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CAT VS HIGH COURTS: WHO HAS THE FINAL SAY? A CONSTITUTIONAL ANALYSIS OF TRIBUNALISATION IN INDIA WITH SPECIAL REFERENCE TO L. CHANDRA KUMAR V. UNION OF INDIA

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Abstract

The objective of this research paper is to understand the constitutional relation between the Central Administrative Tribunal (CAT) and the High Courts in India, especially in light of the case law of L. Chandra Kumar v. Union of India. Tribunalisation was achieved by means of the Forty-Second Constitutional Amendment for speedy, specialized adjudication, and reducing the workload of constitutional courts. This paper discusses the constitutional scheme of tribunals under Articles 323A and 323B and discusses the Administrative Tribunals Act, 1985, specifically focusing on the exclusion of the jurisdiction of the High Courts in cases relating to Service. In addition, judicial review under Articles 32, 226, and 227 and its inclusion as part of the basic structure doctrine in Kesavananda Bharati and Minerva Mills has also been considered. The paper provides an evaluation of the judicial approach that was employed in case S.P. Sampath Kumar and the changes made in L. Chandra Kumar, which state that tribunals are subsidiary bodies and not replacements for constitutional courts. In this regard, the conclusion drawn is that despite the contribution that tribunals make towards specialized justice, there is still need for judicial review through high courts and Supreme Court for the sake of upholding constitutional supremacy and rule of law.

INTRODUCTION

1.1 Background of Tribunalisation in India

"Tribunalization" of India emerged because of the enlargement of administrative activity after Independence. Due to the development of the welfare state, there were a large number of cases related to public employment, taxes, labor relations, etc. This resulted in a huge pile up of cases in High Courts. Thus, in order to speed up judicial proceedings, tribunals were set up.

Tribunals can be described as quasi-judicial authorities that settle disputes on some particular issues. Tribunals, unlike courts, should deal with disputes quickly and efficiently. Recognition

of tribunals by the Constitution occurred with the enactment of the Constitution (Forty Second Amendment) Act, 1976 by inserting part XIV-A in the Constitution consisting of Articles 323A & 323B. These articles conferred the power on Parliament & State Legislatures to constitute tribunals.

It is clear from above that the purpose of Tribunalization was to ease the burden on Constitutional Courts and provide specialized administration in service and administrative disputes.

The Supreme Court in the case of S.P. Sampath Kumar v. Union of India confirmed the constitutional legality of tribunals and considered them as alternative means to the High Courts. After that, the Supreme Court in L. Chandra Kumar v. Union of India made it clear that judicial review under Articles 226 and 227 constitutes part of the basic structure of the Constitution, which is not open to exclusion from consideration. Tribunalization in India is therefore a delicate combination of administrative convenience and constitutional primacy.

1.2 Constitutional Framework of Tribunals

The constitution with regard to tribunals in India has been made by incorporating the Constitution (Forty-Second Amendment) Act, 1976. This act has led to the insertion of Part XIV-A in the constitution containing Article 323A and Article 323B. It provides power to Parliament and State Legislature to constitute tribunals for the purpose of speedy resolution of disputes in administrative and technical areas.

Article 323A gives power to Parliament to constitute administrative tribunals for the resolution of disputes concerning employment and terms of services of persons employed in government service. In exercise of this power, Parliament has enacted the Administrative Tribunals Act, 1985 and constituted the Central Administrative Tribunal (CAT). Article 323B gives power to Parliament and State Legislature to constitute tribunals for the resolution of disputes in the field of taxation, industrial dispute, land reforms, elections, and other prescribed matters.

It also provided exclusion of jurisdiction of ordinary courts except for the Supreme Court under Article 136. This provision creates a conflict between these provisions and Articles 226 and 227, which give powers of writ and supervisory jurisdiction to High Courts. Judicial review under Articles 32, 226, and 227 is considered an integral part of the constitution.

The constitutional validity of such exclusion clauses was contested in the case of *L. Chandra Kumar v. Union of India*. According to the Supreme Court, the power to conduct judicial reviews that exists in the High Courts and the Supreme Court is an integral aspect of the constitution and hence, cannot be subjected to any exclusion clauses. In addition, it was stated that the clauses that exclude the jurisdiction of the High Courts as per Articles 226 and 227 are unconstitutional. Moreover, it was emphasized that tribunals can only work as a first instance court; however, their decisions will still be open to review by High Courts.

