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CONSTITUTIONAL VALIDITY AND COMPETENCY OF THE TRIBUNALS VS JURISDICTION OF ORDINARY COURTS IN INDIA AN OVERVIEW

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ABSTRACT

Rule of law and the administration of justice; lie at the core of the phenomena of welfare state. Also with the acceptance of Welfare ideology, there has been a phenomenal increase in the functions of the government, which has lent enormous powers to the executive and also led to increase in the legislative output. This has led to more litigation, restrictions on the freedom of the individuals and constant frictions between them and the authority. A tribunal is a quasi-judicial body established by an Act of Parliament or State Legislature under Article 323A or 323B to resolve disputes that are brought before it. It is not a court of law, but enjoys some of the powers of a civil court like issuing summons and allowing witnesses to give evidence. Administrative Tribunals can be seen as the means to achieve the end.

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Introduction

The administrative tribunals are not a unique creation of the Political System of India. They are well recognized in the United States of America and in the all democratic countries Europe. After recommendation of Swarn Singh committee ,ARC-1st and supreme court case KK Dutta vs union of India, "Tribunals " were incorporated in the Indian Constitution

by 42nd Amendment Act, 1976. Article 323-A of Indian constitution deals with Administrative Tribunals where Article 323-B deals with tribunals for other matters. In a broad sense, the 'tribunals' are not courts of normal jurisdiction, but they have very particular and predefined work area.

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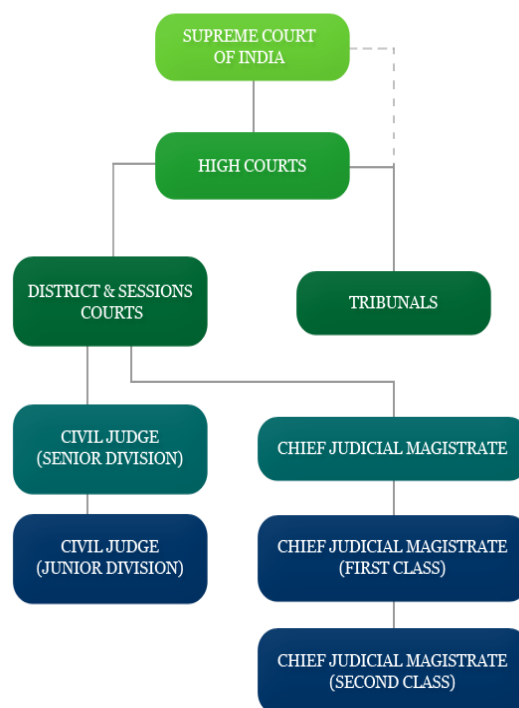
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The Constitution of India, by way of the Preamble, declares that “justice” is ensured to all citizens of the country, justice not only on economic and political as well. For justice (social, economic and political) to prevail it is necessary that


1. The ‘Justice Delivery System’ is not only robust but also capable (efficient and effective);
2. There is an expeditious disposal of cases, the trials should be speedy & at the same time the cases must be decided in due process of law;
3. Adherence must be paid to the ‘rule of law’ (in its ideological sense, the concept of rule of law, represents an ethical code for the exercise of public power, the basic postulates of which are equality, freedom and accountability);
4. There must be adherence to the three timeless principles of natural justice:
 - a) Audi Alteram Partem (Rule of Fair Hearing)
 - b) Nemo Judex In Causa Sua (Rule against Bias)
 - c) Reasoned Order (Adjudicatory body, adjudicating a dispute must give necessary reasons for such adjudication)
5. Law is the means, but justice is the end. In a democratic form of government for justice to prevail, it is necessary that all laws share a common playfield of ‘Salus Populi est Suprema Lex’ that is, welfare of people is the supreme law.
 - a. There are tribunals for settling various administrative and tax-related disputes, including Central Administrative Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), Customs, Excise

and Service Tax Appellate Tribunal (CESTAT), National Green Tribunal (NGT), Competition Appellate Tribunal (COMPAT) and Securities Appellate Tribunal (SAT), among others.^[1]

- b. In several states, Food Safety Appellate Tribunals have been created to hear appeals against orders of adjudicating officers for food safety (additional deputy commissioners).
- c. Armed Forces Tribunal (AFT) is a military tribunal in India. It was established under the Armed Forces Tribunal Act, 2007.



Administrative Tribunals

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Administrative Tribunals have emerged not only in India but also in many other countries with the objective of providing a new type of justice - public good oriented justice. These tribunals manned by technical experts, with flexibility in operations, informality in procedures have gained importance in the adjudication process.

