

## Analytical study of Tribunal and Court in administration of justice in India

Eakramuddin & Abroo Khan<sup>1</sup>, Dr.Ashish Kumar Singhal<sup>2</sup>

<sup>1</sup> School of law, Swami Vivekanand Subharti University, Meerut-250005 India

<sup>2</sup> School of law, Sharda University, Greater Noida-201306 India

Email: [drashiah.singhal@gmail.com](mailto:drashiah.singhal@gmail.com)

**Abstract:** There is a good deal of confusion regarding the meaning of the word Tribunal. Why is the body called a Tribunal? This study undertakes a critical examination of Tribunal as a concept and suggests criteria which distinguish it from a court on the one hand and a quasi judicial body on the other hand. The purpose of study is to analyze the statutory and constitutional provisions mentioned. Tribunals are alternative to courts, so it is important that a set of requirements are made that make competent tribunals equal to court in administration of justice in India. This paper will provide an overview on the analytical field of study for both tribunals and courts in their powers, procedures, and provisions of appointments of members of Tribunal and of appeals. Tribunals are alternative to Courts of takes the same driving seat of court to resolving the disputes among parties. Their appreciable steps of govt. contribute the increasing the access to grievances has been conducted in India and this is a pioneering attempt in this directions. There has been phenomenal increase in the function of the govt. which has lent enrobes power to executive and also led to increase in the legislative output. Though the function of courts whether on district level or state level and as supreme judiciary except on district level other judicial system has his own appointive and function process according to the provisions of the Indian constitution. Whereas govt. has indirectly interfere in selection of judges in courts as in High court & Supreme court but for the members of the Tribunals govt. has direct control over it. Both of courts & Tribunal has their function to provide justice. Courts have to follow some procedure establish as under Cr. P.C. & Evidence Act that Tribunal has no need to follow such procedure. As in Meneka Gandhi vs. Union of India AIR – 1978 SC 597, Supreme Court held that the known principle is a right of the party and the court found the decision of authority in violation to the principle of natural justice.

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### 1. Introduction:

The enactment of Administrative Act 1985 opened a new chapter in the sphere of administering justice to the aggrieved government servant. There are number of administrative Tribunals working in the direction of the constitution empowered under article 323 A & 323 B of its institution. But under the adjudication of Tribunal was only in Supreme Court. This confliction has been seen in Sampath Kumar v/s Union of India AIR, 1987, SC 386 case regarding its appeal in High Court & Supreme Court. How it can be realized that the procedure is followed by Tribunal if it appeals can lie in High Court & Supreme Court, and then it should follow the procedure of evidence Act & civil and criminal procedure Code. The pursuance of the provision contains in the Administrative Tribunal Act-1985 the Administrative Tribunal setup under it. In L. Chandra Kumar v/s Union of India, AIR 1997, SC. exercise original jurisdiction in respect of service matters of employers covered by it. As a result of judgment dated march – 18, 1997 of Supreme Court the appeal against the order of Administrative Tribunal shall lie before the bench of concerned High Court. This was first Nov. 1985 this power to established central Administrative

Tribunal & State Administrative Tribunals. Today it has 17 regular branches. 15 of which operate the principal seats of High Court. In brief Tribunal consists of a chairman vice- Chairman & members. The member are drawn both from judicial as well as administrative streams so as to give the Tribunal the benefit of expertise both in legal & administrative spheres.

### 2. Parameters of procedure followed by Court and Tribunal in administration of Justice:

The very first case which came before Supreme Court calling for characterization of the term Tribunal in Article 136 was Bharat Bank vs. Employees of Bharat Bank AIR-1950 SC. 188, 1950 SCR. 459. The question was whether the S.C could entertain an appeal under Art. 136 against an award of an industrial Tribunal. The intention of the constitution about Tribunal in the article seems to have been to include within the scope of Art 136 tribunals adorned with similar trapping as court but strictly not coming within that definition. The numerous cases are pended in courts & waiting to finalize touch the reason is the increasing industrial from of economy, socialist function of government & more population. It shows the inadequacy of courts in

festive so the Tribunal has instituted the same footing. There are number of Tribunals working in India. They are established through the constitution under article 323 A. 323 B. To established Administrative Tribunal government is empowered for central & state tribunals.