1.3 Establishment of Central Administrative Tribunal (CAT)

The CAT was set up under the Administrative Tribunals Act, 1985 passed as per Article 323A. The main reason for setting up CAT was to provide a fast track method of solving service related problems of public servants. Before CAT was set up, service problems used to be decided by High Courts which led to delays in disposal of cases.

The Administrative Tribunals Act, 1985 was enacted providing for setting up of the Central Administrative Tribunal for central government officials and state administrative tribunals for state government officials. Disputes relating to recruitment, promotion, transfers, discipline, pensions and other services are heard by the CAT.

Jurisdiction over the service matters was given to the CAT through Section 14 of the Administrative Tribunals Act, 1985. Section 28 of the said act barred all courts including High Courts from hearing any service matter except those falling within the jurisdiction of CAT as per Article 136 of the Constitution.

Constitutional validity of CAT was discussed in *S.P. Sampath Kumar v. Union of India*. Here, the Supreme Court validated the existence of tribunals, and it made observations that if tribunals were to maintain their integrity and independence, then they would be able to serve as good alternatives to the High Courts.

In another decision in *L. Chandra Kumar v. Union of India*, the Supreme Court declared that the exclusion of the jurisdiction of High Courts under articles 226 and 227 is unconstitutional since judicial review is one of the basic structures of the Constitution. The Supreme Court ruled that tribunals can be auxiliary bodies and cannot replace constitutional courts. Currently, CAT operates as an auxiliary tribunal, and its decisions are amenable to judicial review by the High

Courts.

1.4 Research Methodology

In this case, the methodology chosen is that of a doctrinal approach in conducting legal research on the issue concerning the constitutional status of the relationship between the Central Administrative Tribunal and the High Courts of India. Given that the study is based on constitutional analysis, judicial review, statutory laws, and judicial precedents, a doctrinal approach is deemed the most suitable choice.

This research has utilized both primary and secondary sources. The primary sources include the Indian constitution as per Article 13, 32, 136, 226, 227, 323A and 323B, the Administrative Tribunals Act, 1985, and some important provisions of the Act as per Section 14 and 28. The decisions of the Supreme Court of India have served as an important resource in analyzing the constitutional validity of tribunalization.

Key judgment cases analyzed for this research include *Kesavananda Bharati v. State of Kerala*, *Minerva Mills Ltd. v. Union of India*, *S.P. Sampath Kumar v. Union of India*, and *L. Chandra Kumar v. Union of India*. These cases shed light on the constitutional status of judicial review and tribunals.

The analysis will be more qualitative and analytical in nature than empirical. There has been no survey or interview conducted in this regard. The main emphasis of the analysis is the administrative tribunals set up by article 323A and whether their creation has actually decreased the burden of judiciary or made matters litigious for them.

EVOLUTION OF JUDICIAL REVIEW

2.1 Meaning of Judicial Review

Judicial Review is an essential doctrine of the Indian Constitution. It means that courts have the power to adjudicate on whether the acts of legislation and the executive conform to the Constitution. In case there is any breach, courts can nullify the law and act declaring them unconstitutional.

Constitutional provisions for judicial review are enshrined in Article 13 which stipulates that all laws which infringe on fundamental rights shall be declared void. Under Article 32, the

power of enforcement of fundamental rights has been conferred upon the Supreme Court. Articles 226 and 227 provide for the writ and supervisory jurisdiction of the High Courts. This shows the significance of judicial review in ensuring constitutional governance.

The significance of judicial review became clear when the doctrine of Basic Structure was developed by the Supreme Court in *Kesavananda Bharati v. State of Kerala*. Judicial review was later incorporated as part of the basic structure in *Minerva Mills Ltd. v. Union of India*.

Regarding tribunalisation, judicial review acquired importance because the absence of the jurisdiction of the High Court posed certain constitutional issues. According to *L. Chandra Kumar v. Union of India*, even a constitutional amendment cannot bar judicial review.

