ISSN - 2583-2344

A Constitutional Appraisal of Tribunalisation of Justice in India: Elucidating the tools of justice delivery in the legal system and tracing the constitutional rationality through the judicial attitude of tribunalisation of justice.

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Best Citation - *Rozena Correia, A Constitutional Appraisal of Tribunalisation of Justice in India: Elucidating the tools of justice delivery in the legal system and tracing the constitutional rationality through the judicial attitude of tribunalisation of justice, 3 IJLR 72, 2022.*

Abstract

The article predominantly focuses on India's tryst with the tribunalisation of justice. The connotation of Courts and Tribunals with their pros and cons as tools in the legal system is underlined in the paper. The paper examines the concept and context of 'tribunal' functioning in India. The twin objectives of evolution and progression are emphasized, which led to the swift development and proliferation of Administrative tribunals of varied categories. It also speaks about establishing the tribunal as an alternative mechanism and parallel to the traditional court system.

The tribunals as quasi-judicial bodies are highlighted with greater detail by assessing the underpinnings in terms of significance and scope.

By taking a restrictive and liberal approach, the article demonstrates the judicial attitude towards tribunalisation of justice and the position of the constitutional courts on the rationality and validity of the establishment of tribunals in India.

Keywords: Constitutional Appraisal, tribunalisation of justice, quasi-judicial, constitutional courts, judicial attitude.

Introduction

> **In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same.**
>
> **Albert Einstein**[330]

The Constitution of India guarantees protection of life and personal liberty to one and all. It provides adequate safeguards to fundamental rights against arbitrary decisions. The rule of law visualizes that all men are equal before law and have equal rights.

The Constitution of India directs the state to ensure that:

1. All the citizens should have an equal opportunity to access to justice.
2. Justice should not be denied to anyone by reason of economic or any other disability.
3. Law should treat all the citizens equally.
4. The Process of legal system should be not only being accessible but also affordable.
5. The process of justice should be fast, fair and economically viable.

Under the Constitution, the Judiciary in India acts as the guardian and protector of the Constitution itself and the fundamental rights of the citizens of India.[331] To ensure access to justice; a single integrated judicial system has been provided by the Constitution of India comprising of

[330] *Albert Einstein* Quotes, In matters of truth and justice…www.brainyquote.com/quotes/albert_einstein_148816. Assessed on 10th July 2022 at 8:30 a.m.

[331] 32. Remedies for enforcement of rights conferred by this Part.—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

the Supreme Court at the apex, High Courts at State level and District and the lower courts at lower level.[332]

The Supreme Court has, time and again, through various judgments, reiterated that there could be no delay in the trial, as delay in justice directly amounts to the denial of justice.[333] Moreover, the Constitution of India, through the Directive Principle of State Policy guides the state to take all the steps necessary to minimize disparities and inequalities amid groups of people in different areas under article 39A of the Constitution of India.[334]

With India's transformation from the police state to a Welfare state, the functions increased numerously, and regulation of the social welfare measures became the order of the day. The state assumed a positive role from labour and banking to public corporations and education. From the constitutional standpoint, the executive made law or delegated legislation that hitherto never existed became predominant.

With the expansionist role of the welfare state, there was a dire need for efficient administration and speedy determination of the disputes arising from the social-welfare legislation. The legalistic and formalistic approach of the Courts did not suit the multifarious litigation brought under the welfare state .Therefore a need was felt to transfer the decision-making powers to expert and specialized bodies, thereby giving birth to Administrative Tribunals.

The Traditional Court System & Tribunal System as tools in the legal system- reconnoitering the pros and cons.

Despite the independence exercised by judiciary in India from executive and legislative organs, the court system in India has been plagued with various inconsistencies and discrepancies. Over the years Indian courts have become infamous for various issues proving excessive hurdles in dispensing justice to the citizens.

