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A COMPARATIVE ANALYSIS ON TRIBUNALISATION
OF JUSTICE IN INDIA WITH SPECIAL REFERENCE
TO THE STRUCTURE IN AUSTRALIA, FRANCE, UK
AND US.

By: Jaisy Elza Joe

ABSTRACT

The creation of tribunals was mainly due to the interruption caused in the administration of the justice delivery system. Tribunals, the quasi-judicial bodies set up to adjudicate specific matters exercising jurisdiction under the specific statutes that established them, have contributed considerably in the adjudication of disputes by delivering justice. Though most of the nations have included laws regarding the 'Tribunals' within their constitutional framework, it varies between nation to nation. This paper helps to get an understanding on the evolution of tribunal system in India with that of the tribunal structure in Australia, France, UK and US.

INTRODUCTION

The term 'Tribunal' has been derived from the word 'Tribunes', which means 'Magistrates of the Classical Roman Republic'. 'Tribunal' is considered to be an administrative body established for the purpose of discharging quasi-judicial duties. A need for a system of adjudication has arisen which is more suited to give response to the emerging requirements of the society which may not be so elaborate and costly as provided by the Courts of law. The primary reason for the creation of Tribunals being the crisis of delays and backlogs in the administration of justice and second being the need for expertise in decision making which have been tackled with the establishment of Tribunals.[1] 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 large number of

small claims. The process of Courts of law is elaborate, slow and costly....Commissioners of customs and excise were given judicial powers more than three centuries ago. Tax tribunals were in fact established as far back as the 18th century.”[2] In several countries, including France, though the adjudicatory forums other than the regular courts discharge the function of adjudication, the same is not considered as a judicial function and these forums are not recognised as Courts. So far as the United Kingdom and India are concerned, the adjudicatory functions discharged by the institutions other than the regular civil and criminal Courts are treated as supplementary to the Courts.[3]

EVOLUTION OF TRIBUNAL SYSTEM

Tribunals are those judicial or quasi-judicial institutions which are established by law.[4] The main intention behind the establishment of such tribunals is for a faster adjudication of disputes and also for expert decision making in specific subject matters. This way it helps to reduce the pendency of cases in the courts which is one main drawback faced by judicial systems. As on November 9, 2021 there are more than 56,46,275 pending cases before various High Courts[5] and as on October 1, 2021 there are more than 69,992 pending cases in the Supreme Court[6]. In the 2017 Law Commission Report of India it was observed that the pendency of cases impact efficiency of the judicial system and administration of justice. The Constitution (Forty-Second Amendment) Act of 1976 incorporated Chapter XIV A into the Constitution, making arrangements for judicial competence with respect to the constitution in the form with tribunals of qualified adjudicatory bodies. This amendment gave birth to such abilities by adding the Arts. 323A and 323B respectively, dealing with the Judicial and other tribunals. The 272nd Law Commission Report on 'Assessment of Legislative Frameworks of Tribunals in India' was submitted after it had been requested by the Supreme Court in *Gujrat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*[7] to find changes to be made with regard to the legislative structure of various tribunals and the process and conditions for the appointment of Chairpersons and Members to these tribunals.

SUMMARISED TIMELINE - DEVELOPMENTS IN THE INDIAN TRIBUNAL SYSTEM

Year	Developments
1941	For reducing the workload of courts and expediting the adjudication of disputes and also for specialised adjudication in tax matters, the Income Tax Appellate tribunal, which is the first tribunal was established in India.
1969	Setting up of Civil Services Tribunals at central and state level as an appellate authority for adjudication on matters relating to service of civil servants was recommended by the First Administrative Reforms Commission.[8]
1974	Setting up of high-powered tribunal and commission was recommended by the sixth law commission in the year 1974 for adjudication of pending matters in the High Court.[9]
1976	<p>Recommendation was made by the Swaran Singh Committee in the year 1976 for setting up of administrative tribunals for adjudication of matters relating to service of public servants, appellate tribunal for considering matters relating from labour and industrial tribunals and also sector specific tribunals for revenue, matters relating to land reforms etc. Power of the supreme court to scrutinise the decisions of the tribunals was also recommended by the committee.</p> <p>In the 42nd amendment to the Constitution, the parliament constituted administrative tribunals for matters regarding the service of public servants and other sector specific tribunals for important subject matters like taxation, land, industrial disputes, foreign exchange[10] etc.</p>

From 1980	Many tribunals were constituted under the Acts which included Central Administrative Tribunal, Securities Appellate Tribunal Appellate Tribunal for hearing Electricity tariff disputes, Appellate tribunal for challenging orders of Central Film Certification Board.
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2017	On the basis of functional similarity, tribunal system was merged with another thereby reducing the number of tribunals by the Finance Act 2017. It also casted the power to the central government for making Rules regarding appointments, removal, qualification, service conditions of chairpersons and members of those tribunals.
2021	The Tribunals Reforms Rationalisation and Conditions of Service Bill 2021 was introduced in Lok Sabha.[11] Parliament passed the Tribunals Reforms Bill, 2021 in August 2021. The central government promulgated the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, in April 2021, that specified provisions related to the composition of the search-cum-selection committees for the selection of members of 15 Tribunals, and the term of office for members. It also empowered the central government to notify qualifications, other terms and conditions of service (such as salaries) for the Chairperson and members of these tribunals. In July 2021, the Supreme Court struck down certain provisions of the Ordinance (such as the provision specifying a four-year term for members) stating that these impinged on the independence of the judiciary from the government. On 16th September 2021, the central government notified The Tribunal (Conditions of Service) Rules, 2021 under the Tribunals Reforms Act, 2021.[12]