2.2 Constitutional Basis of Judicial Review

The Constitution of India offers a robust constitutional basis for judicial review. Judicial review guarantees that all legislative and executive decisions stay within constitutional parameters and never contravene any fundamental rights or constitutional values. Thus, judicial review serves as a check on the arbitrary exercise of governmental authority.

Judicial review enjoys its primary constitutional justification in Article 13, which states that all legislative provisions conflicting with fundamental rights shall be considered void. Article 32 authorizes the Supreme Court to issue writs to enforce the fundamental rights, hence establishing it as the guardian of constitutional rights. Likewise, Article 226 confers broad writ jurisdiction to High Courts not only for the protection of fundamental rights but also for other legal rights. Article 227 confers upon High Courts the jurisdiction to supervise lower courts and tribunals.

The constitutional significance of judicial review became evident in *Kesavananda Bharati v. State of Kerala*, where the Supreme Court laid down the doctrine of the basic structure. Subsequently, in *Minerva Mills Ltd. v. Union of India*, judicial review was established as an essential part of the Constitution's basic structure.

Constitutional Provisions and Tribunalization With respect to tribunalization, these constitutional provisions assumed much significance, for it was contended that the exclusion of the High Court's jurisdiction under Articles 226 and 227 is itself unconstitutional.

2.3 Judicial Review and Basic Structure Doctrine

Basic Structure Doctrine is one of the most important constitutional doctrines in India. Under the Basic Structure Doctrine, the amending power of Parliament as provided in Article 368 is subject to an express restriction in the sense that there are certain essential elements of the Constitution that cannot be amended or altered in any manner whatsoever.

Judicial review is one of those essential elements forming a part of the Basic Structure Doctrine and which can never be deleted or amended in any manner whatsoever. Judicial review is recognized as one of the most important features of the Basic Structure Doctrine through which the supremacy of the Constitution is safeguarded.

Kesavananda Bharati v. State of Kerala was the landmark case in which the concept of the Basic Structure Doctrine emerged. In *Minerva Mills Ltd. v. Union of India*, it has been laid down by the Supreme Court that limited amending power and judicial review form essential parts of the Constitution.

This doctrine gained much significance in the light of tribunalization. Articles 323-A and 323-B provide for the exclusion of the jurisdiction of the High Courts in some cases. In the case of *L. Chandra Kumar v. Union of India*, the Supreme Court stated that judicial review under Articles 226 and 227 is a basic feature of the Constitution and cannot even be excluded through a constitutional amendment. Tribunals can work as complementary institutions to courts, but the last resort will always remain with the constitutional courts.

2.4 Role of High Courts in Judicial Review

The High Courts hold a significant position in the Indian constitutional setup. These courts are constitutional courts, which are entrusted with the task of safeguarding the fundamental rights of citizens, ensuring that the administrative actions are legal, and upholding the supremacy of the Constitution. The powers of the High Courts are derived from Articles 226 and 227, which provide writ and supervisory jurisdiction to High Courts respectively.

Article 226 provides for the power of the High Courts to issue writs including habeas corpus, mandamus, certiorari, prohibition, and quo warranto for the protection of the fundamental rights of the people as well as other rights. The scope of this power of the High Court is greater than that of the Supreme Court as per Article 32 because it covers other legal rights as well.

Article 227 gives the High Court supervisory jurisdiction over subordinate courts and tribunals within its territorial jurisdiction.

Constitutional significance of High Courts was reaffirmed by the Supreme Court in the landmark decision of *L. Chandra Kumar v. Union of India*, wherein the Supreme Court held that exercise of judicial review by the High Courts is a part of the basic structure of the Constitution of India.

The High Court also has an important duty of overseeing the tribunal and making sure that they operate under constitutional constraints. While tribunals offer specialized decision-making, their judgments still need to go through the judicial examination conducted by the High Court. Therefore, the High Court remains a guardian of constitutional administration in India.

DEVELOPMENT OF TRIBUNALISATION

3.1 Growth of Tribunalisation in India

Tribunalization was an outcome of the rise in the role of administration in post-independence India. As the welfare state evolved, there was a surge in disputes concerning government employment, taxation, labor management, and agrarian reform. Hence, there was heavy congestion in High Courts due to delayed adjudication of cases.

In order to alleviate such congestion and provide quick resolution to disputes, specialized adjudication agencies, referred to as tribunals, were established. Tribunals are quasi-judicial forums tasked with resolving disputes relating to technical and administrative aspects.