The major issues which have crippled the courts may be summarized as follows:

1. Pendency of cases: While there are 2.84 crore cases pending in the subordinate courts, the High Courts and Supreme Court are both backed up by 43 lakh and 57,987 cases, respectively. The five states with the greatest backlog according to National Judicial Data Grid (NJDG), are Uttar Pradesh (61.58 lakh), Maharashtra (33.22 lakh), West Bengal (17.59 lakh), Bihar (16.58 lakh), and Gujarat (16.45 lakh).[335] Of all the pending cases, 60% are more than two years old, while 40% are more than five year old. In the Supreme Court, more than 30% of pending cases are more than five years old.[336]

2. Corruption: According to a 2007 survey that categorized bribe recipients showed that 59% of respondents paid bribes to lawyers, 5% to judges, and 30% to court employees in exchange for prompt and favorable decisions.[337]

3. Lack of transparency (particularly in the appointment of judges)- The National Lawyer's Campaign for Judicial Transparency and Reforms (NLC), the association that filed the petition, claims that nine of the 28 Supreme Court Justices are close relatives of prior justices. Regarding India's high courts, the petition claimed that a large representative sample from that time period showed that nearly one-third of the HC judges surveyed happened to be related to current or former judges and legal luminaries. The petition was initially filed in the SC by the NLC in 2014–15 during the NJAC case. 88 of the 300 HC judges who were

[332] Rana Kamal, *Judicial System in India* (2014)

[333] Hussainara Khatoon vs. State of Bihar AIR 1979 SC 1364 (India); Also see K. Pandurangan vs. The Chief Secretary on 18 September, 2009; Shiv Kumar Yadav vs State on 4 March, 2015.

[334] Article 39A was added by the 42nd amendment in 1976 and reads as follows: "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

[335] Mail Today Bureau, *3.3 crore cases pending in Indian courts, pendency figure at its highest: CJI Dipak Misra*, Business Today (June 28, 2018), www.businesstoday.in/current/economy-politics/3-3-crore-cases-pending-indian-courts-pendency-figure-highest-cji-dipak-misra/story/279664.html.

[336] Data obtained from the National Judicial Data Grid

[337] news.outlookindia.com, New Delhi, Aug.18,2011, https://archive.is/20130131001619/http://news.outlookindia.com/items.aspx?artid=731693#selection-1179.1-1198.0

surveyed across 13 High Courts fell into this category.[338]

4. High number of posts lying vacant: In the lower judiciary, more than 5,000 positions have been left unfilled, says Union Law Minister Ravi Shankar Prasad.[339] 5,984 judges' posts were vacant in the subordinate judiciary against a sanctioned strength of 22677 across the country, and it does not include judges in High courts and Supreme Court. The All India vacancy in subordinate courts stands at 26%, in High Court stands at 36% (around 392 judges in 24 High courts against sanctioned strength of 1079) and in SC stands at 19%. In some states around 60% of the judge's positions lying vacant. No wonder the number of pendency of cases has reached in crores.[340]

5. High Litigation Costs: India has acquired a reputation of an expensive legal system. In part, this is because of delays but there is also a question of affordability of fees. The idea is that a relatively impoverished person cannot access the courts for a fair hearing due to financial or similar constraints while it's in our constitutional values and republic ethics. It is a burden on our collective conscience.—*President Ram Nath Kovind, on November 25, National Law Day* [341]

Merits of Tribunalisation of Justice

Administrative adjudication is a dynamic system of administration, which serves, more adequately compared to any other approach, the complex and varied needs of modern society. The main advantages of the administrative tribunals are:

1) Flexibility in operation

Administrative adjudication now has more adaptability and flexibility. For instance, the judiciary exhibit a good deal of conservatism and inelasticity of outlook and approach. Administrative adjudication is not constrained by rigid rules of procedure and canons of evidence and therefore can remain in tune with the changing stage social and economic life.

2) Adequate Justice

Administrative courts are not only the most appropriate form of administrative action in today's rapidly changing environment, but they are also the most efficient way to provide fair justice to the individual. It is challenging for lawyers, who are more focused on legal issues, to accurately analyze the needs of today's welfare society and pinpoint where each person fits within it.

3) Affordable and economical

Administrative justice guarantees speedy and inexpensive justice. In contrast to this, judicial procedures are drawn-out and onerous, and litigation is expensive. It entails paying hefty court fees, hiring attorneys, and covering other incidental costs. Most of the time, administrative adjudication is free of stamp fees. Its processes are straightforward and simple enough for a layperson to understand.

