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TRIBUNALISATION OF JUSTICE

INTRODUCTION

A tribunal, in the legal sense, is a quasi-judicial (having some features of courts but not all) body in the form of a bench consisting of a person or persons with authority to judge and decide a dispute between the parties by exercising judicial powers. The longevity of trials, the expenses of the judicial system, and a large number of pending cases placed a huge burden on the courts and thus caused hindrance in securing justice for the citizens. In order to ease the burden on the courts as well as provide cheaper and quicker justice without a complex and formal system, tribunals were established in the country.

HISTORY AND DEVELOPMENT OF TRIBUNALISATION

The word tribunal has not been defined anywhere in the Constitution and they were not part of the original constitution and came into existence in Independent India with the 42nd Amendment Act, 1976 on the recommendation of the Swaran Singh Committee that was set up in 1967 by the government of India to suggest suitable areas for which tribunals could be established. The amendment added part IXV-A to the constitution called 'tribunals' that contained two articles, namely, Article 323-A and Article 323-B.

Article 323-A: It confers upon the Parliament the power to set up administrative tribunals to adjudicate on the disputes and complaints related to recruitment and service conditions of public servants. This includes employees of any authority or corporation within the territory of India that is owned or controlled by the government. The Administrative Tribunals Act was passed in 1985 under this section that provided for the establishment of Central Administrative Tribunals. Currently, there are 17 regular benches under Central Administrative Tribunals.

Article 323-B: It allows the Parliament as well as State Legislatures to set up tribunals to adjudicate on the disputes and complaints related to subject matters specified under clause (2) of Article 323-B. It includes the following:

1. Levy, assessment, collection, and enforcement of any tax
2. Foreign exchange, import, and export across custom frontiers
3. Industrial and labor disputes
4. Land reforms by way of acquisition by the State of any or rights or extinguishment or modification of any rights as defined in Article 31A or by way of a ceiling on agricultural land or in any other way
5. A Ceiling on urban property
6. Elections to either House of Parliament or the Legislature apart from the matters referred to in Article 329 and Article 329 A
7. Production, procurement, supply, distribution, and control of prices of foodstuffs declared by the President as essential goods by public notification
8. Any offence against law with respect to the matter mentioned above as well as the fees in respect to these matters
9. Any matter incidental to the above-mentioned matters[1]

It must be noted that while only the Parliament can establish a tribunal under Article 323-A, both the Parliament and the State Legislatures can establish a tribunal under Article 323-B. And unlike Article 323-A that allows for only one tribunal for the Centre and one for each state or two or more states, Article 323-B, allows for a hierarchy of tribunals. Article 323-B has a wide ambit and the tribunals established under it can try criminal cases as well.

The power of judicial review of High courts in the decision of tribunals was first examined by the Supreme Court in the case of *S.P. Sampath Kumar v. Union of India*[2]. It allowed the tribunals to act as a substitute for high courts and the decision of the Tribunals could only be challenged in Supreme Court by a Special Leave Petition (SLP) under Article 136 of the Constitution. The

[1] INDIA CONST. art 323-B (d).
[2] S.P. Sampath v. Union of India, UOI (1987) 1 S.C.C. 124.

jurisdiction of High courts was excluded under Article323 (A) (d) and Article 323 (B) (d). Subsequently, in the case of *L.Chandra Kumar v. Union of India*[3], the Supreme Court held that power to judicial review by the High Courts and the Supreme Court was under Article 226 and Article 32 respectively formed the basic structure of the Constitution and thus these clauses were held unconstitutional and struck down. Now parties could only approach the Supreme Court under Article 136 after they have sought the decision of Division Bench of the High Court. The tribunals could still act as courts of firsts instance for areas they were dealing with but their orders are subject to appeal in High courts. Even if the tribunals were to exercise the power of judicial review, they can only do in a supplementary role and not as a substitute to High courts. After this case, the Law Commission of India in 2008 made several recommendations, such as that before an appeal against the order of the tribunal reaches the Supreme Court, it may be heard before a larger bench of the tribunal itself. It also recommended that the chairman of a tribunal and the chief justice of a High court should have similar powers and only a former or sitting chief justice of the High court or a judge of the Supreme Court should be appointed as a chairman of the tribunal. *In Union of India v. R. Gandhi*[4], it was held that the jurisdiction of the courts can be transferred to specially constituted tribunals.