Tribunalization was provided for by constitutional provisions in the Constitution (Forty-Second Amendment) Act, 1976, where Part XIV-A was incorporated into the Constitution. The inclusion of Articles 323A and 323B gave Parliament and State Legislatures power to create tribunals for administrative purposes and specialized functions.

The legality of tribunalization was confirmed in the case of *S.P. Sampath Kumar v. Union of India*, where the tribunals were regarded as an efficient substitute for High Courts. However, the Supreme Court ruled in *L. Chandra Kumar v. Union of India* that tribunals are supplementary bodies that should not serve as replacements for constitutional courts, as judicial review through Articles 226 and 227 is fundamental to the Constitution.

3.2 Forty-Second Amendment Act, 1976

The Constitution (Forty-Second Amendment) Act, 1976 made a great contribution to the evolution of tribunalization in India. The Forty-Second Amendment inserted Part XIV-A to the Constitution, which aimed at lightening the load on the regular courts and providing fast justice for specialized controversies. Part XIV-A comprises Article 323A and Article 323B.

Under Article 323A, Parliament may constitute administrative tribunals for any dispute or complaint with respect to recruitment and conditions of service of persons appointed to the public services. Pursuant to this provision, Parliament promulgated the Administrative Tribunals Act, 1985 and constituted the Central Administrative Tribunal (CAT). Under Article 323B, Parliament and State Legislatures may establish tribunals for various matters like tax, labor, land reform, election, and so forth.

The most important aspect of these two Articles is the exclusion of the jurisdiction of the ordinary courts except the Supreme Court under Article 136. It posed constitutional problems since it affected the writ and supervisory jurisdiction of the High Courts under Articles 226 and 227.

L. Chandra Kumar v. Union of India dealt with the question of the constitutional validity of such exclusion clauses. According to the Apex Court, judicial review exercised by the High Courts and the Supreme Court is an integral part of the basic structure of the Indian Constitution and cannot be excluded.

3.3 Administrative Tribunals Act, 1985

The Administrative Tribunals Act, 1985, has been passed by Parliament under Article 323A for setting up administrative tribunals for deciding matters related to public services. The purpose of the Act was to make speedy and specialized disposal of service matters and to lessen the workload of High Courts.

According to the Act, CAT has been set up for the personnel working in the Central Government, but state-level administrative tribunals may also be formed for the personnel working in the state government. The jurisdiction of CAT covers disputes in respect of recruitment, promotion, transfer, disciplinary action, pension, and other terms and conditions of service of public servants.

According to Section 14 of the Act, jurisdiction in service matters is given to CAT. Section 28 provided that no court will have any jurisdiction over any matter within the jurisdiction of CAT except Supreme Court under Article 136. Therefore, the service matters coming under the jurisdiction of CAT could not be entertained by High Courts.

The constitutional legality of the Act was established for the first time in S.P. Sampath Kumar vs. Union of India, where tribunals were regarded as effective substitutes for High Courts. Nevertheless, the Supreme Court ruled in L. Chandra Kumar vs. Union of India that excluding High Courts from exercising their jurisdiction was illegal as judicial review is an essential part of the constitution.

3.4 Constitutional Issues in Tribunalisation

The tribunalization of India has led to some constitutional problems involving judicial review and independence of tribunals. While the formation of tribunals was meant for the quick resolution of specialized disputes, questions arose on the exclusion of the jurisdiction of the High Court and executive control over the tribunals.

The provisions in Article 323A and 323B provided for the exclusion of ordinary courts in matters vested with tribunals. Also, the exclusion of the jurisdiction of the High Courts in service matters was provided under Section 28 of the Administrative Tribunals Act, 1985. There is a conflict between these provisions and Articles 226 and 227, which grant writs and supervisory jurisdiction respectively to the High Courts.

Another constitutional problem relates to the independence of the tribunals. As the appointments and administration of tribunals depend on the executive, there were suspicions about their impartiality and independence.

These constitutional problems were considered by the case of L. Chandra Kumar v. Union of India. In its judgment, the Supreme Court ruled that the judicial review by the High Courts and the Supreme Court is an integral part of the basic structure of the Constitution and thus cannot be excluded.