The Supreme Court has unanimously held that clause 2 (d) of Art 323 A. & clause 3 (d) of Art 323 B to the extend they exclude the jurisdiction of High Courts. The Supreme Court under Art. 226/227 and 32 of the constitution are unconstitutional as they damage the power of judicial review which is the basic structure of the constitution. The court observed that the Jurisdiction conferred upon the High Courts under / Art. 226/227 & upon the Supreme Court under article 32 of the constitution is part of the inviolable basic structure of our constitution

### **3. Jurisdictional and functional area of Courts and Tribunals:**

The jurisdiction of Tribunal in adjudicating cannot be violate the fundamental right of the citizen, the Court has the Supreme Power over tribunals jurisdiction. The aggrieved party will now be entitled to move the High Court and from the High Court decision, the aggrieved party could them move the Supreme court under Article 136. It is a better step of court to control over the Tribunal as Supreme Court ruled in India v/s Delhi High Court Bar Association AIR 2002 S.C 1499 that the Parliament has power to enact the law in question. The court has argued that art. 323A and 323 B are enabling provisions which specifically authorized the legislatures to enact laws for the establishment of Tribunals in relation to matter specified therein. The power of Parliament to establish a Tribunal for any other matter not covered by Art 323 A & 323 B has not been taken away. Parliament has exclusive Jurisdiction to make law with respect to any entry in list I, as well as in the residuary area not covered by list II and III.

### **4. Function of Tribunals vis- a- vis fundamental rights and rule of law:**

Tribunal is working in the same footing of Court as in A.C. Companies v/s P.N. Sharma AIR 1965 SC, 5918: 1965 (2) SCR 365 though there is no difference between Court and Tribunal in administer justice but have different procedure to adjudicate while “when a body is created by statute & clothed with authority to determine right and duties of parties & to impose pains & penalties on them it satisfies. Supreme Court has power to heard appeal among Tribunal like against industrial to functioning under labour disputes Act 1947. Central administrative Tribunal, election commission and election tribunals, Railway rate Tribunal, Income Tax appellate Tribunal, Authority of Wages Act, Central Government acting of under section 111 (3) of Companies Act 1956, Central Government exercising

Power of revision under section 30 of the mines and minerals (Regulation and Development) Act 1957, Central Government hearing appeal in custom matters, state Government engaged in revisinal preceding under section 7 (f) of the U.P. (Temporary) control of Rent & eviction Act. State Government Acting under rule 6 (6) of the Punjab welfare officers Recruitment & Conditions of service rules, 1952, issued under the factory Act 1948 & board of revenue Regulation in the mentioned different form Tribunals are working but there is a link with Court either in form of appeal or in other way Both of Court & Tribunals administering justice.

### **5. Administrative adjudication and executive aspect of government and supervisory nature of High Courts and Supreme Court:**

In the realm of justice Courts functioning within their jurisdictional territory, the court in India empowered and instituted in the light of different laws. Court on district level as court of session section 9 of Cr. P.C. the State Government shall establish a court of session for every session division. The Code of Criminal Procedure has power to institute other Courts section 10. for addl. session judge and 11 for judicial magistrate section 12 Chief judicial magistrate and additional Chief Judicial magistrate section 13 special judicial magistrates, section 14 for local jurisdiction of judicial magistrate section 14 for metropolitan, etc. The constitution of India under article 214 has power to the establishment of High Court for State and for the whole territory of India under article 124 of Indian constitution has power to establishment and constitution of supreme court. In administration of justice High Courts and Supreme Court protects the fundamental rights of the citizen.

In providing justice while Tribunal has his different function. But Tribunal seems in violation of fundamental rights of parties when they do not follow the due procedure established by under section 61 of the code of criminal procedure service of summon and without adopting the procedure of Indian Evidence Act-1872, under section 135 order of production and examination of witnesses.