Administrative tribunals differ from the ordinary courts in two things, their **constitution and procedure**. As regards their composition they consist of administrative officials and experts and not judges, for their procedure, it is simpler and much more informal than that the courts. Thus the usual rules of evidence are not observed, lawyers are often not allowed to appear, facts are quickly elicited by act questioning by the hearing officer or tribunal, and decisions are speedily reached.

Constitutional Validity of Tribunals

The Supreme Court in landmark L. Chandra Kumar case (1997) held that the Tribunals constituted either under Article 323A or under Article 323B of the Constitution, possess constitutional validity.

Administrative Tribunals in various Countries

In the continental countries like France, there is a systematic hierarchy of administrative courts headed by the council of state at the top - to hear appeals from the decision of lower tribunals. It constitutes a complete system like that of regular courts in other countries.


In the Anglo-Saxon countries and those like India which have been influenced by their traditions, the growth of administrative tribunals has been haphazard. They have been established as and when required, but although their number is now fairly large they have never been organized into a coherent system. Their constitution and procedure differs from instance to instance and there is no single higher tribunal to hear appeals from them.

In India, the development has been along the same lines as in Britain. Due to the backward state of economic and social legislator the number of administrative tribunals in this country is not so large as in Britain, but it is by no means negligible. Here also the adjudicator power is vested, as in Britain, sometimes in separate tribunals like the Income Tax Appellate Tribunals. Boards of Revenue, Labour an Industrial Court,. Labour Appellate Tribunals. etc. while in other case: government departments or particular officers have it. Thus the district collector or deputy commissioner has adjudicatory powers under the legislation for the reduction of agricultural indebtedness, in respect appeals from specified kinds of orders of local bodies, etc.

The number of such tribunals is increasing because of the welfare role taken up by the state under the Constitution. The number of Indian statutes which constitute administrative authorities, purely administrative and quasi-judicial, is large.

In 1985 the Parliament passed the Administrative Tribunals Act and set up the Central Administrative Tribunal for the speedy settlement of disputes and complaints regarding recruitment and service conditions of the employees of the Central and State Governments as well as local authorities (see more details in the chapter on Personnel Administration). This was in pursuance of Article 323A inserted by way of 42nd Amendment of the Constitution. The same Amendment inserted Art. 323B which empowers the appropriate legislature to set-up the following tribunals: in matters relating to taxation, foreign exchange, labor disputes, land reforms, elections, essential goods, offences and incidental matters' relating to such matters.

In the U.S.A. administrative tribunals are of four kinds, Firstly there are independent administrative courts, e.g. the U.S. Custom Court. Board of Tax Appeals, Court of Claims

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etc. The members of these are called judges and their tenure of office is during good behaviour and they do no other work except adjudicatory. The procedure of these tribunals also resembles the judicial. Secondly, there are social administrative courts like the Board of Appeal in the Patent Office, or Board of Veterans' appeal in the Veterans' Administration. These are integral parts of some administrative units, and their members are not called judges. They, also have no administrative work to do but only adjudicate. Thirdly, there are the regulatory bodies like the Interstate Commerce Commission.

Federal Trade Commission and others. These, as we have seen, have all kinds of powers. quasi-legislative, administrative and adjudicatory. Their members are not called judges, they are appointed by the President for fixed terms, and are removable by him only for reasons specified in the law. These bodies are independent of executive control. Fourthly and lastly, there are licensing authorities like the Bureau of Marine Inspection and Navigation, Civil Aeronautics Authority. etc.

Adjudicatory powers are also vested in executive departments or their heads, e.g., the Secretary of Agriculture, but the recent tendency in the U.S.A. has 'been to assign the adjudicatory powers to independent administrative agencies rather than to departments.'

In the U.S.A. the number of administrative tribunals is estimated to be over 50. In Britain it is still larger, seeing that no fewer than 14 closely printed pages of Pollard's book Administrative Tribunals at Work are devoted to a mere enumeration of them. They are characterized, by a bewildering diversity of constitution and procedure, and no effort has so far been made to co-ordinate them. Some of them consist of single officers, others are plural in composition.


Some are independent or quasi-independent of executive control, while others are departmental in character. Their proceedings may be public or private. Personal hearing mayor may not be allowed. Lawyer's mayor may not be permitted to appear. Grounds for decision may or may not be given, and finally, appeals mayor may not be allowed.

Factors giving rise to Administrative Tribunals

- (1) The root of the development of administrative tribunal is expansion of government activities, and increased interference with the lives of the Citizens.
- (2) The regular courts have not the requisite expertise to settle issues arising from highly technical & complex matters by-product of modern administration.
- (3) The desire to subordinate individual rights to public goods is also at the back of the preference for administrative tribunals.
- (4) Administrative tribunals are generally preferred where prompt action is called for.
- (5) The desire to have inexpensive and rapid Justice unencumbered by elaborate rules of procedure and evidence has also led to the growth of administrative tribunals.
- (6) The administrative tribunals relieve the regular court of law of a great amount of work.

