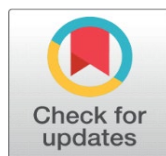


TRIBUNAL ADJUDICATION IN INDIA: NEED, GROWTH AND REFORMS NEEDED

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ABSTRACT

In a developing country like India, with the infrastructural development in various sectors also led to rise in dispute among the concerns. These disputes affect the citizens, requires a special judicial body to deal with them on the basis of technicalities involved. To deal with such problems and without affecting the powers and to keep away constitutional courts from such disputes related to a specific sector, opened the doors for entry of tribunals. These tribunals are form formed by a statute passed by the parliament or legislature. The tribunals mainly by pass the jurisdiction of District Courts and, in specific matters and statutes of High Courts except their constitutional powers to deal matters. These tribunals contain the one of the main functions of judiciary, bindingness of its decisions which also plays an important role in recognition.

The adjudication through this quasi-judicial wing grown with rapid speed as it not only covers all technical and sectoral aspect but also free from rigid or lengthy procedure of the normal courts. This study tries to deal with the need of tribunals due to their nature of working, reasons of growth of tribunals along with the future reforms needed in tribunal adjudication.

Keywords: Need of Tribunals, Reasons of Growth of Tribunals, Courts and Tribunal Adjudication, Reforms Needed in Tribunal Adjudication

1. INTRODUCTION

Tribunals are one of the integral and inclusive parts of Indian judicial system and hold a “quasi-judicial” nature as tribunals are considered courts but they do not completely stick to the same set of rules and procedures as conventional courts do. John Rawls said, “*The justice is the first virtue of social institution, as truth is of systems of thought.*”¹ If a system is not able to work efficiently for the society, then society requires reform in such system. Certain lacunas in the existing judicial system led to insertion of reforms in the judicial system. Tribunals are one of the elements of those reforms. The word Tribunal is derived from the Latin word tribune which means ‘*seat of judge*’² but in modern scenario tribunal in general understanding is considered as a body of officers to resolve a dispute in speedy manner without trapping into complex procedure of civil courts. These tribunals are separate from judiciary. The objective of establishment these tribunals is to reduce the burden of the courts. The process of formation of tribunals is also not rigid which provides an ease in setting up of tribunals for a particular type of dispute. 20th century brought the rapid growth of administrative tribunals in India. Tribunals were even before the 20th century like the Commissioner of Custom and Exercise tribunal was founded in 1660, and tax tribunals were established in the 18th century in countries like United Kingdom. In order to resolve conflicts between people and their governments, numerous tribunals were established following World Wars under various welfare-benefitting laws across the globe. Countries like United States have tribunals in different form and

¹John Rawls, *A Theory of Justice* (Universal Law publishing co. Pvt. Ltd., 2nd Indian Reprint, 2005).

²Webster’s, *New World Dictionary* 1517 (2nd edn., 1972).

role. In India, the numerous reports and Committees had suggestions favouring the tribunal system. XIV report³ (1958) of Law Commission of India had explained the significance of Administrative Tribunals and advocated to establish the order of appellate tribunal or tribunals both at the Centre and/or at regional level.

In India Tribunal system came not only after the insertion of the Article 323A and 323B⁴ in constitution but tribunals were in existence before that like tribunal for Industrial and Insurance disputes. Article 323A and 323B of constitution of India gives constitution authority for formation of Tribunals through a legislation which founded a milestone for tribunalisation of various disputes in India. The objective at time of inserting these articles in constitution was to reduce pendency and provide speedy justice to subjects.

The landmark case of *L. Chandra Kumar*⁵ supreme court first time observed the significance and importance of various tribunals as part of the judicial framework. The Supreme Court in this case also held that tribunals could serve as the first instance of dispute resolution in certain specific disputes, although decisions of tribunals are subject to review by the higher judiciary, to ensure the preservation of constitutional principles. This case also put emphasis on the point that tribunals act as supplements or additive, rather than complete substitution or replacements, to the courts. These tribunals also help in ensuring that justice remains effective and accessible. Report headed by Shri M.C. Setalvad suggested first time after independence about the reforms in judicial administration.⁶

In exercise of power under Article 323A of constitution, the Parliament enacted the **Administrative Tribunals Act in 1985**⁷, which empowers the Central government to establish the Central Administrative Tribunal (CAT) and state-level administrative tribunals (SAT) for providing speedy, inexpensive and efficient justice to the aggrieved public servants. The government(s) also created various tribunals under Article 323B as well on the matters specified in Article 323B clause (2) as per their legislative competency. In recent years the need for tribunalisation is increased and it has taken growth although this adjudication also requires certain reforms to maintain the sanctity of the justice delivery system.

