribunal is considered to be judicial proceeding for the purpose of Section 345 and Section 346 of CPC, 1974[12] and Section 193, 195 and 228 of the IPC, 1860.[13]

Technical rule of evidence do not apply to their proceeding and they have wide range of discretionary power to decide admissibility of document, onus of proof and can even rely on hearsay evidence.

Justice Krishna Iyer observed in State of Haryana vs Rattan Singh[14]: "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act... The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice."

The exemption granted to Tribunals from law of evidence has been subject to most debates in public. Law of evidence was developed due to necessity of jury system. Due to untrained nature of jurors, the courts found it necessary to apply prelim purification of evidence being presented

[12] The Code of Criminal Procedure, 1973: Sec. 345- Procedure in certain cases of contempt; Sec. 346- Procedure where Court considers that case should not be dealt with under section 345
[13] The Indian Penal Code, 1860: Sec. 193- Punishment for false evidence; Sec. 195- Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment; Sec. 228- Intentional insult or interruption to public servant sitting in judicial proceeding.
[14] (1977) 2 SCC 491 (493): AIR 1977 SC 1512 (1513)

in court and as Tribunals do not have juries this necessity is gone. It also has other positive result such as the proceedings of Tribunal are not delayed by argument upon technicalities of evidence, appeals on point of evidence and objection to evidence, it also helps in prevention of miscarriage of justice by technicalities.[15]

Principle of separation of power has been held as basic structure of Constitution of India, however petitioner have contended again and again over time that Tribunal violates principle separation of power. Tribunal cum regulatory bodies such as Competition Commission of India are entrusted with both functions i.e. regulatory and adjudicatory. To circumvent the violation of separation of power and to comply with guideline of Sampath Kumar case, what does legislature do is essentially create and appellate Tribunal over these body thus biding by Sampath Kumar case but throwing out principal of separation of power.

Result of Tribunalistaion

Insanity is doing the same thing over and over and expecting different results."-
Albert Einstein

The sole purpose behind the establishment of administrative Tribunal was to provide an alternate expeditious justice delivery mechanism. If available data is an indicator then this trend has been whole-heartedly discouraging. As said, the data does not lie, the available data clearly shows the miserable conditions of the Tribunal in which they are currently in India.

As of July 2017 the top five central Tribunals (CAT, RCT, DRT, CEST, and ITAT) in the country have a combined backlog of over 3.50 lakh cases.[16]

Qualitatively speaking, 91% speaking cases of Principal Bench of Central Administrative Tribunal had been upheld thus some may say that they have performed well[17].

There is no available data for recent years or how many of those cases have been upheld in Apex Court. But, the Supreme Court always see the decision by Tribunal with a sense of doubt with a remarkable exception being Income Tax appellate Tribunal which was projected as role model at

[15] Warren H. Pillsbury Harvard Law Review, Vol. 36, No. 5 (Mar., 1923), pp. 583-592
[16] Law Commission of India, 272 Report "Assessment of Statutory Frameworks of Tribunals in India", available at http://lawCommissionofindia.nic.in/reports/Report272.pdf Last accessed on 8 June 2020
[17] See: Statement/Graphs, http://cgat.gov.in/, Last accessed on 8 June 2020

UNDP event. CJ Bobde said "ITAT has made its mark for professional excellence, an exception to general perception of Tribunalisation."[18]

Recommendation of Law Commission

Law Commission has highlighted problems of overburdened judiciary and reforms required in Tribunals. The Law Commission of India in its 272 report recommended for change in the way of selection of members

Commission stated that role of government in selection of members should be minimal as government is a party in typically every litigation it is important that the members are impartial. To achieve this the Commission recommenced formation of selection committee headed by Chief Justice of India or sitting judge of Supreme Court and having two nominees of Central Government. This committee should be responsible for selecting chairman, vice chairman and judicial members of the Tribunals.[19]

In its 162nd report Commission recommended establishment of National Appellate Administrative Tribunal headed by either Chief Justice of High Court or judge of Supreme Court thus according a status higher then High Court in practical terms.[20]

In its 215th[21] report Commission recommended for taking a fresh look at the Chandra Kumar case by a larger bench of Supreme Court which was again affirmed by Commission in its 272 report where the Commission said that High Court are not inviolable as Supreme Court and allowing the decision of Tribunal to be heard by High Court defeats the basic purpose for which Tribunal were set up.[22]

A global perspective-

(A) France-

[18] https://www.livelaw.in/pdf_upload/pdf_upload-369525.pdf Last accessed on 8 June 2020
[19] Supra 16
[20] Law Commission of India, 162 Report "Review of functioning of central administrative Tribunal", available at http://lawCommissionofindia.nic.in/reports/Report162.pdf Last accessed on 8 June 2020
[21] Supra 4
[22] Supra 16

In France, there is three tier administrative court system operation in pyramidal form. At the top is "Conseil D' Etat" (Council of State) which is also a final court of appeal. Below it are 7 regional "CoursAdministratives D' Appel" (administrative courts of appeal followed by 35 "TribunauxAdministratifs" (administrative Tribunals). These administrative Tribunals are the first form court.

Members in counseil d etat are selected in two way examination and invitation. Majority of members are selected from national school of administration (l'EcoleNationale d' Administration) A highly competitive school with double sieve ensuring person of highest intellectual capabilities are recruited. The other method is by invitation in people who have already distinguished themselves in practice in public administration are selected. They are generally older and more experienced. This ensures there is combination of practical and theoretical expertise. Members of lower court are also selected in similar fashion. Member of lower courts are also conferred with status of ir-removability where they cannot be transferred without their consent even in form of promotion.[23]

(B) England-

Tribunals are one of the most important part of judicial system of England. There are large number of Tribunals in England for various issues such as employment, immigration, property rights etcetera.[24] In 2007 British parliament enacted Tribunals, Courts and Enforcement Act, 2007. This Act introduced a new system of two generic Tribunal with single appeal structure. Power were given to Lord Chancellor to head and watch functioning of Tribunals, he was also given duty to provide administrative support to new Tribunals. A new transforming public service was formed to provide administrative support to new Tribunals.[25]

CONCLUSION-

It is evident from all the material placed above that Tribunals are no doubt a wonderful mechanism to reduce the burden on our justice system and provide, litigants faster and cheaper justice delivery mechanism. But it is also evident from above facts that till now these Tribunals have failed miserably. There can be several reason attributed to it. Various Law Commission reports have also given various

[23] Advantages and Disadvantages of Administrative Adjudication, http://www.abyssinialaw.com/root/study-online/item/314-the-advantages-and-disadvantages-of-administrative- adjudication. Last accessed on 8 June 2020
[24]Creyke, Robin, Tribunals in the Common Law World, The Federation Press, United Kingdom, 2008 at p. 20.
[25] Excerpts from the 'Explanatory Notes to the Tribunals, Courts and Enforcement Act, 2007' prepared by the Ministry of Justice, British Parliament.

recommendations. Still, no significant progress is made. Furthermore, to make a new faster mechanism like Tribunals, which are efficient on paper but they will never work until the judges who after spending 10+ years in courts are so much accustomed to court functioning that they function in similar way in Tribunal. Similarly lawyers representing in Tribunals are also so accustomed to courts that their habit of taking Passover and next dates never change. To relive our judiciary from burden of lakhs of cases than we will have to think of something radical foreign and unheard and above all our judges and courts will have to loose their ego and welcome the change.