Advantages of Administrative Tribunals

- (1) Administrative Justice is cheaper
- (2) Administrative tribunals perform the functions with greater flexibility.
- (3) The proceedings are broadly characterized by informality and simplicity.
- (4) The administrative adaptation and responsiveness are cited as some of the merits of administrative adjudication.
- (5) Summary procedure is another advantage of the administrative adjudication.
- (6) Experimentation is possible in the field and not in the realm of judicial trials.
- (7) Another merit of tribunals is that they provide relief to the ordinary courts.

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Disadvantages of Administrative Tribunals

- (1) The administrative tribunals do not fit in very well with the concept of Rule & Law.
- (2) Administrative adjudication also violates the principles of natural justice.
- (3) Tribunals cannot act Judicially, are the limbs of the executive.
- (4) The administrative tribunals do not observe uniform procedures.
- (5) Sometimes, no appeal to the ordinary courts of law is permitted against the decision of the administrative tribunals.

Suggestions

- (1) Administrative tribunals should be manned by persons possessing legal training and experience.
- (2) A code of judicial procedure for administrative tribunals should be devised and enforced.
- (3) Reasons should invariably accompany a decision.
- (4) The right to Judicial review on points of law must remain unimpaired.
- (5) Indiscriminate recourse to administrative tribunals must be avoided; the tribunals have utility for specific purposes and within specific limits.

Source – Iasexamportal.com

NATIONAL GREEN TRIBUNAL:

The National Green Tribunal has been established under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle


environmental disputes involving multi-disciplinary issues.

Salient features

- a. The NGT is not bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.
- b. NGT is also not bound by the rules of evidence as enshrined in the Indian Evidence Act, 1872.
- c. It will be relatively easier (as opposed to approaching a court) for conservation groups to present facts and issues before the NGT, including pointing out technical flaws in a project, or proposing alternatives that could minimize environmental damage but which have not been considered.
- d. While passing Orders/decisions/awards, the NGT will apply the principles of sustainable development, the precautionary principle and the polluter pays principles. However, it must be noted that if the NGT holds that a claim is false, it can impose costs including lost benefits due to any interim injunction.

Recent judgments

- a. The southern bench of the National Green Tribunal has suspended the environmental clearance of the India-based Neutrino Observatory project for research on high energy and nuclear physics, being set up in Tamil Nadu. The INO Project is a multi-institutional effort aimed at building a world-class underground laboratory with a rock cover of approximately 1200 metre for non-accelerator based high energy and nuclear physics research in India.
- b. The illegal and improper activities at the camping sites led to the pollution of Ganga, forest areas and there was violation of the norms and guidelines

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with impunity thus the National Green Tribunal has prohibited all camping activity on beaches along the Ganga which fall within 100 meters from the middle of the river during lean season flow from Shivpuri to Rishikesh, a hub for eco-tourism and river rafting.


- c. Biomedical waste plants in Delhi shall be subjected to inspection by joint inspection team of CPCB and DPCC. A complete and comprehensive report be submitted about their performances, capacity and results of treating such para-medical wastes. The NGT also directed the team to report about the manner in which bio-medical waste was being handled by hospitals and the situation prevailing in medical institutions adversely affecting human health and environment.
- d. The National Green Tribunal (NGT) ordered a complete ban on burning of any kind of garbage, leaves, plastic waste and rubber in the open in Delhi-National Capital Region (NCR) to control air pollution. As per NGT, burning of garbage and other material like plastic is responsible for nearly 30 percent of the air pollution in the capital and its suburbs. The person who is found burning or responsible for burning would be liable to pay compensation in terms of Section 15 of the National Green Tribunal Act, 2010. It also directed authorities to levy a fine of 5000 rupees on anyone found burning such material in the open.

The critical issues are discussed as follows:

- a. The act has limited the jurisdiction of tribunal to "substantial question of environment" i.e. situations where 'damage to public health is broadly measurable' or 'significant damage to environment' or relates to 'Point Source

of Pollution'. The question related to environment can't left on discretion of an individual especially on subjective assessment whether environment damage is substantial or not.

- b. NGT Jurisdiction is confined to where community at large is affected by specific form of activity such as pollution. It excludes individual or Group of individuals who deserves as much protection as to Community at Large.
- c. The qualifications for a technical member are more favorable to bureaucrats (especially retired) and to irrelevant technocrats. The act considers higher degrees in Science, Technology and Administrative experience but no provision for ecologist, sociologist, environmentalist, civil society or NGO, etc.
- d. The Act is silent on provision that who is liable to pay compensation or cost of damage to public health or environment. The MOEF state that it shall be notified in rules but this substantial concern shall be included in act only not on will of executive.
- e. The Act doesn't provide jurisdiction to Tribunal over all laws related to environment such as Wildlife Protection Act (1972), Indian Forest Act 1927, Scheduled Tribes (Recognition of Forest Rights Act) 2005 and various other state legislation's.
- f. NGT though is regular in scheduling hearings, typically with time gaps of two to three weeks between two consecutive hearings. Despite the high percentage of cases being disposed of, there is also an increasing backlog of cases in NGT.