4) Relief to Courts

The process also provides the relief that is desperately needed for regular courts of law, which are already overworked with routine lawsuits.

Demerits of Administrative Tribunals

Even though administrative adjudication is essential and useful in modem day administration, we should not be blind to the defects from which it suffers or the dangers it poses to a democratic polity. Some of the main drawbacks are mentioned below.

(i) Administrative adjudication undermines the rule of law. The rule of law ensures that everyone is treated equally under the law and that due process of law prevails over governmental arbitrary action. However, administrative tribunals, with their independent rules

[338] Ushinor Majumdar, *Outlook India*, (Sep 09,.2016), https://www.outlookindia.com/magazine/story/scions-of-themis-and-zeus/297827

[339] *Over 5,000 posts in lower judiciary lying vacant: Ravi Shankar Prasad*, Times of India (Aug. 1, 2018), timesofindia.indiatimes.com/india/over-5000-posts-in-lower-judiciary-lying-vacant-ravi-shankar-prasad/articleshow/65226357.cms.

[340] Pradeep Thakur, *Vacancies in lower courts at all-time high*, Times of India (Jan. 1, 2018), timesofindia.indiatimes.com/india/vacancies-in-lower-courts-at-all-time-high/articleshow/62320296.cms.

[341] Usha Rani Das (04 Dec.2017), http://www.indialegallive.com/special-story/litigation-expenses-the-long-quest-and-high-cost-of-justice-40245

and procedures, put a serious limitation upon the celebrated principles of Rule of Law.

(ii) Administrative tribunals have no set procedures and may at times disregard even the principles of natural justice.

(iii) Administrative tribunals frequently conduct summary trials and they do not adhere to established precedents. As a result, it is not possible to predict the course of future decisions.

(iv) The regular judiciary follows a uniform procedure for dispensing justice and centuries of experience have borne testimony to the advantages of uniform procedure. There isn't a set standard operating procedure for administrative adjudication.

(v) Administrative tribunals are staffed by administrators and technical heads that may lack legal education or training of judicial work. Some of them may not have the independent outlook of a judge.

The Tribunal as an alternative mechanism and parallel to the traditional court system.

The traditional judicial systems as we saw are plagued with lots of practical difficulties, the concept of Tribunals originated as a substitute for courts when lesser formalism, greater expediency, and better expertise were required in adjudication of disputes.[342]Tribunals were conferred upon certain characteristics which gave them certain definite advantages over the courts. These were affordability, accessibility, lack of technicality, initiative, and subject-matter expertise.[343]

The idea of administrative tribunals emerged not only in India but also in many other nations with the sole purpose rendering a new type of justice - public good oriented justice. These tribunals with very low cost of adjudication, staffed by technical experts, with good lot of flexibility in procedures and operations, and informality in procedures gained importance in the adjudication process very swiftly, as they served the purpose of delivering justice in the most appropriate and much required way, where courts and ARDs failed.

They are not a court nor are they an executive body. Rather they are a mixture of both. They are judicial in the sense that facts must be decided and applied impartially, without considering executive policy. They are administrative because the reasons for preferring them to the regular judiciary are administrative reasons.[344]

The Supreme Court in *Jaswant Sugar Mills Ltd., Meerut vs Lakshmichand And Others*[345] finalized the following criteria or tests to find out as to an authority is a tribunal or not:

(a) Authority to adjudicate has been rendered by statute or statutory rule.
(b) It must have the accessories of a court and by this means be bestowed with the power to summon witnesses, administer oath, compel production of evidence, etc.
(c) No boundation of strict rule of justice.
(d) The authority is exercising its functions impartially and judicially and is applying the law and adjudicating over disputes autonomously of executive policy.
(e) The authority is self-governing and protected from any administrative intervention in the discharge of their official functions.