HOW ARE TRIBUNALS DIFFERENT FROM COURTS?

Even though tribunals and courts share the same objective – to secure justice, tribunals have many distinct features that set apart from the courts, such as:

1. Whereas a court is a part of the traditional judicial system and derives its powers from the state, an administrative tribunal is statutory in its origin, i.e., created by the Parliament.
2. Administrative tribunals are independent and do not involve administrative interference in the discharge of its quasi-judicial duties.
3. Unlike courts, they are not bound by the civil procedure code or the Indian Evidence Act, 1872. But tribunals do have to follow the principles of natural justice.
4. Also unlike courts, the presiding officers of a tribunal need not be trained in law.

[3] L.Chandra Kumar v. Union of India, A.I.R 1997 S.C. 1125.
[4] Union of India v. R.Gandhi, (2010) 11 SCC 1

5. While the courts are independent of the executive, the executive exercises control over the tenure and terms and conditions of the service of the tribunals.

However, an Administrative Tribunal does have the power to summon witnesses, to administer, oaths and to compel the production of documents, etc. like a court. The writs of Certiorari and Prohibition are also available against a decision of the tribunal. Tribunals also have the power to hold someone in contempt. As the Supreme Court held in *Durga Shankar Mehta v. Raghuraj Singh*[5], the expression tribunal does not mean the same thing as 'Court' but includes, within its ambit, all adjudicating bodies, provided they are constituted by the state and are vested with judicial functions as distinguished from administrative or executive functions.

CHALLENGES FACED BY THE TRIBUNALS:

A report by 'We at Vidhi Centre for Legal Policy' titled, 'reforming the Tribunals Framework in India', highlighted that the tribunals in India suffered from a lack of independence. The selection committee responsible for the appointment system in the tribunals leans towards the members of the executive which is in violation of the guidelines given by the Supreme Court according to which the committee should consist of an equal number of executive and judicial members. Moreover, the issue of reappointment and appointing retired judges also threaten the autonomy of tribunals as sitting judges or chairman of tribunals may tend to give orders in favor of the Central government in hopes to be appointed again. The constitutional validity of the tribunals and their relationship with the rule of law has also undergone a lot of scrutinies and in *Madras Bar Association v. Union of India*[6], the court stated that Parliament does not violate constitutional provisions by vesting an alternative court/tribunal with adjudicating functions that were earlier vested in a superior court as long as the alternative court/tribunal met the characteristics and standards of the court that is to be substituted.

CONCLUSION:

The judicial system of the country was plagued with many issues that rendered it inadequate to handle the burden of the cases and thus the tribunals, quasi-judicial bodies, were established by a

[5] Durga Shankar Mehta v. Raghuraj Singh, A.I.R 1954 SC 520
[6] Madras bar association v. Union of India, (2014) 10 SCC 1

way of amendment. Tribunals are different from courts in many aspects. They are not bound by complex, formal procedures and aim at providing quick relief by following principles of natural justice. They are also cheaper than the traditional judicial courts and are specialized. Despite this, the tribunal system is not free of shortcomings. They suffer from lack of funds and infrastructures and their independence is easily threatened by the executive. Has the justice system failed the citizens? Judiciary is the hope on which a democracy survives and should be thus protected at all costs. Ample funds need to be allocated to the tribunals and the guidelines laid down by the Supreme Court should be followed. It also needs to be made sure that the executive does not exert any kind of undue influence on the functioning of the tribunals. Tribunals though not originally in the constitution are now an integral part of the country's judicial system and thus it is necessary to ensure their competence.