2. NEED OF TRIBUNALS

Increased complexity of legal and administrative disputes, along-with the heavy burden of cases in conventional courts, led the not only the need of setup tribunals but also to organise the existing tribunals in India. The tribunals are also considered equally authoritative to the conventional courts which also increases the usability of the tribunals. There are three essential requisites of a tribunal: *"(1) It must have the trappings of a court; (2) It should be constituted by the State; and (3) It should be invested with the State's inherent judicial power"*.⁸

Tribunals created as specialized bodies to deal with specific types of cases with efficiency, which provides an option to the parties that promotes quick resolution of disputes and reduces the pendency of the judiciary. Following are the main reasons for promoting the tribunals in India:

One of the fundamental reasons for foundation of tribunals is their capacity to expedite and simplify the adjudication process.

Moreover, tribunals carry technical expertise that is often required for specialized cases, such as those involving labour, tax, environmental issues, or telecommunications. The presence of technical members along with judicial members tries ensures that decisions are well-informed and practical. It is blending of legal insight with subject-specific knowledge.

The Supreme Court of India has recognized the necessity and need of tribunals to meet the new demands of a modern changing society, as observed in cases like *L. Chandra Kumar v. Union of India* (1997), which upheld their importance but also maintained the need for judicial oversight. Overall, tribunals are crucial in making justice more reachable, efficient, and specialized, to enhance the legal landscape in India.

The Supreme Court also clarified the object of tribunals by observing that tribunals provide a new-fora for inexpensive and fast track adjudicatory framework and permitting to function by tearing of the conventional shackles and barriers

³The Constitution of India, 1950.

⁴The Constitution of India, arts. 323A, 323B.

⁵*L. Chandra Kumar v. Union of India*, 1997 (3) SCC 261.

⁶ M.C. Setalvad, The Law Commission of India, Fourteenth Report, "Reform of Judicial Administration", (1958), Vol. 11, available at: <http://lawcommissionofindia.nic.in/1_50/Report14Vol2.pdf> (Visited on 15 December, 2017).

⁷The Administrative Tribunals Act, 1985 (act 13 of 1985).

⁸ *Engineering Mazdoor Sabha v Hind Cycles*, AIR 1963 SC 874.

of strict rule of pleadings, strict rule of evidence, lengthy trials, endless revision, reviews and appeals, which at the end, create hurdles in quick flow of the stream of justice.⁹

3. REASONS OF GROWTH OF TRIBUNALS

There are various reasons for the growth of tribunal system in India like adaptability of these bodies by various organizations, fast and less formal procedure in proceedings, it also provides efficient disposal of conflicts along with relief to courts.

1. QUICK DISPOSAL OF DISPUTES:

It is always said about the justice delivery system that “*Justice delayed is justice denied*” and to avoid this denial of justice it is necessary to have a dispute resolution mechanism which not only operates on technicalities of the matters but also responds on these consensual-difference without following the robust procedure. Now a days constitutional courts also refer the parties to avail the jurisdiction of tribunals even if these courts may proceed on such matters. Fast disposal of dispute not only gives satisfaction to the parties to the case but also increases the public trust on justice delivery system. Disputing parties in India do not wish to go courts except having the ultimate option because of lengthy process of court proceeding while the tribunals do not contain rigidity in their functioning.

2. LESS EXPENSIVE AND LESS FORMAL:

The process in tribunals is not only quick but also less expensive in comparison to civil courts or constitutional courts. It also creates economic and public friendly environment for parties to raise their contentions before the tribunal if they have been provided by certain legislature for a specific sector.

In India, tribunals were created to provide a more accessible, affordable, and less formal alternative to conventional courts. Traditional courts generally involve its own procedural laws and minimal legal costs in comparison to other courts. The flexible procedures followed by tribunals contribute to faster case resolution, as these do not strictly apply the formal rules of evidence and procedures that are essential in regular courts.

The simplified process of tribunals helps parties present their cases without being overwhelmed by procedural technicalities, which promotes a more direct focus on the core issues at hand.