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- g. NGT's critics have also questioned the "lack of environmental finesse" of its expert members. "Usually, the expert members are experts of one particular field and not of environment as a whole. For instance, an expert member who has been working on forests for many years would not be able to comprehend the issues arising out of industrial pollution. Thus, the judgments are vague and not relevant in some cases.

Many have also questioned some NGT judgments, for instance, the one dealing with the Okhla Bird Sanctuary in Noida. In September 2013, NGT' principal bench gave an order that stopped all construction within a 10-kilometre (km) radius of the sanctuary because the government had not notified the eco-sensitive zone around it at that time. The order stopped constructions only in Uttar Pradesh, but inexplicably didn't do so in parts of Delhi which fall within the 10 km radius. Many have criticized the selective and "judicial" nature of this judgment.

The bottom line is that NGT has done well so far. But many improvements are still required to make accessible, speedy and effective resolution of environmental disputes a practical reality. For this, NGT must be strengthened and not weakened.

Tribunals Curtailing Jurisdiction of Ordinary Courts

Tribunal, being a quasi-judicial body, goes against the Doctrine of Separation of Powers and allows dilution of judicial mechanism - the exclusive arena of ordinary courts.

The Supreme Court (SC) in Chandra Kumar case (1997) held that the power of the High Court (HC) under Article 226 and 227 to exercise judicial superintendence over the decisions of all courts and tribunals is a part of the basic structure of the Constitution.


However, decisions of some of the tribunals, like National Green Tribunal continue to be taken on appeal only before the SC bypassing the HC as Court of Appeal, depriving them of their power of judicial review.

Conferring a direct right of appeal to the SC from tribunals has changed the SC from a constitutional court to a mere appellate court and has also resulted in a backlog of cases. Appeals from SC would require SC to deal with the finer nuances of disputes under specialised areas of law from afresh. This is not ideal for a court of last resort.

Competency of Tribunals

Tribunals like NGT, NCLAT, CAT have emerged as efficient institutions of rendering justice due to benefits such as:

- Flexibility of procedure** – as rigid procedures and evidence ordeals of courts are not followed, rather it goes by the principle of natural justice.
- Provide efficiency** in dispensing justice due to cost and time effectiveness.
- Unburdening of judiciary**– They have helped in significantly reducing the burden of the judiciary, though appeals can be made there.
- Specialisation** through expert involvement – saves time and increases effectiveness.
- However, Tribunals are often criticized for issues such as:**
- Appeal:** Administrative tribunals were originally set up to provide specialized justice delivery and to reduce the burden of caseloads on regular courts. However, appeals from tribunals have inevitably managed to enter the mainstream judicial system.
- High Pendency:** Many tribunals also do not have adequate infrastructure to work smoothly and perform the functions originally envisioned leading

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- to high pendency rates thus proving unfruitful to deliver quick justice.
- h. **Appointments:** Appointments to tribunals are usually under the control of the executive.
 - i. **Functioning:** There is a lack of information available on the functioning of tribunals. Websites are routinely non-existent, unresponsive or not updated.
 - j. **Accessibility** is low due to scant geographic availability therefore justice becomes expensive and difficult.
 - k. Despite such challenges, tribunals are great resources in rendering justice in government, reducing conflicts and disputes related to public officials who are agents of good governance.
 - l. **Qualifications:** In Union of India vs. R. Gandhi (2010), the Supreme Court said that when the existing jurisdiction of a court is transferred to a tribunal, its members should be persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court.
 - m. **Independence:** The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.
 - n. **Accessibility:** Tribunals must have benches in different parts so as to ensure that they are accessible.
 - o. **Appointments to members:** should be done by an impartial and independent selection committee.
 - p. Given their benefits, tribunals should be revamped keeping in mind the 272nd Law Commission report for the restructuring of tribunals and the ruling


of SC in Chandra Kumar Case and bringing tribunals under independent agency. Hence, tribunals are meant to supplement ordinary courts and cannot supplant them.

Conclusion

Given their benefits, tribunals should be revamped keeping in mind the 272nd Law Commission report for restructuring of tribunals and the ruling of SC in Chandra Kumar Case, and bringing tribunals under independent agency. Hence, tribunals are meant to supplement ordinary courts and cannot supplant them.

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