Significance and Scope of Tribunals as Quasi- Judicial Bodies

A quasi-judicial body is a non- judicial body which can interpret law. It is an entity that is required to objectively ascertain facts and draw conclusions and has powers and procedures similar to a court of law or judge. Such actions are able to remedy a situation or impose legal penalties, and they may affect the legal rights, duties or privileges of specific parties.[346]

[342] Ashok K. Jain, *Administrative Law*- (Supplement 2010), Ascent Publications, Ch.8 – Tribunals, p. S117

[343] See, Neil Hawke, *Introduction To Administrative Law* 67 (2013); J.J.R. Upadhyaya, *Administrative Law* 139 (9th Edn., 2014);S.H. Bailey, Cases, Materials And Commentary On Administrative Law 99 (2005); Neil Paperworth, Constitutional and Administrative Law 349 (2016); Brian Thompson &Michael Gordon, *Cases And Materials On Constitutional And Administrative Law* 653 (2014).

[344] https://egyankosh.ac.in/bitstream/123456789/19134/1/Unit-23.pdf

[345] Jaswant Sugar Mills Ltd., Meerut vs Lakshmichand And Others,1963 AIR 677 available at https://indiankanoon.org/doc/387276/

[346] *West's Encyclopedia of American Law*, (edition 2. 2008) The Gale Group, Inc.

The powers of the quasi-judicial bodies are usually limited to a very specific area of expertise and authority.

Some of the key differences between Judicial and Quasi–judicial bodies may be summarized as under:

- Judicial decisions are constrained by common law precedent, whereas quasi-judicial decisions usually are not so bound; judicial decisions may create new law in the absence of common law precedent, whereas quasi-judicial decisions must be based on conclusions of existing law
- Quasi-judicial bodies need not adhere to strict judicial rules of evidence and procedure;
- Quasi-judicial bodies must hold formal hearings only if required to do so under their governing laws or regulations.[347]

Administrative Tribunals as quasi-judicial body possess following characteristic:

- An Administrative tribunal has statutory foundation and so it is creation of law;
- It possesses some of the features of court but not all. It carries out quasi-judicial operations and functions as it is delegated with jurisdictional powers of the State.
- It is an independent body and act without any bias. It is free from any administrative intrusion in carrying out of their judicial or quasi-judicial occupations;
- It is required to follow principles of natural justice in deciding the cases.
- It does not follow the technicalities of rules of procedure and evidence prescribed by the Civil Procedure Code and the Evidence Act. It is independent from the severe and rigid rules and regulation of various laws which courts are bound to follow compulsorily.
- It enjoys supremacy of court in quite a range of matters like authority to summon witnesses, to administer oath, to induce production of documents etc.; Its proceedings are deemed to be judicial proceedings and in certain procedural matters it has powers of a civil court.
- The prerogative writs of certiorari and prohibition are accessible against the decisions of administrative tribunals. Hence decisions of tribunal cannot be taken as final and are subject to scrutiny by higher courts.
- It has been recognized specifically to address and deal with a particular type of case or with a number of identical or closely resembling cases.

The Supreme Court and the various High Courts have had occasions to define it, particularly while interpreting the Special or extraordinary powers of the tribunals under Articles 136,226 and 227. The Supreme Court held that the elements and nature of the jurisdictional authority that a body exercises should be comprehended and taken into account before classifying it a "tribunal". Thus it had held that the Government of India is a tribunal when it decides a dispute regarding registration of purchase; for, in such a dispute the Government of India has to act judicially.[348] The Government of India acts as a tribunal also when it hears an appeal against an order of a state government refusing to grant a mining lease.[349] Similarly, when a State Government exercises a revisional jurisdiction under Rent Control Act, it is a tribunal.[350]

In *Associated Cement Company vs P.N. Sharma*,[351] *P.B Gajendragadkar*, C.J, held that ' tribunals which fall within the purview of Article 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision'.

