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Administration Tribunals underneath Indian Constitution: A Study within the Lightweight of Determined Cases

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ABSTRACT

The Constitution of India is the Supreme Law of India. It was adopted by Constituent Assembly of India on 26th November 1949 and become effective on 26th January 1950. 26th January is very well known as red letter day because on 26th January India got its own constitution and become very powerful, sovereign and democratic republic. Our constitution is a unique document because it is not a mere pedantic legal text as it also considers the human value, cherished principles and spiritual norms. According to J.N Pandey "Constitutional law is the rule which regulates the structure of the principal organs of the Government and their relationship to one another and determines their principal functions" When constitution came into force there were only 395 articles in 22 parts and 12 schedules. The constitution was replaced by the Government of India act 1935 as the country's fundamental governing document. The constitution of India declares as a sovereign, secular, socialist and democratic republic. In Indian constitution, the most important role is played by the government and its administration. To control the parliament and to talk about the issues, condition etc. Under Part XIV-A of Indian Constitution, article 323-A and 323-B has been established under 42nd Amendment Act, 1976. Article 323-A reads about the "Establishment of Administrative Tribunals". The main reason behind establishment of Administrative Tribunals is to make the judicial system conservative, rigid and technical. The power of the administrative tribunals plays an important in the union and the state legislature. The below section of paper generally talks about the second reason behind the establish of Administrative Tribunals is take control over the State government and the Central Government including the employees of any local or other authority within the territory of India. Article 323-B deals with the "tribunals for other matters".

Keywords: Administrative Tribunals, Amendment, Judicial System, Central Government and State Government

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I. INTRODUCTION

By giving up the traditional approach, now the State has become the welfare state. Welfare nature of government is the evolutionary goal for every kind of the Government. Now, the state is changing so is the jurisdiction and disputes. As a result the state started to seek the social security and social welfare for the common masses. The Preamble of the constitution declares India to be sovereign, socialist, secular, democratic and republic. In the wisdom of the framers of our constitution, these ingredients play a major role to make the welfare state. The constitution of India, by way of the Preamble, expressly declares that the “Justice” is ensured to every citizens of the country and the people have equal right and opportunity². The term “Administrative Tribunals” is related to the jurisdiction and resolving disputes relating to the recruitment and conditions of service of government servants under central government and state government. The establishment of Administrative tribunals was done by Parliament³. It comes under the Central Government authority. The main reason behind the establishment of Administrative tribunal is to resolve the technical issues that are missed by the court to hear and to provide speedy justice and procedural simplicity that is guaranteed by the tribunal reduces the burden of constitutional courts and thus its importance is undetermined.

Under the constitution of India, the Administration tribunal is mentioned under articles 323-A and 323-B⁴, article 323-A provides for the establishment of Administrative tribunal by a Parliamentary law for determining the disputes relating to the recruitment and conditions of a service under the union government and state governments and article 323-B deals with the tribunals for other matters, it empowers the parliament of State and Union legislature for the establishment of tribunals in another areas for the adjudications of any disputes complaints or offences with respect to the matters⁵.

According to Servai “the development of administrative law in a welfare state has made administrative tribunals necessary”. Administrative tribunals are the central government authorities outside the ordinary court. They are not court neither they are executive body infact it is judicial in nature, that the tribunals have to decide the facts and apply them impartially⁶. In the case of **Sagar Mills v Lakshmi Chand**⁷, the court laid down tests the

2 Shivam Goel, *ADMINISTRATIVE TRIBUNALS IN INDIA*, SSRN, Aug-Oct .2014, at 1, 1.

3 DR J.N PANDEY, *CONSTITUTIONAL LAW OF INDIA* 792-793 (49th ed.2012).

4 INDIA CONSTI, Art. 323, cl. 2

5 Pandey, *Supra* No.2 at 795.

6 Abhishek Kumar Jha, *ADMINISTRATIVE TRIBUNALS IN INDIA :- A STUDY IN THE LIGHTED CASES*, SSRN., Jan.2012, at 1, 2.

7 Sagar Mills v. Lakshmi Chand, A.I.R 1963 S.C.C 677.

following characteristics to determine whether the authority is tribunals or not :-

- a) Power of adjudication must be deprive from the statue or statutory rule.
- b) Tribunals are not bound by strict rules of evidence.
- c) The procedure followed by the body should be lienant as compared to the court.
- d) The body should have power to summon, compel the production of documents and administrative oath.

