

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ROLE OF ADMINISTRATIVE TRIBUNALS IN THE ADMINISTRATION OF JUSTICE

AUTHORED BY - AAKASH JOT KAUR*

INTRODUCTION

Welfare of people is the evolutionary goal of every kind of government in this contemporary world. There has been a tremendous increase in the functions of the government, which has given enormous powers to the executive authority, due to which there is also increase in the level of legislative output. This has led to increase in litigation, restrictions are imposed on the freedom of the individuals which has caused constant frictions between them and the authority. The development of welfare State administered to an increase in government functions and the executive authority has to perform a number of quasi- legislative and quasi- judicial functions, thus diminishing the traditional place of different parts of the government under the doctrine of separation of powers. Under this doctrine, the government's power is divided between the legislature, executive and the judiciary which are conferred with the power of making law, executing and interpreting the laws accordingly.¹

A welfare State is a concept of government where the State plays a key role in protection and promotion of the economic and social well-being of its citizens. It is based on the principle of equality of opportunity, equal distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. ² With the change in time the welfare State changed and involved itself in the holding of large socio-economic activities like providing health services, education, industrial regulation and other welfare activities. And where this kind of activities take place it is certain there will be disputes. The issues which arise from these disputes are matters which affect the society at large. The inherent procedural law due to

limitations made it problematic for the courts to dispose these cases steadily thus causing to a huge backlog of cases at all levels of judiciary. Therefore courts became flooded with litigations which resulted directly and incidentally due to which governmental interventions

*Research Scholar, Department of Law, Punjabi University, Patiala.

¹ William Wade, *Administrative Law* 885, (Universal Law Publishing Company Pvt. Ltd., Delhi, 8th edn. 2003)

² *Id.* at 880.

increased. It was also felt that the members of the judiciary were neither trained nor fully equipped to deal with socio economic and technical matters. Therefore the need was felt for specialized adjudicatory bodies such as tribunals.³

Tribunal is a quasi-judicial institution that is set up to deal with specific problems such as resolving administrative or tax related problems. It performs a number of functions like adjudicating disputes, determining rights between contesting parties, making an administrative decision, reviewing and existing administrative decision and so forth.⁴The meaning of the word tribunal which can be traced out from the various Supreme Court authorities is that they are adjudicating bodies constituted by the State and vested with judicial and quasi-judicial functions as distinguished from administrative or executive functions.⁵ According to H.W.R.Wade, “The social legislation of the twentieth century demanded tribunals for purely administrative reasons; they could offer speedier, cheaper and more accessible justice, essential for the administration of welfare schemes involving the large number of small claims. The process of courts of law is elaborate, slow and costly..... Commissioners of custom and excise were given judicial powers more than three centuries ago. Tax Tribuna's were in fact established as far back as the 18th century.”⁶

Administrative tribunals are bodies outside the ordinary court system, which not only interpret but also apply the laws when acts of public administration are questioned. They are mixture of both quotes and executive body as they have to decide facts and apply them without considering executive policy. These are administrative in nature due to which they are preferred over the ordinary courts of law. The Supreme Court in *Jaswant Sugar Mills v. Lakshmi Chand*,⁷ laid down the following tests to determine whether an authority is a tribunal or not:

1. Power of adjudication must be derived from a statute or Parent Act.
2. It must possess the powers of a court and vested with the power to summon witnesses, administer oath, compel production of evidence, etc.
3. Tribunals are not bound by strict rules of evidence.
4. They are to exercise the functions judicially and apply the law to resolve disputes independently.

³ Available at: <https://www.nascollege.org/e%20cotent%2010-4-20/ms%20deepika%20srivastav/3deepika%20LL%20M%20II%202022-4.pdf> (visited on April 28,2022)

⁴ I.P.Massey, Administrative Law 536 (Eastern Book Company, Lucknow, 6th edn., 2005)

⁵ Ibid.

⁶ Ibid.

⁷ AIR 1963 SC 677

5. Tribunals are independent and immune from any administrative interference in the discharge of their judicial functions.

HISTORY OF TRIBUNAL SYSTEM IN INDIA

In India, after independence there was increase in administrative adjudication and several other welfare laws were made for the people. The development in the field of administrative law can be seen in the 20th century due to development in the society. It is also said that administrative law is the sociology of law rather than philosophy of law. Tribunals were created to expedite the legal system. After independence, there was a need for the settlement of administrative conflicts which were raised due to development in Administrative Law. The Law Commission of India in its Report⁸ proposed that there is a need of setting up of tribunal or commission at Central level and State level particularly. It was also recommended that tribunals must observe the principles of natural justice and to maintain procedural safety safeguards while arriving at the decisions.⁹ The tribunal set up with the object of providing speedy cheap and decentralized determinations of disputes which were arising out of various welfare legislations and this led to the new developments in the law courts.