### **6. Aims and objects of the study:**

Today litigant gives due regards to courts and ultimately has believed on Court in providing justice. The question arise that whether the Tribunals are alternative to Court and can be giving the same importance. Every jurist, judge, lawyers, and academicians are to conclude that our judiciary is under the more burdens of cases. Tribunals have important role in administration of justice and reduce the burden of judiciary. The objective of the study is to research whether Tribunals and courts in India providing justice on the same criteria. As rightly observed that ‘Justice Delayed is justice Denied’ the

Tribunals are fulfilling the same part of this delay proceeding.

#### **The other objectives are as under-**

To research the analytical examine both Tribunals and courts that what extent tribunal's relevancy with court. To analyses of adopted procedure adopt courts and Tribunals in administering justice. To analyses the procedure on them both courts and tribunals play a role of justice. To examine that Tribunals violate the fundamental rights of parties granted by constitution of India. To make conclusive determination that tribunals gives decision without following the procedure laid down in Indian evidence Act and under the code of criminal procedure. To compare briefly administrative Tribunals of India with tribunals of other countries. To analyses the direct control of Government over Tribunals with the reference of code and the interference of Government being an executive body. To emphasis on that the Tribunals are not a court more are they an executive body rather they are the mixer of both they are juridical in the sense where the function of courts and tribunals is are same to some extent. To evaluate tribunal is a negation of rules of law ensures equality before law and supremacy of ordinary law and due procedure of law over governmental arbitrariness where as courts seems to follow the procedure. To find out the importance of tribunal in justice now a days and equal to court being flexible and in providing adequate to justice, less expensive and providing speedy justice. To recommended persons possessing legal training should man tribunals and experience to inspire public confidence the appointment of members should be made in concentration with the Supreme Court. To analyses like court follows procedure as same a 'code of judicial procedure for administrative tribunals' should be devised and enforced.

This is important in view of the prevalence of varying procedure of administrative adjudication in India. To give suggestion that reasons should invariably accompany decision by tribunals "good law". To examine the supervisory nature between Tribunal and court regarding jurisdiction and in appeal and to made peoples aware towards the need and justice of tribunal to reduced the burden of judiciary being its alternative and being a function of Government as protector, provider, entrepreneur, economic controller.

#### **7. Conclusion**

Research Methodology. A Methodology in this research will be to find out the complexity in running with Tribunal and Court technically of this the problem undertaken in research work. This research will be based on doctrinal method taking out the view in mind and rapid change in govt. function as well as more population and large economic aspect of

country. It is most needed to analyzing the work of Tribunal in administration of justice along with courts procedure in this respect. It is a part and parcel of administering justice whether the fundamental thoughts are violating of the party or not or the decision of Tribunal is infringe to the other constitutional provisions.

To analyzing the adequacy of the decision of Courts of Tribunal a comparative study is most needed of both functions in this respect. In Administration of justice by Tribunal and Courts it can be studied sometime through empirical method to see its real function and procedure. Apart it the study will be based on doctrinal method. In the prior steps of research comprehensive and alert table work will be sought through the information collected from texts looks its constitution and procedure aspect beside it journals the sources of its functioning, periodicals, bulletins, newspaper, Magazines, international publications and other relevant material on the behalf of research study. The area of study is the meditation on which does not have competent study revising literature on it. Therefore the doctrine and empirical method will be implied to the study the severity of the problems in administer justice by court and Tribunal other will be impact of legislative, executive and judiciary measures which will be analyzed.

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#### **Correspondence To:**

Dr. A. K. Singhal, Coordinator, School of law, Sharda University, Greater Noida, Uttar Pradesh, India Email: [drashiah.singhal@gmail.com](mailto:drashiah.singhal@gmail.com)