II. EVOLUTION OF TRIBUNAL IN INDIA

The evolution of Tribunal should take place in India because due to long pendency cases, heavy preoccupation and backlog cases judiciary is facing a long issue regarding the justice, the judiciary is not having any time to spend each minute with the people and issue every single issue and in today India is a democratic country, every person has equal right that they should get justice. A need arose to set up an institution, which would help in dispensing prompt relief to harassed employees who are facing injustice and whose rights are being violated.

The growth of administrative tribunal took place in the 19th century in both developed and developing countries. The first ARC and a committee under J.C Shah recommended the establishment for the administrative tribunal to deal with the service matters. The same was validated by the Supreme Court in 1980⁸. The establishment of administrative tribunal is to provide the speedy justice, through the administrative tribunal the people should get justice prior to time. The concept of administrative tribunal was first introduced in Law commission XIV in the year 1958 which suggested that the formation and establishment of administrative tribunal and it should operate within a legal and procedural framework. Law commission in its 58th report mentioned that there should be establishment of tribunal and commission litigation should be the last resort to reduce the arrears of the court. The commission which propound the establishment of administrative tribunal is Swaran committee. This committee also propound that the judgment of tribunal should be the subject of review by the High Court and Supreme Court⁹. 42nd of the Constitution Amendment provide the parliament the power to make decisions on the disputes and complaints about the termination and termination of services and duties or to be decided by the administrative court.

8 *Tribunals: Administrative, Evolution, Characteristics, Categories*, CIVILS DAILY (Sept.21, 2017). <https://www.civildaily.com/Tribunals-Establishment-Evolution-Characteristics-Categories>.

9 Darshit Vora, *Conclusive Research On The Administrative Tribunal*, Ipleaders (Oct.11, 2020) <https://blog.ipleaders.in/conclusive-research-administrative-tribunal>.

III. TYPES OF ADMINISTRATIVE TRIBUNAL

There are diverse forms of tribunals which are governed by the statutes, rules and regulations by the central government as well as the state government.

a) *Central Administrative Tribunal*

This enactment of tribunal opens a new chapter in the eyes of law. The tribunal empowers to rapid justice. The tribunal comes under the section 323-A of Indian constitution act. Central Administrative tribunal differs from the ordinary court with regard to the jurisdiction and procedures; it makes them free from the shackles of the ordinary court and enables them to provide rapid justice.

The main aim of the administrative tribunal is to spread speedy justice in the centre and state level, so in the each centre the central administrative tribunal is enacted through the administrative tribunal act, 1985. The central administrative tribunal is not bound by the code of civil procedure, 1908 but it is guided by natural justice. A tribunal has the same power as the code of civil procedure does.

b) *Income Tax Appellate Tribunal*

Income Tax Appellate Tribunal has constituted under the Income Tax, 1961. It is quasi-judicial institution set up in January 1941 which specializes in the direct taxes act. This Tribunal has its various benches in various cities and the appeals can be filed before it by aggrieved persons against the order passed by the Deputy Commissioner or Commissioner or Chief Commissioner or Director of income tax appeal against the order of the Tribunal lies before the High Court. An appeal also lies to the Supreme Court if the High Court deems fit¹⁰.

c) *Customs, excise and service tax appellate tribunal :-*

The Parliament passed the CERAT Act in 1986 where the Tribunal settle questions, Objections or offenses with respect to customs and extract income. Advances from the units of the CERAT lie with the Supreme Court¹¹.

d) *National Green Tribunal*

The National Green tribunal was established on 18 October 2010. The main motive for the establishment of National Green Tribunal is to protect the environment, conservation of forests and other natural resources including the cases related to the legal rights of

¹⁰ Jha, *supra* note 5

¹¹ Jha, *supra* note 5

environmental protection. The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 filing of the same¹².