JUDICIAL RESPONSE TO TRIBUNALISATION

4.1 S.P. Sampath Kumar v. Union of India

The S.P. Sampath Kumar v. Union of India was one of the earliest cases that dealt with the issue of constitutionality of administrative tribunals. In this case, the question of constitutionality of the provisions of the Administrative Tribunals Act, 1985, especially that concerning exclusion of the jurisdiction of High Courts in service matters in accordance with Section 28 of the Act.

In the instant case, it was pleaded that exclusion of the jurisdiction of High Courts by invoking provisions of Articles 226 and 227 amounted to violation of the basic structure of the constitution as judicial review was an essential constitutional element. The validity of Article 323A was also attacked.

In this case, the Supreme Court sustained the constitutional validity of the Administrative Tribunals Act, 1985 and remarked that tribunals would serve as an efficient alternative to High Courts if they had independence and judicial powers and competence equivalent to those of constitutional courts.

Yet, the Court highlighted the necessity of independent members of tribunals and proposed measures pertaining to their appointment and terms of service. This decision marked a point at which tribunalization had been considered in favor of tribunals being treated as replacements for the High Courts. This approach was later revised in L. Chandra Kumar v. Union of India.

4.2 L. Chandra Kumar v. Union of India

In L. Chandra Kumar v. Union of India, the constitutional validity of the exclusion clauses in Article 323A, Article 323B, and Section 28 of the Administrative Tribunals Act, 1985 was challenged. These clauses excluded the jurisdiction of High Courts in matters decided by tribunals.

It was contended that the exclusion of the jurisdiction of High Courts under Articles 226 and 227 violated the basic structure of the Constitution since judicial review is one of the fundamental features of the Constitution.

It was held that judicial review conferred on High Courts and the Supreme Court under Articles

226, 227, and 32 constitutes a part of the basic structure of the Constitution and hence cannot be excluded either by statute or by amendment to the Constitution. Accordingly, the provisions providing for the exclusion of jurisdiction were struck down as unconstitutional.

It was further pointed out that tribunals could act as courts of first instance in specialized matters, but the orders of the tribunal could be challenged before the Division Benches of High Courts.

4.3 Judicial Review after L. Chandra Kumar

The decision in *L. Chandra Kumar v. Union of India* has completely transformed the status of tribunals under the Constitution of India. Prior to this judgment, tribunals used to be considered effective alternatives to the High Courts on certain issues. However, it was clarified in this decision that the tribunals cannot be substituted for constitutional courts since judicial review is an essential feature of the Constitution.

The jurisdiction of High Courts under Articles 226 and 227 regarding decisions made by tribunals was restored. In accordance with this decision, all decisions made by tribunals should be open to examination by division benches of the High Courts within whose territorial jurisdiction the concerned tribunal operates. As a result, tribunals have been turned into courts of first instance instead of being final tribunals.

Moreover, it was found unconstitutional the exclusion provisions provided for in Article 323A, Article 323B, and Section 28 of the Administrative Tribunals Act, 1985.

Following the decision, tribunals remained effective as specialized tribunals, while constitutional courts preserved the power of judicial review.

4.4 Critical Analysis of Tribunalisation

The process of tribunalization in India aimed at providing speedy and specialized justice and lessening the burden on constitutional courts. As far as administrative tribunals are concerned, especially CAT, they were supposed to ensure efficient hearing of service-related disputes. But, the system has received quite a lot of criticism constitutionally and practically speaking.

First of all, there is a question about the impartiality and independence of tribunals. Since their appointment and administration rests in the hands of the executive, there is a fear about their

impartiality. The members of the tribunals do not get the protection of the constitution like High Court Judges.

Secondly, the process of tribunalization has not been able to ease off judicial work completely. In the case of *L. Chandra Kumar v. Union of India*, tribunal orders came to be reviewed by the High Courts through Article 226 and 227 of the Indian Constitution. This leads to a lengthy process of appeal.

According to *L. Chandra Kumar v. Union of India*, it was made clear that tribunals were supplemental institutions and not a substitute of constitutional courts.

Hence, while the system of tribunalization is very relevant, there are other issues which need to be addressed.