Regarding the problems related to various issues in respect of tribunals there was a set up the Administrative Reforms Commission in 1967. It was set up to look into the problems related to tribunals and give solutions.¹⁰ The reasons for the growth of tribunals were examined and they were as follows:-

- 1) The judiciary was not speedy, it was costly and complicated procedures were adopted to give justice.
- 2) There was in adequacy of judiciary to effectively decide the matters related to administration especially when it dealt with technicalities of the matter.

The Commission recommended that the establishment of independent tribunals in the areas such as service matters and dispute of employees under the State; orders of assessment on adjudication under Customs, Central Excise, Sales Tax and orders under the Motor Vehicles Act.¹¹

⁸ Law Commission of India, "14th Report on Reforms of Judicial Administration" (1958).

⁹ *Ibid.*

¹⁰ Available at: https://www.researchgate.net/publication/304134655_Administrative_Tribunals_in_India (visited on April 28,2022)

¹¹ *Ibid.*

Therefore, in 1976 on the recommendation of Swaran Singh Committee the Parliament enacted the 42nd Constitution (Amendment) Act, 1976 which inserted Articles 323A and 323B. It provided for the establishment of administrative and other tribunals to deal with the matters specifically provided for. The main distinction that can be made out between both the articles is that while 323A allows for the Parliament to provide for administrative tribunals to adjudicate disputes, 323B allows for the any “appropriate legislature”, to create an administrative tribunal for the adjudication of disputes.¹² The Law Commission of India in its report expressed its concern over the arrears in High Court as there was necessity for speedy justice.¹³ In 2003, the Commission recommended that environment courts must be set up to reduce the burden and pressure on the High Courts and the Supreme Court.¹⁴ The most historic and important report of Law Commission on tribunal is 272nd Report which is concerned with the development and the position of tribunals in India and also deals with the judicial review of administrative tribunals.¹⁵

FEATURES OF TRIBUNALS IN INDIA

- 1) An Administrative Tribunal has statutory origin because it is the creation of statute.
- 2) It has some characteristics of Courts but not all.
- 3) It performs the quasi-judicial functions as well as entrusted with some of the judicial powers of the State.
- 4) It is not bound by the strict rules which are followed by the court such as the rules of evidence.
- 5) It possesses the power of court in some matters like to summon the witness, to administer oath, to compel production of documents etc.
- 6) It enjoys independence from any type of administrative interference in discharge of their judicial or quasi-judicial functions.
- 7) The prerogative writs of Certiorari and Prohibition are available against the decisions of administrative tribunals. Therefore tribunal cannot dispose the matter is final and arbitrarily and it should act without any bias.
- 8) It is perpetual in nature and tribunals have been selected specially to deal with particular type of case within a number of closely related types of case.

¹² The Constitution (42nd Amendment) Act, 1976.

¹³ Law Commission of India, “79th Report on Delay and Arrears in High Court and other Appellate Courts,”(1979).

¹⁴ Law Commission of India, “186th Report on the proposal to constitute Environment Courts” (2003).

¹⁵ Law Commission of India, “272nd Report on Assessment of Statutory Framework of Tribunals in India,”(2017).

ADMINISTRATIVE TRIBUNALS ACT, 1985

In pursuance of Art 323-A Parliament has passed the Administrative Tribunals Act, 1985¹⁶ covering all matters falling within the clause (1) of Article 323- A. This Act authorizes central government to establish administrative tribunals for central services and on the application of States even for States services as well as for local bodies and other authorities including public corporation. From the date of establishment of tribunals all courts except the Supreme Court under Art 136,¹⁷ had no jurisdiction with respect to the matter falling within the jurisdiction of the tribunals. A tribunal shall consist of Chairman and such number of Vice-Chairmen and other members as appropriate Government may deem fit.¹⁸ They are appointed by the President in the case of Central tribunals and by the President in consultation with the Governors or Governors in case of State or joint Tribunals. The qualifications regarding that are also laid down in the Act. The tribunals are bound by the decision of Supreme Court and High Courts as the law which is declared by Supreme Court shall be binding on all the courts within the territory of India.¹⁹

TYPES OF ADMINISTRATIVE TRIBUNALS

There are different types of administrative tribunals in India, which are constituted under different statues, regulations and rules of the Central Government as well as State Governments. Some of the Tribunals are discussed as under:-

1) Central Administrative Tribunal (CAT)

The Administrative Tribunals Act, 1985 opened a new chapter of administering justice to the aggrieved government servants. It owes its origin to the Constitution which empowers the Central Government to set up by an Act of Parliament, the Administrative Tribunals for adjudication of disputes and complains with respective recruitment and conditions of service of persons appointed to the public services and posts in connection with the Union and the States.²⁰ The Tribunals enjoy the powers of the High Court in respect of service matters of the employees covered by the Act. They are not bound by the technicalities of the Code of Civil Procedure, but have to abide by the Principles of

¹⁶ Act No 13 of 1985.

