

Administrative Law tribunal System/ Judicial powers of Administration

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Tribunal system in India: Introduction

- **Need of tribunal system-**
- Welfare State- State looks into socio-economic matters socio legal matters etc.
- Economic matters require urgent solutions - industrial matters ,labour matters etc.
- Traditional judiciary inadequate ,unsuitable
- Expertise in such fields
- Prompt and experienced solutions
- Functional approach rather than theoretical and technical approach.

Definitions.

- Tribunal means a seat or a bench upon which a judge or judges sit in a Court it also means a Court of Justice. Whereas under administrative law tribunal *means adjudicating authorities other than ordinary courts of law.*

In *[Durga Shankar Mehta v Raghuraj Singh]*

- Supreme Court define the tribunal , *'In the expression 'tribunal' as used in Article 136 does not mean the same thing as Court ,it includes all adjudicating bodies provided they are constituted by the State and are invested with the judicial as distinguished from administrative or executive functions'.*

- In [Bharat Bank Limited v Employees] A I R 1950 SC
- the Supreme Court stated, ‘ *the tribunals are clad in many of the trappings of the court and though exercise judicial functions they are not full-fledged Court.*
- Tribunal is adjudicating body which decides controversies between the parties and exercises judicial powers as distinguished from purely administrative functions and does possess some of the trappings of a Court but not all.

Constitutional position of Tribunal

- Article 136 empowers the Supreme Court to grant special leave to appeal from any judgment from any judgment, Decree determination sentence order made by any Tribunal in India.
- likewise Article 227 enables every High Court to exercise superintendence over all tribunals throughout the territories over which it exercises jurisdiction
- The Constitution 42nd Amendment Act 1976 Article 323 A and 323 B have been inserted by which parliament has been authorized to constitute administrative tribunals for settlement of disputes and adjudication of matters specified there in.

Administrative Tribunal: misnomer

According to HWR Wade,

- Tribunal is constituted by Act of Parliament and not by government.
- Decisions of such Tribunal are judicial rather than administrative
- All tribunals do not deal with cases in which government is a party. Some tribunals adjudicate upon matters between two to private parties for example dispute between landlord and tenant employer and employee
- Such tribunals are independent and not subjected to administrative interference in deciding the cases.
- MP Jain suggests such bodies should be called only tribunals deleting the word administrative

Distinguish between Tribunal and court

Sr No.	Court	Administrative Tribunal
1	Part of traditional judicial system-- powers derived from State	Agency created by statute and conferred judicial powers
2	Section 9 CPC: jurisdiction to try all civil suits except barred	power to try cases in matters specially conferred by Statute
3	Judges trained in law	members of Tribunal may not be trained in law
4	Judges are independent of Executive in matters of tenure terms and conditions of service	matters of tenure terms and conditions of service are in hands of government.

Sr No	Courts	Administrative Tribunal
5	Judge must be impartial arbiter cannot decide matter in which he is interested.	Administrative Tribunal maybe a party to the dispute decided by it.
6	Bound by all rules of evidence and procedure	not bound by rules of procedure unless imposed by relevant statute.
7	must decide the cases objectively	takes into consideration the executive policy may not be totally objective
8	Court is bound by the law of precedent, res judicata and estoppel	not strictly bound by them
9	Court can decide validity of a legislation	Tribunal cannot do so.

Characteristics of Tribunal

- Creation of Statute not by Government
- Trappings of Court but not all
- Performs a judicial function and not administrative function
- Possesses the powers of Court example to summon witness etc
- Not a bound by evidence and procedure rules
- In [*Dhakeshwari Cotton Mills v CIT*] AIR 1955 SC Supreme Court held income tax officer was not fettered by technical rules of evidence and was entitled to act on materials which

- Mandatory to follow Principles of Natural Justice.
- In *[State of UP v Mohammed Nooh] AIR 1958 SC* where the prosecutor was also adjudicating officer the decision was held invalid as principle of natural justice violated
- In *[S N Mukherjee versus Union of India] AIR 1990* the supreme court explained the reasoned decision is not only for the purpose of showing that citizens received justice but also valid discipline for the Tribunal itself.

Characteristics of Tribunal

- Dispute between to private party election tribunals rent Tribunal and industrial Tribunal but tax Tribunal- dispute between Government and individual
- Not subject to administrative interference
- Writ of certiorari and prohibition available against decision of tribunal

Finality of decisions

- Bombay Industrial Relations Act of 1946
- *Dhulabhai v Madhya Pradesh AIR 1969 SC*
- . The following principles regarding exclusion of jurisdiction of Civil Court may be laid down:-
 - (1) Where the statute gives finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be *excluded if there is adequate remedy to do what the civil Court would normally do in a suit*. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

Dhulabhai v Madhya Pradesh

- (2) Where there is an *express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant* but is not decisive to sustain the jurisdiction of the civil court.
- Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive.
- In the latter case it is *necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted*, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

Dhulabhai v Madhya Pradesh

- (3) Challenge to the provisions of the particular Act as **ultra vires, cannot be brought before Tribunals constituted under that Act**. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.
- (4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, **a suit is open**. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.
- (5) Where the particular Act **contains no machinery** for refund of tax collected in excess of constitutional limits or illegally collected, **a suit lies**

Dhulabhai v Madhya Pradesh

- (6) Questions of the **correctness of the assessment** apart from its constitutionality are for the decision of the authorities **and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act.** In either case the scheme of the particular Act must be examined because it is a relevant enquiry.
- (7) An exclusion of jurisdiction of the Civil Court is **not readily to be inferred** unless the conditions above set down apply.
- Thus we find that in the Dhulabhai's Case the Supreme Court has laid down the position of law in India very clearly.