IV. REASONS BEHIND THE GROWTH OF ADMINISTRATIVE TRIBUNAL IN INDIA

According to Dicey's theory of rule of law, the ordinary law of the land must be administered by ordinary law courts. He was opposed to the establishment of administrative tribunals. According to the classical theory and the doctrine of separation of powers, the function of deciding disputes between the parties belonged to ordinary courts of law. But, as can be seen over the period of time, the governmental functions have increased and ordinary courts of law are not in a position to meet the situation and solve the complex problems arising in the changed socio- economic context¹³. The main reason behind the growth of administrative tribunal is "speedy justice" because due to overburden of work, the cases are still pending in the courts due to which the emergency cases are not solving at proper time¹⁴. Departmental policies and other factors are considered: The ordinary and traditional methods of courts consider the conflicting between the parties, therefore to provide appropriate and speedy justice, "administrative tribunals" plays a major role.

V. CHARACTERISTICS OF ADMINISTRATIVE TRIBUNAL

The following are the characteristics of an administrative tribunal:

1. An administrative tribunal is the creation of a statute and thus, it has a statutory origin.
2. It has some of the trappings of a court but not all.
3. The tribunal performs quasi-judicial functions and is bound to act judicially under each and every circumstance.
4. These tribunals are not adhered strictly by the rules and procedures of evidence
5. Tribunals are independent and not subject to any administrative interference while performing the judicial and quasi-judicial functions endowed on it¹⁵.

12 National Green Tribunal, <https://Greentribunal.in/>.

13 C.K. Takwani, *Lectures On Administrative Law*, Eastern Book Company, 228-230 (4th edn).

14 "Reasons For The Growth Of Administrative Tribunal, Advocatespedia (Aug.20, 2020).

https://advocatespedia.com/Reasons_for_the_growth_of_administrative_tribunal.

15 *Administrative- Tribunal*, Law Times Journal (Dec.8, 2019).

<http://Lawtimesjournal.in/Administrative-Tribunal/>.

6. The decisions of most of the tribunals are in fact judicial rather than administrative in as much as they have to record findings of facts *objectively* and then to apply the law to them without regard to executive policy. Though the discretion is conferred on them, it is to be exercised objectively and judicially.
7. Most of the administrative tribunals are not concerned exclusively with the cases in where the Government is a party; they also decide disputes between two private parties, e.g. Election Tribunal, Rent Tribunal, Industrial Tribunal, etc. On the other hand, the Income Tax Tribunal always decides disputes between the Government and the Assessors¹⁶. Thus, taking into account the functions being performed and the powers being exercised by administrative tribunals it can be said that, they are neither exclusively judicial nor exclusively administrative bodies, but are partly administrative and partly judicial authorities.

VI. IMPORTANT CASE LAWS

a) **L Chandra Kumar v Union of India**

In *L Chandra Kumar v UOI*¹⁷ the Supreme Court provided extensive pointers pertaining to powers of tribunals constituted under articles 323A and 323B. The SC struck down clauses 2(d) of 323A and 3(d) of 323B since these provisions excluded jurisdiction of the High Court and Supreme Court under Articles 226 and 32 respectively. The Court held that tribunals constitute under 323A and 323B would remain to be courts of first instance in the respective fields for which they have been instituted. Litigants won't be allowed to approach the High Court without going to the tribunals first.

b) **S.P Sampath Kumar v Union of India**¹⁸

This is the first and perhaps the most important case in this period that attracted judicial scrutiny in this area. The Constitution Bench in *Sampath kumar* was called upon to decide on the main issue whether Section 28 of the Act was unconstitutional as it excludes judicial review, which was contended as part of the basic structure of the constitution¹⁹. The Supreme Court accepted without doubt that judicial review is part of the basic structure. However the Court went on to observe that the creation of alternate institutional mechanisms which were as effective as the High Courts would not be violation of the basic structure. The

¹⁶ Goel, *Supra* note 1, at 25-27 .

¹⁷ L Chandra Kumar v. Union of India, (1995) 1 S.C.C 400.