3. DISPOSAL OF CASES BY EXPERTS:

A certain number of members in tribunals are expert of the field for which tribunal is formed along with the judicial members. These members play a important role in disposal of a dispute in efficient and in proper manner by dealing with technicalities in depth related to specific sector which if dealt by the constitutional courts may take significant amount of their time to deal with, although the decisions of these tribunals are always subject to judicial review¹⁰. These expert members of tribunals are also referred as technical members and these technical members are back bone of the whole tribunal system.

4. FLEXIBLE IN QUORUM OF MEMBERS:

The procedure for appointing the members in Indian tribunals is designed in such manner to provide flexibility which also differs in various tribunals but it is insured that a specialized expertise related to that field is represented and have significant role in the decision-making process of the tribunals.

In tribunals, unlike conventional courts where there is a standard for appointment generally or mandatorily involves persons with a legal background, different tribunals have different appointment criteria as per the specific requirement of the kind of cases they handle like tax, labour, company or administrative tribunals.

The selection process in most of the tribunals consists of both judicial and technical members. Judicial members are commonly retired judges or a person having significant experience of legal profession, on the other side the technical members are the experts or senior working professionals of a relevant sector or field like engineering, finance, environment or administrative services. The combination of judicial members with the technical members provides a amalgamated legal interpretation with the core area of dispute.

⁹U.O.I. v. Delhi High Court Bar Association., JT 2002 (3) SC 131, Page no. 11.

¹⁰Supra note 6.

5. RELIEF FOR COURTS:

The tribunals not only resolve the disputes of various key sectors in India but also reduces the overburdening of the courts from these cases. As in our country there are several issues related to fundamental, constitutional and statutory rights and if the courts are provided a body to deal certain matter of specific problem, it not only provides ease to courts in dealing other important matter but also increases the public good.

4. COURTS AND TRIBUNAL ADJUDICATION

Tribunals are formed at two level one at the level of district judiciary and another at the level of high courts. At district level tribunals bypass the jurisdiction of civil courts while at high court level, tribunals bypass the jurisdiction of high courts to primarily entertain the dispute. The difference between tribunals and courts are also pointed in *Kihoto Hollohan*¹¹ case.

On the following basis difference or similarity between of tribunal in comparison to courts can be understood:

- **VALIDITY AND JURISDICTION**

Tribunals can only be formed through a legislation for a specific kind of disputes. These tribunals are backed by constitution but power jurisdiction and other limitations are not specifically mentioned in constitution. Supreme Court also observed many a times that these tribunals can be an alternative of High courts in only limited roles only. In *R. K. Jain*¹² case supreme court observed:

"The Tribunals set up under Articles 323A and 323B of the Constitution or under an Act of legislature are creatures of the Statute and in no case claim the status as Judges of the High Court or substitute etc.."

- **TYPE OF HANDLING DISPUTE**

Article 323A of the Indian constitution provides for formation of Tribunals by law related to disputes and complaints with respect to recruitment and condition of services of public servants. So the tribunals formed by the legislation under this article are only specific to matters provided in Article 323A of constitution. While the Article 323B of the Indian Constitution provides for formation of tribunal by law for the matters specified in clause (2) of the Article 323B. Various tribunals have been formed by enacting legislature on the matters specified in clause (2) of the Article 323B by the appropriate legislature which has power to make laws.

Tribunals Like National Green Tribunal handles only dispute related to environment issues and its preservation, National Company Law Tribunal which handle dispute related to dispute of companies under Companies Act only, and other tribunals to take up labour and industrial, tax, rent and tenancy rights and essential goods etc. disputes.

- **PROCEDURE OF PROCEEDINGS**

The procedure of proceeding in tribunals is not as rigid in comparison to the traditional courts and High Courts. The tribunals have been provided the freedom under their parent statutes to lay down their own procedure.

Their procedures, although not strictly bound by the Civil Procedure Code yet adhere to the principles of natural justice.

An overview of the procedures followed by various tribunals is as follows:

- 1) **FILING OF PETITION OR APPLICATION:**

The procedure to file a petition by the aggrieved party is not so complex and can file application or petition before the concerned tribunal. Although such petitions must be filed within limitation period with full details of issue, documents and relief sought.

¹¹Kihoto Hollohan vs Zachillhu and Others 1992 SCR (1) 686.

¹²R. K. Jain vs. Union of India, 1993 (4) SCC 119.

2) **NOTICE AND HEARING:**

Upon receiving the application, the tribunal issues a notice to the other party or parties involved. Both parties present on the specified dates and give their arguments and evidence. Tribunal may also give suggestions for a mediator or conciliator to facilitate a settlement between the disputing parties.