¹⁷ The Constitution of India, 1950, art.136.

¹⁸ The Administrative Tribunals Act, 1985, s.5.

¹⁹ The Constitution of India, 1950, art.141.

²⁰ *Id.* at art. 323A

Natural Justice. They are distinguished from the ordinary courts with regard to their jurisdiction and procedures. This makes them free from the restrictions of the ordinary courts and enables them to provide speedy and inexpensive justice. The Act provides for the establishment of Central Administrative Tribunal and State Administrative Tribunals. The CAT was established in 1985. The Tribunal consists of a Chairman, Vice Chairman and Members. These Members are drawn from the judicial as well as the administrative streams. The appeal against the decisions of the CAT lies with the Supreme Court of India.²¹

2) Domestic Tribunal

It is private body under an agreement between parties and it denotes associations like unions, clubs, commercial associations, and professional bodies' etc.as well as they have autonomous status and exercise powers within their domestic jurisdiction.²²

3) Customs and Excise Revenue Appellate Tribunal (CERAT)

The Parliament passed the Customs and Excise Revenue Appellate Tribunal (CERAT) Act 1986.²³ The Tribunal adjudicates disputes, Complaints or offences with regard to customs and excise revenue. The Appeals from the orders of this Act lies with the Supreme Court.²⁴

4) National Green Tribunal

The National Environment Tribunal Act, 1995²⁵ and National Environment Appellate Authority Act, 1997 were found in adequate in giving adjudication to environment cases effectively and efficiently. Due to which the National Green Tribunal Act, 2010²⁶ was established as a statutory body for the effective and expeditious settlement of cases related to environment protection and conservation of forest and natural resources.²⁷ The Supreme Court of India directed in *Indian Council for Environmental Legal Action v. Union of India*,²⁸ that environment courts having civil and criminal jurisdiction must

²¹ *Supra note 15* at 35.

²² *Supra note 1* at 889.

²³ Act No. 62 of 1986.

²⁴ Available at: <https://lawcommissionofindia.nic.in/reports/Report272.pdf> (visited on April 30, 2022)

²⁵ Act No.27 of 1995.

²⁶ Act no 19 of 2010.

²⁷ *Ibid.*

²⁸ (1996) 3 SCC 212.

be established to deal with the environment related issues in a speedy manner.

5) Election Commission (EC)

The Election Commission is a tribunal for adjudication of matters pertaining to the allotment of election symbols to parties and similar other problems. The decision of the Commission can be challenged in the Supreme Court.²⁹

Foreign Exchange Regulation Appellate Board (FERAB)

The Board has been set up under the Foreign Exchange Regulation Act, 1973.³⁰ A person who is aggrieved by an order of adjudication for causing breach or committing offences under the Act can file an appeal before the FERAB.³¹

6) Income Tax Tribunal

This tribunal has been constituted under the Income Tax Act, 1961. The Tribunal has its benches in various cities and appeals can be filed before it by aggrieved persons against the order passed by the Deputy Commissioner or Commissioner or Chief Commissioner or Director of Income Tax. An appeal against the order of the Tribunal lies to the High Court. An appeal also lies to the Supreme Court if the High Court deems fit.³²

ROLE OF JUDICIARY

This is the first and the most important case in this period that attracted judicial scrutiny in this area is of *S.P.Sampath Kumar v. Union of India*³³ the Constitution Bench was called upon to decide on the main issue whether Section 28 of the Act was unconstitutional as it excludes judicial review, which was contended as part of the basic structure of the Constitution. The Supreme Court accepted without any doubt that judicial review is part of the basic structure. However the Court went on to observe that the creation of alternate institutional mechanisms which were as effective as the High Courts would not be violative of the basic structure. The Act allowed a person who held the post of a Secretary to the Government of India or an equivalent to become the Chairman. Since these Tribunals were to be substitutes of High Courts it is impermissible for bureaucrats to hold such a post. Hence this provision was held to be

²⁹ Supra note 4 at 538.

³⁰ zzzz

³¹ *Ibid.*

³² Act No. 43 of 1961.

³³ AIR 1987 SC 386.

unconstitutional. The Chairman should be a retiring or retired Chief Justice of a High Court. Other members have to be appointed by a committee consisting of a sitting Judge of the Supreme Court. It was also suggested that the Chief Justice of India has to consult while making these appointments. The Parliament accepted these recommendations and now they find a place in the Act by way of the Administrative Tribunals (Amendment) Act of 1986.