¹⁸ S.P Sampath Kumar v. Union of India, A.I.R 1987 S.C 386

¹⁹ During the pendency of the case, the government gave an assurance to the court that the act would be amended so that the jurisdiction of the Supreme Court under article 32 was not excluded. the act was consequently amended after the decision.

administrative Tribunals under the Act were recognized as effective substitutes of the High Courts. This proved to be a shot in the arm of the proponents of tribunals. However the Apex Court came down heavily on the procedure for appointing the Chairman of the Tribunal. Section 6(1) (c) of the Act allowed a person who held the post of a Secretary to the Government of India or an equivalent post to become the Chairman. Since these Tribunals were to be substitutes of High Courts it is impermissible for bureaucrats to hold such a post. Hence this provision was held to be unconstitutional. The Chairman should be a retiring or retired Chief Justice of a High Court. Other members have to be appointed by a committee consisting of a sitting Judge of the Supreme Court. It was also suggested that the Chief Justice of India has to consult while making these appointments. The Parliament accepted these recommendations and now they find a place in the Act by way of the Administrative Tribunals (Amendment) Act of 1986.

c) **Sambamurthy v State of Andhra Pradesh**²⁰

It was held in this case that Article 371D (5) of the constitution, which was inserted by the Constitution (32nd Amendment) Act, 1973, was unconstitutional and void. This provision had enabled the Government of Andhra Pradesh to modify or nullify any order of the Administrative tribunal of that state. It was pointed out that such a provision was violative of the basic structure as it made the tribunal not as effective as the High Court when it comes to judicial review. Here the Court seems to be strictly adhering to the directive in *Sampath Kumar's* case that the administrative tribunals should be effective substitutes to the High Court.

VII. CONCLUSION

In practice there are a number of tribunals functioning in the country. Very few of them, however, have been able to inspire confidence in the public. The tribunals have shown a singular lack of competence and objectivity in determining disputes. Another reason for their failure is the constitution of the tribunals and the method of appointment of the personnel. Persons with expertise and the right qualifications do not want to sit on these tribunals thus leading to the unsatisfactory functioning of these tribunals²¹. The uncertainty of tenure, unsatisfactory service conditions, interference by the executive and political interference has further impeded the proper development of tribunals in India. Tribunals are supposed to provide specialised adjudicatory services but the type of people appointed lack the requisite

20 Sambamurthy v. State of Andhra Pradesh, (1987) 1 S.C.C 386

21 Sathe, S.P., Administrative Law, 6th. Edn., Butterworths, New Delhi, 1999, Pp. 245-252

expertise and are on the tribunals merely because of political pressure and executive interference.

The objective of this research paper is to answer the above research question. The answer to first research question is that, the foreigners can seek redressal in Foreigners (Tribunals) Order, 1964, an order under the Foreigners Act, 1964. The reason behind the formation of different foreign act is the NRC act in Assam, the MHA has amended after the NRC act that no foreigners should be living in India illegally, so a different laws for foreigners has been amendment for those who are living in India. The laws of Indian tribunals and foreign tribunals are different, for foreigners it depends on the jurisdiction formed in Foreigners (Tribunals) Order, 1964.

In order to answer the second research question is that, The main reason is that the administrative tribunals does not apply to army, navy and air force is that these military services already have their own tribunals to function in their own manner, as the laws and all the conditions which applied to normal citizens is different from military citizens. The armed forces tribunal is a quasi- judicial organ structured to handle services and disciplinary matters, especially for Indian Navy, Indian Air Force and Indian Military.

An objective study of the Constitution at work cannot miss a basic fact of constitutional government in India, namely, the existence and functioning of full-fledged Parliamentary and Cabinet government in the States of the Indian Union. A local executive fully responsible to a local Legislature ensures a good deal of local internal sovereignty and sovereignty means statehood, limited as it may be by the distribution of powers. Local States pursue local policies, sometimes in accordance with the policy of the Centre, sometimes not.

VIII. REFERENCE

1. <https://ssrn.com/abstract=1989780>
2. https://advocatespedia.com/Reasons_for_the_growth_of_administrative_tribunal.
3. <https://ssrn.com/abstract=2479241>.