#### **References:**

##### **1. Table of Cases:-**

- Bharat Bank v/s employees of Bharat Bank, AIR 1950 S.C. 188:1950 SCR 459.
- Jaswant Suger Mill v/s Lakshmi Chand AIR 1963 SC 677 : 1963 Supp. (1) SCR 242.
- Express Ness paper, v/s Union of India AIR 1958 S. C. 578.
- Keswanand Bharti v/s State of Kerela AIR 1973 S.C.
- Dhakeshwari cotton mills v/s Comm. Of Incom tax AIR 1955 S.C. 65.
- Sangram Singh v/s Election Tribunal AIR 1955 S.C.
- Workmen of Motipur suger factory v/s M.S factory AIR 1965 S.C. 1803.
- Mohan Anba Prasad Agnihotri v/s Bhasker Balvant AHER AIR 2000 S.C. 931: 2003 S.C.C. 1990.
- Gujrat Steel Tubes L.td. v/s Its Muzdur Union AIR 1980 S.C. 1896.
- Mohindra Singh Gill v/s Chief Election commissioner. AIR 1978 S.C. 851.
- T. D. Raja Laxmi v/s Distt. Election officer, AIR 1999 Ker 140.
- U.O. I. v/s Delhi High Court Bar association 1 (2002) 4 S.C.C 274: AIR 2002 S.C. 1479.

Mohan Amba Prasad Agnihotri v/s Bhaskar Balwant Aher, AIR 2000 S.C. 931: (2000) 3 S.C.C 190.  
 Workmen of Minakshi Mills L.td. v/s Minakshi Mill L.td. AIR 1994 S.C. 2696, 2717:(1992) 3 S.C.C.336.  
 Makhan Singh v/s State of Punjab- AIR 1952 S.C. 27: 1952 S.C.R 368.  
 D.T.C. v/s D.T.C. Mazdoor congress – AIR – 1991 S.C. Delhi High Court in C.I.T. v/s Sudhir Choudhrie (2005).  
 Income Tax Appellati Tribunal v/s U.K. Agrwal (1999) 1 S.S.C..16.  
 A.K. Karipak v/s U.O. I (1969) 2 S.C.C, 262.  
 All India Bank employes Ass. v/s The National Industrial Tribunal.  
 Air India v/s Nergesh Meerza AIR 1981 S.C. 1929.  
 Sampath Kumar v/s UOI AIR 1987 – SC. 386.  
 L.Chandra Kumar v/s UOI AIR - 1997, SC.

## 2: Books-

Jain S.N.-Administrative law.  
 Ratan Lal and Dhiraj Lal-The Code of Criminal Procedure Ed. Reprints 2006.  
 Dicey A.V -An Introduction to the study of law of the constitution – 9<sup>th</sup> Ed. fifth Indian Reprint 2008.  
 Julius Stone - Human law and Human Justice 3<sup>rd</sup> Indian Reprint 2008 – Universal law Publication.  
 Pandey, Dr. J.N.-The Constitutional law India, CLA, Allahabad 44<sup>th</sup> Ed. 2008.  
 Upadhaya J.J. R –Administrative law.5<sup>th</sup> Ed. – 6 Ed. 2007  
 CLA. Tandon, M.P. – The Court of Civil. Procedure 2006 Ed. Revised by Justice Rajesh Tondon.  
 Dr U.Chandra-Human Rights7<sup>th</sup> Ed. 2007 Allahabad law Agency Pub.  
 Jain Prof. M.P. - Indian Constitutional law Wadhva and Company Nagpur 5<sup>th</sup> Ed. Reprint 2006.  
 Takwani, C.K.- Civil Procedure E.B.C. Lucknow 5<sup>th</sup> Ed. Reprint 2005.  
 Tripathi, Dr.J.P.–The Code of Civil Procedure 6 Ed. 2008.  
 Lal Batuk - The law of Evidence Reprint 2008 CLA.  
 Takwani C.K. -Administrative law EBC. Ed. 2007.  
 Avasthi, Mashawari- Public Administration 29<sup>th</sup> Revised Ed. 2007.  
 Paranjape Dr. V.N - Code of Criminal Procedure 5<sup>th</sup> Ed. 2006.  
 Dr. Avtar Singh - The law of Evidence 6 Ed. 2007.  
 Serkar, S.K. and Ejaz Ahmad - The law of Evidence 6 Ed. Revised 2002.Bakshi, P.M-The Constitutional law of India, Universal Law Publishing Co., Delhi, 8<sup>th</sup> Ed. 2008.  
 Neil Hoawk -Administrative Tribunal.  
 Saxena, H.S.-Central Administrative Tribunal (C.A.T.): Redress Against administrative wrong.  
 Shukla, V.N. Constitution of India EBC. Lucknow 14<sup>th</sup> Ed. 2007.  
 Seervai, H.M – Constitutional law of India, U.L.P. Delhi 5<sup>th</sup> Ed. Vol- 1-3 Reprint 2006.