While deciding the case of *Sambamurthy v. State of Andhra Pradesh*³⁴ the Supreme Court held that Article 371D (5) of the Constitution, which was inserted by the Constitution (32nd Amendment) Act, 1973, was unconstitutional and void. This provision had enabled the Government of Andhra Pradesh to modify or nullify any order of the administrative tribunal of that state. It was stated that such a provision was violative of basic structure as it made the tribunal not as effective as the High Court when it comes to judicial review. Here the Court seems to be strictly adhering to the directive in Sampath Kumar's case that the administrative tribunals should be effective substitutes to the High Court.

A historic judgement was given in the case *L. Chandra Kumar v. Union of India*³⁵ in which the Apex Court held that Sampath Kumar was decided against the background and that administrative tribunal cannot perform a substitutional role of the High Court, it is only being supplemental. The contention that the constitutional safeguards which ensure the independence of higher judiciary is not available to lower Judiciary and body such as Tribunals was upheld in the Apex Court consequently that the lower judiciary would not be able to serve as effective substitutes to the higher judiciary in the matters of constitutional interpretation and judicial review.

ADVANTAGES OF ADMINISTRATIVE TRIBUNAL

Administrative adjudication is a dynamic system of administration, which serves, more adequately than any other method, the varied and complex needs of the modern society. The main advantages of the administrative tribunals are:

- 1) **Flexibility Administrative Adjudication:** It has brought about flexibility and adaptability in the judicial as well as administrative tribunals. For instance, the courts of law exhibit a good deal of conservatism and inelasticity of outlook and approach. The justice they administer may become out of harmony with the rapidly changing

³⁴ 1987 SCR (1) 879.

³⁵ AIR 1997 SC 1125.

social conditions. Administrative adjudication, not restrained by rigid rules of procedure and canons of evidence, can remain in tune with the varying phases of social and economic life.³⁶

- 2) **Adequate Justice:** In the fast changing world of today, administrative tribunals are not only the most appropriated means of administrative action, but also the most effective means of giving fair justice to the individuals.³⁷
- 3) **Less Expensive Administrative Justice:** The Tribunals ensures cheap and quick justice. As against this, procedure in the law courts is long and cumbersome and litigation is costly. It involves payment of huge court fees, engagement of lawyers and meeting of other incidental charges. Administrative adjudication, in most cases, requires no stamp fees. Its procedures are simple and can be easily understood by a common man.³⁸
- 4) **Relief to Courts:** The system also gives the much-needed relief to ordinary courts of law, which are already overburdened with ordinary suit.³⁹

DISADVANTAGES OF TRIBUNALS

32 *Ibid.* 33 *Ibid.* 34

Although, Administrative Tribunal play a very important role in the welfare of the modern society but it has some defects in it. In some of the disadvantages of Administrative Tribunals are as follows:

- 1) **Against the Rule of Law:** It is observed that establishment of administrative tribunal does not follow the principles of Rule of Law. The Rule of Law was propounded to promote equality before the law and supremacy of ordinary law over the arbitrary function of the government. The administrative tribunals somewhere restrict the ambit of rule of law by providing separate laws and procedures for certain matters.⁴⁰
- 2) **Lack of specified procedure:** Those administrative adjudicatory bodies do not have any rigid set up of rules and procedures. So, there is a chance of violation of the principle of natural justice.⁴¹

³⁶ H.K.Saharay, *Administrative Law and Administrative Tribunals Act, 1985* 263 (Universal Law 31 Publishing, Gurgaon 2nd edn. 2017)

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

- 3) **Scope of Arbitrariness:** The Civil and Criminal courts have to work on uniform code of procedure as prescribed under Civil Procedure Code and Criminal Procedure Code respectively. But the administrative tribunals have no such stringent procedure. They are allowed to make their own procedure which may lead to arbitrariness in the functioning of these tribunals.⁴²

CONCLUSION

In practice there are a number of tribunals functioning in the India. Very few of them, however, have been able to inspire confidence in the public. The tribunals have shown lack of competence and objectivity in determining disputes. Another reason for their failure is the constitution of the tribunals and the method of appointment. Due to uncertainty of tenure, unsatisfactory service conditions and interference by political leaders have served as an obstruction in the development of tribunals in India. Just as the ordinary judiciary is protected from political control through security of tenure and through institutional methods of appointment the tribunal must also be free from any type of interference. It is essential therefore that a single centralized nodal agency be established to oversee the functioning of the tribunals. And they will work as a protection of tribunals and will ensure the independence in the matters of tenure and funds. The condition of tribunals in a country is not satisfactory as they did not work properly and now not able to achieve the purpose for which they were established. Reorganization of tribunals is required in order to achieve the goal for which they were established that a speedy justice and quick disposal of cases in order to reach the desired goal in the field of justice which is needed for the development of country.

⁴² *Ibid.*