3) **EVIDENCE AND EXAMINATION:**

The tribunals are also provided under statutes the power to summon witnesses, examine the necessary documents, and conduct the inspections. Oral or documentary evidences can be presented before the tribunals by parties. The tribunal may also appoint the experts in order to assist in understanding the disputed technical issues.

4) **ARGUMENTS AND SUBMISSIONS:**

After the evidence is presented, both parties have an opportunity to present their arguments and legal submissions.

The tribunal may ask clarifying questions or seek additional information.

5) **ORDER OR JUDGMENT:**

The tribunal, after considering all the evidence and arguments of the parties, delivers a reasoned written judgment or order.

5. **FEW TRIBUNALS FOLLOW SPECIFIC PROCEDURES:**

The general procedure specified above followed by the most of tribunals, while few tribunals may have their additional rules and procedures.

For Example:

NATIONAL GREEN TRIBUNAL (NGT): National Green Tribunal focuses on fast disposal of cases in relation to environmental issues, by conducting most of the time summary hearings.

INCOME TAX APPELLATE TRIBUNAL (ITAT): This tribunal applies formal procedure, with rigid timelines and limitation for filing appeals, notices, and hearings.

SECURITIES APPELLATE TRIBUNAL (SAT): This tribunal deals with cases related to securities market regulations, and its procedures are governed by the regulations of the Securities and Exchange Board of India (SEBI). Thus, it is clear to remind that specific procedures may vary depending on the nature of the dispute, the rules of tribunals, and the applicable laws.

● **ENFORCEMENT OF DECISIONS OF TRIBUNALS**

The tribunals decision is binding on the parties in the same manner as the decision of a court is binding and an appeal to a higher court may also lie against it. The proceeding of the tribunals is considered as judicial proceeding¹³ and some of the tribunals have also power to initiate contempt proceedings.

● **APPEAL FROM TRIBUNALS**

Appeal from the order and decision of the certain tribunals directly lie to the Supreme Court of India. It is also important to note that the practice of providing direct appeal from the tribunals or other adjudicative bodies exercising judicial power to the Supreme Court did not start only after *L. Chandra Kumar*¹⁴ but it was present prior to it through statutes enacted by parliament. The reference can be made to following legislation which provide for direct appeal to Supreme Court of India by bypassing the High Courts:

- Section 10-GF of the Companies Act, 1956;
- Section 18 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act, 1997); Section 53T of Competition Act, 2002;
- Section 125 of the Electricity Act, 2003;
- Section 423 of the Companies Act, 2013;

¹³The Administrative Tribunals Act, 1985, s.30.

¹⁴Supra note 6.

- Section 30 and Section 31 of the Armed Forces Tribunal Act, 2007 (AFT Act, 2007); and
- Section 22 of the National Green Tribunal Act, 2010 (NGT Act, 2010).

● JUDICIAL REVIEW BY THE TRIBUNALS:

In India the power to do judicial review of legislations is vested with constitutional courts and it can not be snatched by any legislation. In *L. Chandra Kumar*¹⁵ case it was affirmed, that such tribunal would be deemed to be possessed of the competence to test the constitutional validity of the statutory provisions and rules, it was provided, but can not do the judicial review of parent legislation under which it has been enacted. But all decisions of tribunals would be subject to the scrutiny before a division bench of the High Court, within whose jurisdiction the concerned tribunal had passed the order or before Supreme Court.

6. REFORMS NEEDED IN TRIBUNAL ADJUDICATION

Tribunals system although from its insertion in India got not only attention but also delivering efficient justice. Tribunal system although has so many positive characteristics but it also requires certain insertions and reforms.¹⁶ Tribunal system is also criticized due certain drawbacks. Following are the suggestive reforms needed:

● PROCEDURE OF APPOINTMENT OF MEMBERS

In the case of *R. Gandhi*¹⁷, the supreme court observed that, "Impartiality, independence, fairness and reasonableness in decision making are the hallmarks of Judiciary. If 'Impartiality' is the soul of Judiciary, 'Independence' is the life blood of Judiciary." So, it is very important to note that the without impartiality, independence can not be achieved. Appointment of qualified and independent member in tribunals play a very important role in delivering the efficient justice.