## 3: Articles-

India, Information Technology -Teli Justice Bridges India's Courts and Jails” ZD Net Asia-Thursday, Feb. 21, 2008.  
 No banches of Supreme Court outside Delhi–Article from M2 press wire May 24, 2000.  
 Only Supreme Court of India can save the Gonges say MSD. Researchers -The Hindustan Times.May 2, 2008.

India Plans to Set up E- Court in Supreme Court. – News wire -Article from: xinhua News Agency July 2, 2002.  
 News wire - Secured laon Have Priority over tax dues: INDIA Supreme Court. Asia plus News Jan 9, 2009.  
 Judiciary has given meaning to Indian Democracy; Kalam-The Hindustan Times; July 24, 2006.  
 Judiciary can't be oversensitive - The Hindustan Times Sept. 27, 2007.  
 Supreme Court upholds Crienet Board's outdoorsy, Rules it is not a state - PTI - The Press Trust of India L.td. Feb 2, 2005.  
 Civil Service Tribunal (European Union civil Service Tribunal's procedural regulation to be adopted by justice and Home affair council) Anticle from European Report: dated April, 20, 2007.  
 Supreme Court Imposes Time Limit on objection to selection of Arbitor - 30-04-2009 Times of India.  
 Cronyism in N.S.W. Courts and Tribunals labour Govt. control over Decisions, Health Quest Protection in the Court - Dec. 4, 2006 by Antino Santangelo.  
 India Question criminal Tribunals by Security Council - The Hindustan Times: Oct. 11, 2006- Sources News wire.  
 Indian Justice System: An Introduction Monday Business Briefing; Nov. 25, 2003.  
 TDSAT to give its verdict on the row blue TRAT and VSNL (POLICY AND REGOLATION) (Telicon Disput Settlement appellate tribunal, Telecom Regular Authority of India, Videsh Sanchar Nigam Ltd. On International Bandwidth pricing) Brief Article. India Telecom; April 1, 2005.  
 Of Judges crossing judicial limits- The Hindustan Times; March 11, 2007.  
 Challenging Arbitral Awards: “ Finality is Good but Justice is Better”Article from-Mondaq Business Griefing Jan 21, 2003.  
 Introduction of the competition (Amendment) Bill, 2007 (Laws and rules of unfair Trade).  
 Introduction to the Employment Tribunal, 24<sup>th</sup> Sept. 2008 The Hindustan Times.  
 Opinion, Court Times a golden Knit women's feature Severe; Jan, 14, 2006 Naveen, J.K. in Magzine, High Bean Research.  
 No Need to expend the Seepe of ' State ': S.E. PTI. – The press Trust of India L.td. feb. 2, 2005,  
 Delhi High Court Tribunal sift ban on SIMI Tuesday Aug. 15, 2008 Source NDTV. com (New Delhi).  
 Peoples “ Tribunal ” to record atrocities on minorities - New Delhi, Aug. 17, 2009-News Kerla.com.  
 LTTE still most lethal; Tribunal- Friday, Nov. 21, 2008 - The Hindu.  
 Land mark Tribunal ruling hits tax authority , May 23<sup>rd</sup>, 2008 - CA in India. Org.  
 Peoples' Tribunal worn of resign sadism in In India – New Delhi Feb. 28 The Kashmir Times online.  
 Indian Tribunal orders spectrum return in – April 2, 2009.  
 Kashmir: people's Tribunal Requests J. and K. Govt. to determine the impact of landmines on local communities.Source - International Campaign to Ban landmine 23 April 2009 (ICBI).

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