42nd Constitutional Amendment, 1976

- Mini Constitution—drastic and controversial amendment .
- Regarding Administrative Tribunals :
- 1 Took away power of superintendence of High Court over tribunals under Article 227.
- 2 Inserted part XIV-A ie (Art 323A and Art323B)and empowered parliament to constitute administrative tribunals for purposes specified.

42nd Constitutional Amendment, 1976

Art 323 A

Parliament by law can provide for adjudication of matters/complaints regarding conditions of service of persons appointed in public services

Parliament will also provide for its jurisdiction, powers and procedures

Art 323 -B

(1) Empowers legislature to provide adjudication by tribunals

2) Such law may exclude the jurisdiction of all courts except that of SC under Art 136.

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42nd Constitutional Amendment, 1976 : Legal implications

- Substantially excluded and curtailed the power of Judicial review of High Court and Supreme Court.
- Are 323 A and Art 323B –not self executory but enabling
- Retrograde Innovation

44th Constitutional Amendment, 1978

- Art 227 was amended and power of HC over administrative tribunals was restored.
- No amendment in Art 323 A or Art 323B.

Sampat Kumar v Union of India, AIR (1987)SC386

- Under Art 323 A , the Parliament enacted Administrative Tribunals Act 1985
- Sec 28 –excluded power of judicial review of High Court in service matters under Art226 and 227.
- SC power under Art 136 for Special leave for appeal was intact.
- This Act was challenged in Sampat Kumar v Union of India.(1987)

Sampat Kumar v Union of India, *AIR (1987)SC386*

- Bench **upheld the validity** of the Act and stated that
 - Does **not totally exclude** (bar) judicial review as SC review power is intact.
 - Tribunal has been contemplated as **substitute** to HC and not supplement.
 - Tribunal should be real Substitute *de facto* and not *de jure*.
 - *As this tribunal has power of courts ,hence is a substitute –hence upheld the validity of the Act.*

J B Chopra v Union of India AIR (1987)SC 357.

- SC Held that Administrative Tribunal Has power to decide even constitutional validity of an Act, rule order, regulation etc.

Post Sampat Kumar -conditions

- In *Sampat kumar* case, Court discussed role and position of HC and their contribution .
- Faith of litigants—highest court –effective ,efficient and satisfactory.
- Disciplined ,independent and trained judges—objective decisions.
- Held that substitute should also be so effective and worthy successor of HC in all respects.

Reality

- Tribunals – Really substitute ??
- NO.
- Actual experience – Failed to inspire confidence from people.
- No effective alternative.
- Serious complaints against tribunals.
- Did not allow SC citations or proper argument of cases.
- ‘resting place’

R K Jain v Union of India

- SC expressed anguish on working of tribunals
- Sole remedy of Art 136 is not effective and convenient to all.
- Suggested for study by Law Commission

L Chandra Kumar v Union of India *AIR 1997 SC 1125—The trend setter*

- Observations Sampat Kumar –Needs to be re considered .
- Larger Bench held :
- 1 –Judicial review was excluded hence violation of basic structure
- Parliament cannot amend Constitution in violation of basic feature doctrine
- Judicial review power cannot be excluded by an Act

L Chandra Kumar v Union of India *AIR 1997 SC 1125—The trend setter*

- Majority held :
- Sec 28 of the Administrative Tribunals Act 1985 was **ultra vires**.
- Clause 2 (d) Art 323 A and Clause 3(d) of Art 323-B as amended by 42nd amendment was also **ultra vires** as destroyed basic structure .
- No constitutional prohibition for tribunal as supplemental and **not substitution for HC** .
- **Tribunals decision** subject to scrutiny by HC and Supreme Court.

Drawback in Sampat kumar Case

- No consideration of all aspects in proper terms
- Attention not brought to exclusion of judicial review.
- NO experience and study of working of tribunals
- But in L Chandrakumar Case
- SC could see actual working and worthyness of tribunals.
- Report of Arrears committee (1989-90) well studied helpful.

Shortcoming of L Chandra kumar

- In this case SC stated that-as tribunals are subordinate to HC, direct appeal to SC under **Art 136 –is not allowed.**
- **First appeal to HC –then to SC u/ Art 136.**
- **Submitted –This is not correct constitutional position .**
- **Art 136 is plenary power of SC –cannot be taken away or curtailed.**
- **Court cannot modify constitutional position.**