CONCLUSION AND SUGGESTIONS

5.1 Findings of the Study

This research demonstrates that tribunals were introduced in India in order to decrease the burden on constitutional courts as well as to facilitate rapid adjudication in specialized disputes. The insertion of Article 323A and Article 323B in the Constitution (Forty-Second Amendment) Act, 1976, established various tribunals concerning administrative and other disputes. In accordance with Article 323A, the Administrative Tribunals Act, 1985 provided for the establishment of the Central Administrative Tribunal (CAT) in regard to service matters.

Moreover, this research indicates that there were constitutional doubts about exclusion of High Court jurisdiction with regard to Articles 226 and 227 by virtue of tribunals. Initially, in the case of *S.P. Sampath Kumar v. Union of India*, it was thought that tribunals can be considered as good alternatives to High Courts. However, later on the view taken by *S.P. Sampath Kumar* case was altered in *L. Chandra Kumar v. Union of India*.

In, *L. Chandra Kumar* case, the Supreme Court stated that judicial review by High Courts and the Supreme Court constitutes part of the basic structure of the constitution; hence, cannot be ousted. Tribunals have been declared as supplementary institutions and not replacements to constitutional courts.

5.2 Challenges in Tribunal System

Despite the need for providing a quick and specific form of justice, the tribunal system in India suffers from a number of problems. Firstly, there is an issue relating to lack of independence of tribunals. Since appointments and service conditions of tribunal members are controlled by the executive, there arise certain doubts about its independence.

Secondly, there is the problem of delay in disposing of cases despite the fact that tribunals have been set up to dispose of the cases promptly and efficiently. Apart from the fact that most tribunals suffer from paucity of judges, inadequate infrastructure, etc., the orders of the tribunals after *L. Chandra Kumar v. Union of India* came to be reviewable by High Courts through their writ jurisdiction under Articles 226 & 227 resulting into multiplicity of proceedings.

Lastly, the provision for excluding the jurisdiction of High Courts under Section 28 of the Administrative Tribunals Act, 1985 also amounted to a constitutional problem. The Supreme Court struck down this provision as it was contrary to the basic structure of the Constitution in *L. Chandra Kumar v. Union of India*.

The next issue that may be considered is that of the non-uniformity in functioning and standards in various tribunals. This is because there may not be a uniformity in regard to their selection process and qualifications, which would affect the effectiveness of such tribunals.

5.3 Suggestions and Reforms

There are various reforms needed to improve the working of tribunals in India. An important reform includes ensuring the independence of tribunals from the executive branch of government. The appointments, service, and tenure of the tribunal members must be regulated independently for ensuring impartiality.

Another reform involves upgrading infrastructure and filling up the vacancies at the tribunals. Insufficient number of members and poor infrastructure often lead to delays in deciding the cases, undermining the aim of swift justice delivery. Standards in qualifications and appointments must also be developed.

L. Chandra Kumar v. Union of India, 1997 is a famous case wherein the Indian Supreme Court

has laid down that tribunals in India are only supplementary bodies and continue to come under judicial scrutiny by High Courts under Article 226 and 227.

Reforms involving streamlining of processes, digitization of processes, speedier appointments, and other procedural improvements can further improve the efficiency of the tribunals. Judicial supervision periodically conducted by the High Courts can help in improving the effectiveness of the tribunals. Thus, various reforms are necessary.

5.4 Conclusion

In India, tribunalisation was implemented to ensure speedier and specialized adjudication and alleviate the workload of the constitutional courts. The tribunals were formed through the provisions of Article 323A and Article 323B to address administrative and technical issues. As per the Administrative Tribunals Act, 1985, the Central Administrative Tribunal (CAT) was established for service matters.

While the implementation of tribunals resulted in specialized adjudication, the exclusion of High Court jurisdiction caused some controversy from a constitutional perspective. In the case of *S.P. Sampath Kumar v. Union of India*, the tribunals were regarded as good substitutes for the High Courts. Yet, the court took another stance in *L. Chandra Kumar v. Union of India*, whereby it declared that judicial review under Article 226 and 227 is an essential part of the Constitution's basic structure.

It was made clear that the tribunals are supplementary bodies and cannot serve as substitutes for the constitutional courts. This implies that the tribunals will continue to function in specialized adjudication, but judicial review will still be performed by the High Courts and the Supreme Court.

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