Justice J.S. Verma, in *Supreme Court Bar Association*¹⁸ case observed "*...Only those persons should be considered fit for appointment as Judges of the superior judiciary who combine the attributes essential for making an able, independent and fearless judge. Several attributes together combine to constitute such a personality.....*"

The appointment in most of the tribunals is controlled of the central government.¹⁹ It also shows interference of executive in judicial work. Directive Principles of State policy provide that "state shall take steps to separate the judiciary from the executive in the public services of the States."²⁰

In **Chandra Mohan vs. State of UP**²¹, Apex Court held:

"The Indian Constitution, though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the States;"

Although the apex clarified through a series of judgement that in India there is not strict separation of power in India in terms of functions but also stated that executive.

In **Madras Bar Association vs. Union of India**²², the Supreme Court required the following things:

- A five-year term for tribunal members, with eligibility for reappointment
- Judicial members should have at least 10 years of experience.
- Need for the Search-cum-Selection Committee (SSC) for appointment of members of tribunals.

¹⁵Supra note 6.

¹⁶ Nimesh Das Guru, "A Long Quest for Rationalisation of Tribunals in India", *PSYCHOLOGY AND EDUCATION* 2021, ISSN: 1553-6939.

¹⁷Union of India (UOI) vs. R. Gandhi and Ors., (2010) 11 SCC 1.

¹⁸Supreme Court Advocates-on-Record Association v. Union of India (1993) 4 SCC 441.

¹⁹Tribunal (Conditions of Service) Rules, 2021, Available at <<https://www.mod.gov.in/acts/tribunal-conditions-service-rules-2021>>.

²⁰The Constitution of India, 1950, art. 50.

²¹1967 (1) SCR 77.

²²AIR Online 2020 SC 917.

- After this parliament enacted the tribunals reforms act to provide a framework for appointment and service conditions of the members of the tribunal.
- **TRIBUNAL REFORMS ACT 2021²³ PROVIDES FOR APPOINTMENT OF CHAIRPERSONS AND MEMBERS**
 - The Act lays down the qualifications and eligibility required for appointment as chairpersons and members of the tribunals. The criteria ensures that persons with the requires knowledge and expertise should be appointed.
 - The Act provides a comprehensive process for the appointment of chairpersons and the members of the tribunals. It establishes a search-cum-selection committee to recommend suitable candidates.
 - The Act also provides for the term of chairpersons and members of the tribunals. This creates consistency in taking decision.
- **TRAINING TO MEMBERS**

The need of training to members in tribunals increased when the new facets of the issues came before the tribunals and pointed by the constitutional courts. Thus, it required necessary for the judicial and administrative members, along with technical members, of the tribunals. These training sessions to these tribunal members to be given on regular basis in certain frequency of 2-4 years.
- **INFRASTRUCTURE AND ADMINISTRATIVE SUPPORT**

Tribunal system also needs infrastructural support and administrative support. The tribunals reforms act provides certain provisions for establishment of a body known as Tribunal Reforms Authority which is specially dedicated for these things. A good infrastructure includes not only proper place for adjudication and presence of tribunal members but also includes proper staff to assist and tools for proper functioning (which includes technological equipment and assistance).
- **NON-UNIFORMITY IN TRIBUNALS SHOULD BE AVOIDED:**

There should be uniformity in the working of the tribunals. Although the reforms are taken by the government but still the procedure of various tribunals in non-uniform.

7. CONCLUSION

The increasing need and rapid growth of tribunals had not only increased judicial dependency on tribunals but also led for reforms in tribunal system. In India the tribunalisation is utilised and successful over court system in the public due to its various features like cost effectivity, less time taking and disposal of dispute on actual technicalities. There also need statutory reforms to so that tribunals could not become the flood doors for higher courts in appeal. There also needs separation of power in the affair of tribunals.²⁴ These specialized forums for handling disputes also facing challenges and difficulties in terms of independence (appointment and service conditions) and efficiency (not proper trained members). For ensuring the effectiveness and continued growth of the tribunals in India, certain reforms are necessary and crucial which includes to upholding the independence of tribunals and focus on quality decisions. After addressing the major issues before tribunals, India can have a robust and effective tribunal system to provide fair and timely justice to its citizen.

CONFLICT OF INTERESTS

None.

ACKNOWLEDGMENTS

None.

²³Tribunals Reform Act 2021, (Act 33 of 2021). <https://www.mod.gov.in/dod/acts/tribunal-reforms-act-2021>

²⁴Rojer Mathew vs South Indian Bank Ltd and Ors., AIR ONLINE 2019 SC 1514.

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