Earlier, the Supreme Court, with reference to its decision in *Bharat Bank vs Employees of Bharat Bank* [352] defined a tribunal in *Durga Shankar Mehta v Thakur Raghuraj Singh*

[347] *West's Encyclopedia of American Law*, (edition 2. 2008), The Gale Group, Inc. https://en.wikipedia.org/wiki/Quasi-judicial_body

[348] M/s Hari Hagar Sugar Mills v. Sham Sunder Jhunlhunwala , 1961 AIR 1669 available at https://indiankanoon.org/doc/1531171/

[349] ShivjiNathubhai vs The Union Of India & Others, 1960 AIR 606 available at https://indiankanoon.org/doc/1074998/

[350] Shri Bhagwan And Anr vs Ram Chand And Anr, 1965 AIR 1767 available at https://indiankanoon.org/doc/1009476/

[351] Associated Cement Companies Ltd vs P. N. Sharma And Another, 1965 AIR 1595, available at https://indiankanoon.org/doc/911769/

[352] The Bharat Bank Ltd., Delhi vs Employees Of The Bharat Bank, 1950 AIR 188, available at https://indiankanoon.org/doc/653417/

& Others on 19 May, 1954 and said that the expression 'tribunal' in Article 136 did not mean the same thing as "court, but that it included within its ambit all adjudicating bodies constituted by the State and invested with judicial, as distinguished from purely administrative or executive, functions.[353]

In the words of J. C. Shah, 'the duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State'. In deciding whether an authority required to act judicially when dealing with matters affecting rights of citizens may be regarded as tribunal, though not a court, the principal incident is the investiture of the trappings of a court'.[354]

Thus, tribunals can be summed up as "Judgment seat; a court of justice; board or committee appointed to adjudicate on claims of a particular kind"[355]with certain characteristics, such as, accessibility, lack of technicality, expedition and subject knowledge which often give them advantages over the courts.[356]

Thus, taking in view the various decisions and judgments pronounced by Supreme Court of India we can summarize the essential features of Tribunals as

i) It must have the trappings of a court;

ii) It should be constituted by the State; and

iii) It should be invested with the State's inherent judicial power.[357]

Tracing the analytical framework and Constitutional rationality through judicial attitude of tribunalisation of justice.

The Law Commission of India's 14th Report, "Reform of Judicial Administration", (1958) suggested the formation of an appellate Tribunal or Tribunals at the Centre and in the States. The Law Commission in its 58th Report (1974) 'Structure and Jurisdiction of the Higher Judiciary', recommended the formation of distinct high powered Tribunal or Commission to deal with the service matters and also devised that approaching the Courts should be the last recourse.

The High Court Arrears Committee, chaired by Justice J. C. Shah (1969), proposed the formation of an independent Tribunal to look after service matters unresolved before the High Courts and the Supreme Court. The Swaran Singh Committee appointed to study, 'the required changes in fundamental laws', suggested in 1976 that the Administrative Tribunals may be set up under a Central law, both at the State level and at the Centre to decide cases relating to service matters.

The Constitution (Forty-second Amendment) Act, 1976 added Part XIV-A, titled "Tribunals," which provided for the establishment of "Administrative Tribunals" under Article 323-A and "Tribunals for other matters" under Article 323-B. This was done in response to the recommendations of the Swaran Singh Committee.[358]

The 42nd Amendment Act of 1976[359] is hailed as a milestone in the history of Indian jurisdiction, which enabled sea change in the adjudication of disputes in the country overburdened by the pending cases in the normal courts by construing and legislating Art. 323 A & Art.323 B in the Constitution of India.[360] Art. 323A[361] provides for the

[353]Durga Shankar Mehta vs Thakur Raghuraj Singh And Others, 1954 AIR 520, available at https://indiankanoon.org/doc/937486/

[354]Jaswant Sugar Mills Ltd., Meerut vs Lakshmichand And Others, 1963 AIR 677, 1963 available at https://indiankanoon.org/doc/387276/

[355] Thakker, C.K., *Administrative Law*, Eastern Book Company : Lucknow, 226 (1996)

[356] See, Neil Hawke, *Introduction to Administrative Law* 67 (2013); J.J.R. Upadhyaya, Administrative Law (9th edn., 2014) S.H. Bailey, *Cases, Materials and Commentary on Administrative Law* 99 (2005); Nel Parpworth, *Constitutional and Administrative Law* 349 (2016); Brian Thompson & Michael Gordon, *Case and Materials on Constitutional and Administrative Law* 653 (2014).

[357] Engineering Mazdoor Sabha v. Hind Cycle, 1963 AIR. 874.