In Australia, tribunals deal with both administrative and civil issues and those can be Government sponsored or private. The administrative tribunals are concerned with executive actions of the government whereas the civil tribunals are concerned with resolving private disputes. The Court of Appeal which is a division of the Supreme Court of Australia has the power to entertain the appeals against the judgment of the tribunals. A tribunal with general jurisdiction to review a large range of government administrative decisions or similar tribunal does not exist in the United Kingdom, Canada or New Zealand although the Leggatt Committee in the United Kingdom recommended that existing tribunals should be brought together in a unified structure. Nowhere is there an administrative review structure as comprehensive and general as in Australia. The presence of a general review tribunal has promoted the concept of providing for review of administrative decisions generally.[13]

France has a dual legal system which can be classified into two branches: 1. Private law (le droit privé) that deals with private bodies and individuals and Public law (le droit public) which deals with public bodies. The courts concerning civil litigation of private individuals are carried out by the first degree courts referred as Tribunal d'Instance or by a department which is called as Tribunal de Grande Instance or by Tribunaux de commerce depending upon the subject matters of the case. The appeals are heard by a second degree court called Cour Administrative d'appel. In rare circumstances the decisions in the appeal can be contested in Cour de Cassation the Supreme Court. In the case of public law, the first tier is Tribunal Administratif (Administrative Court) which can be appealed in Cour Administrative d'appel (Administrative Court of appeal). The highest body is Conseil d'Etat the supreme court in public law which can finally adjudicate upon the issues arising from both tiers.[14]

In the United Kingdom, some tribunals are administered by local authorities, some by government departments and others by an agency of the Ministry of Justice called Her Majesty's Courts and Tribunal Service (HMCTS). HMCTS runs a two-tier system namely, First Tier Tribunal which hears matters directly from the people against the decisions made by the departments and an Upper Tribunal which is a superior court of record, hears appeals arising from the first-tier tribunal but not exclusively limited to those matters. Both tiers are split into chambers which have similar jurisdiction for hearing the cases. Tribunals can also sit as a panel having qualified experts in specific areas but the powers are limited in order to award compensation, impose fines etc. based on the jurisdiction. These two-tier systems are headed by a Senior President, independent from the Lord Chief Justice.[15]

In the United States of America, the Supreme Court is the highest court that reviews the decisions of the lower courts in the country including State Supreme Courts. [16] The US constitution does not vest powers on administrative bodies other than courts as the power exercised by those tribunals are only in the nature of quasi-judicial and not judicial. Administrative adjudication is not strictly exercised due to the strict adherence of the doctrine of separation of powers. The report of the special committee for Administrative Law appointed by the American Bar Association in 1933 led to enactment of Administrative Procedure Act, 1946 which is a statutory code relating to the judicial control of administrative action in the USA. The Statute empowers the Courts to review decisions of administrative bodies only on questions of law and interpretation of statutes.[17]

INDIAN JUDICIAL DECISIONS ON THE STATUS OF TRIBUNALS

In *L. Chandra Kumar v. Union of India*[18] the constitutional validity of Articles 323- A(2)(d), 323-B(3)(d) and the Administrative Tribunals Act, 1985 was challenged. It was held that Section 28 of the Administrative Tribunals Act, 1985 and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the extent they exclude the jurisdiction of the High-Courts under Articles 226 and 227 and the Supreme Court under Article 32 would be ultra vires of the Constitution.

In *Jaswant Sugar Mills Ltd., Meerut v. Lakshmi Chand*,[19] it was held that to determine whether an authority acting judicially was a Tribunal or not, the principal test was whether it was vested with the trappings of a Court, such as having the authority to determine matters, authority to compel the attendance of witnesses, the duty to follow the essential rules of evidence and the power to impose sanctions.

In *Associated Cement Co. Ltd. v. P.N. Sharma*[20] it was held that the procedure which is followed by the Courts is regularly prescribed and while exercising powers, Courts have to conform to that procedure while on the other side the procedure which the Tribunals have to follow may not always be strictly prescribed. It was held that “the basic and fundamental feature that is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State”.

In *Durga Shankar Mehta v. Raghuraj Singh*[21] the Supreme Court of India held that the expression 'tribunal' according to Article 136 does not mean something as 'Court' but includes within it, all adjudicating bodies, provided they are constituted by State to exercise judicial powers as distinguished from discharging of administrative or legislative functions.

In *Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi*[22] the Supreme Court held that the award of a Tribunal can be challenged under Article 136 of the Constitution if the Tribunal is the creature of Statute and observes the provisions of special Act and when it is vested with the functions of the Court or necessary trappings of the Court. Whereas, in *Associated Cement Co. Ltd. v. P.N. Sharma*[23] it was held that the Courts alone have no monopoly to exercise judicial power and thus, the vesting of trappings of the Court is not an essential attribute of a Tribunal.

CONCLUSION

The Tribunals help in speedy, cost effective adjudication processes, reducing strict formal procedures as in courts, and it also does not insist on following the rules of evidence. The Tribunal has to exercise its powers in a judicious manner by observing the principles of natural justice or in accordance with the statutory provisions under which the Tribunal is established. The constitution and functions of the tribunals though are similar but different in nature. However, a Tribunal is more suited than a Court to undertake the task after considering all relevant issues of law, fact, policy and discretion.[24] The law Courts with their elaborate procedures, legalistic fronts and attitudes were deemed incapable of rendering speedy and affordable justice to the parties concerned. Technical cases required specific adjudicatory forums with experts having knowledge in those laws. The Tribunals emerged not with the sole promise of speedy, effective, decentralised dispensation of justice but also the expertise and knowledge in specialised areas that was felt to be lacking in the judges of traditional Courts.[25]

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