[358]Law Commission of India, Report No.272, Available at https://lawcommissionofindia.nic.in/reports/Report272.pdf accessed on 20th April 2021

[359] Ind. Const. 42nd. (1976)

[360] Arts.323A and 323B, The Constitution of India, 1950

[361]Art. 323A, The Constitution Of India, 1950 reads thus: Administrative tribunals.-
(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. (2) A law made under clause (1) may— (a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States; (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals; (c) provide for the procedure (including

ISSN - 2583-2344

establishment of administrative tribunals by the Parliament and Art. 323B[362] provides for the establishment of tribunals to adjudicate on the matters specified in the sub clause with regard to which the respective Legislature had the power to make laws.

As soon as it was realized that introduction of Administrative Tribunals as quasi-judicial bodies would go a long way in reducing the burden of courts and pendency and would also provide cheap, speedier and effective adjudication, the Parliament enacted Administrative Tribunals Act 1985 and in accordance with the amendment of Constitution of India by Article 323A, the Central Administrative Tribunal (CAT) and State Administrative Tribunals (SAT) got established which exercised original jurisdiction only in relation to the service matters of employees covered by it. The procedural simplicity of the Act can be appreciated from the fact that the aggrieved person can also appear before it personally.

After the passing of the 42nd constitutional Amendment, there was a change in the government which wanted to undo and reverse the provisions inserted through the 42nd Amendment including deletion of the constitutional provisions introducing tribunals. However, this attempt failed due to the failing majority support in the Rajya Sabha retaining the Articles 323A and 323B which introduced tribunals as constitutional entities.

However, the Supreme Court held in Union of India v. Delhi High Court Bar Association[363] that the legislatures can establish tribunals outside the scope of Art. 323 A and Art. 323B as long as there was legislative competence under the Seventh Schedule.[364] Art. 323A was to be effective only if the Parliament implemented a law in this regard.

Section 28 of the Administrative Tribunals Act, 1985 came under constant attack as it provided exclusion of power of judicial review of writ jurisdiction under Article 32 and 226 of the Supreme Court and High Court respectively.

In *SP Sampath Kumar v Union of India*[365] (1987) 1 SCC 124 , the final decision of the Constitutional bench revolved around two fundamental issues[366]:

i. Whether by excluding the jurisdiction of Supreme Court and High Court under Article 32 and 226 respectively, the impugned law was violating the power of judicial review which has been held to be a part of the basic structure
ii. Whether the tribunals created under the Administrative Tribunals Act were capable of being effective substitutes for the High Courts and would inspire trust in the parties subjected to their jurisdiction

The issue (i) was partly resolved by the subsequent amendment. As regards the power of the High Court under Article 226, the Court, placing reliance on Minerva Mills v

provisions as to limitation and rules of evidence) to be followed by the said tribunals; (d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1); (e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment; (f) repeal or amend any order made by the President under clause (3) of article 371D; (g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals. (3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

[362] Art. 323B, THE CONSTITUTION OF INDIA, 1950 reads thus: Tribunals for other matters- (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws (2) The matters referred to in clause (1) are the following, namely: (a) levy, assessment, collection and enforcement of any tax; (b) foreign exchange, import and export across customs frontiers; (c) industrial and labour disputes; (d) land reforms by way of acquisition by the State of any estate as defined in Article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way; (e) ceiling on urban property; (f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in Article 329 and Article 329A; (g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods; (h) offences against laws with respect to any of the matters specified in sub clause (a) to (g) and fees in respect of any of those matters; (i) any matter incidental to any of the matters specified in sub clause (a) to (h).

[363] Union of India v. Delhi High Court Bar Association AIR 2002 SC 1479

[364] Union of India & Anr vs Delhi High Court Bar Association 1(4 March, 2002) available at https://indiankanoon.org/doc/522930/

[365] SP Sampath Kumar v Union of India (1987) 1 SCC 124

[366] SP Sampath Kumar v Union of India (1987) 1 SCC 124 (Misra J)

Union of India[367], holding that the power of judicial review was an integral part of the Indian Constitution, would not prevent the Parliament from providing for 'effective alternative institutional mechanisms'. It further observed, taking into consideration the problems of delay and backlogs, the parliament was justified in setting up of Administrative Tribunals as an 'effective alternative institutional mechanism'

The issue (ii) was answered by expressing hope that the administrative tribunals will serve as true substitutes for the High Courts, not only in form and de jure but in content and in fact, and to fulfill this endeavor the Act will be suitably amended to make the tribunal, a worthy successor of the High Court in all respects[368].

In *Sakinala Harinath v State of Andhra Pradesh*[369] ably supported by *R.K Jain case*[370] held that the theory of 'alternative institutional mechanism' propounded in Sampath Kumar disregarded the judicial review enshrined in Articles 226 and 32 as the basic feature of the Constitution. The Court held that Article 323A (2)(d) in so far as empowers the parliament to exclude the jurisdiction of High Courts under Article 226 is unconstitutional.

In *L. Chandra Kumar v Union of India*[371], the Supreme Court comprehensively reconsidered, reviewed and revised the Sampath Kumar case.

The predominant highpoint of this judgment has been the verdict that the tribunals perform a ***supplemental*** role to the High Courts and not ***substitutional*** role for the High Courts. The bench while performing a delicate balancing act efficaciously set to rest the theory of 'alternative institutional Mechanism' advocated in Sampath Kumar case and observed that [the tribunals] 'they could not be considered as full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation' and adjudication[372]. The bench asserted the power of Supreme Court and High Courts to test the validity of the legislation on the touchstone of the constitution could never be oust or excluded by the Administrative Tribunals Act.[373] Administrative Tribunals under Article 323-A could examine the constitutional validity of various statutes or rules but not the parent statute.[374]

Conclusion

The Tribunals have been established in around the globe because of simple fact that they are economical, inexpensive, affordable (cost-effective), accessible, sans hefty court procedures & technicalities, speedy, expeditious and proceed more swiftly and professionally as they are managed by specialists, while the Courts are too inaccessible, too procedure centric and very expensive. The concept of Tribunalisation was developed to counter the backlogs and delay in the administration and dispensation of justice. Nevertheless, the data which is officially available, for some tribunals contradicts the purpose of the establishment of tribunals and represents a rather disappointing picture of judicial competency of tribunals.

The report submitted by Malimath Committee (1989) has also pointed out various flaws in the organization and operations of tribunals and has observed:

'Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the interior status and the casual method of working. The last is their actual composition; men of caliber are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory

[367] Misra J, citing Minerva Mills v Union of India (1980) 3 SCC 625 (Bhagwati J's separate judgment)
[368] SP Sampath Kumar (n 25)[18] (Misra J)
[369] Sakinala Harinath v State of Andhra Pradesh (1993) 3 ALT 471
[370] R.K Jain v Union of India 1993 AIR 1769
[371] L. Chandra Kumar v Union of India (1997) 3 SCC 261; corresponding citation AIR 1997 SC 1125 (Judgment delivered by the seven judge constitutional bench of in March 1997)
[372] L Chandra Kumar v Union of India (1997) 3 SCC 261 [79]
[373] L Chandra Kumar v Union of India AIR 1997 SC 1124 Para 93 of the Judgement- "…no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High-Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution."
[374] L. Chandra Kumar v Union of India 1997 AIR 1125 [91] [94]

ISSN - 2583-2344

conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals. Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in sonic of the States where they have been established for their abolition'.

Functioning of Administrative tribunals suffer from lack of autonomy especially in terms of appointment and funding. In Chandra Kumar case, SC held that the appeals to such tribunals lies before the court and hence defeats the whole purpose of reducing burden of the superior courts. Since the government typically appoints retired judges to man, the current judges in courts may favor the government in some cases to acquire political favour for appointment to such tribunals after retirement. There seems to be lack of necessary infrastructure to operate efficiently and carry out the purposes that were originally intended for them. Additionally, there is also a dearth of understanding of the staffing requirements regarding tribunals.

In concluding remarks, there is not even an iota of doubt that the tribunals are here to stay, however they need to be streamlined in consonance with functional, institutional and normative independence.