

# Role of Tribunals in the Adjudication of Dispute

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## Abstract

India has a written constitution which is clearly distinguishing the government in three parts in which judiciary is one. Primary duty of judiciary is to resolve the disputes arising between states and parties by interpreting the Constitution and other laws to find out the intention of legislation. Judiciary is an independent machinery of Constitution which exercises the power of judicial review to determine the legality of executive, legislative and administrative actions of governments. By Forty Second Amendment Act 1976, a new part (Part- XIV A), was added in Constitution of India which incorporated Article 323A and 323B, which provides for adjudication of matters through Tribunals. But sometime we saw that tribunals are not functioning properly so we have a need to reform tribunals for desirable outcomes. The paper shall conclude by providing practical recommendations for improving functioning of Tribunal.

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## **Introduction**

The Constitution of India is the supreme law of land which setup independent machinery for salvation of disputes called judiciary and primary duty of judiciary is to deliver justice and interpreted the constitution and other laws to find out the intention of legislation within the power of judicial review. There is three tiers system of judiciary in India that is Lower Courts, High courts and Supreme Court. In present scenario apart from judiciary tribunals plays a very important role in adjudication of disputes. By Forty Second Amendment Act 1976, a new part (Part- XIV A), was added in Constitution of India which incorporated Article 323A and 323B, which provides for adjudication of matters through Tribunals.

Tribunals are the multi-member, quasi-judicial body of retired judges of High Court and Supreme Court which play a very important role in adjudication of dispute and complaint. Tribunals specialise in specific area of their adjudication like National Green Tribunal deals with environment issues, Mental Health Tribunal deals with mental health issues, Central Administrative Tribunals deals with administrative issues and Armed Forces Tribunals deals with military issues etc. In present scenario we have a great need of tribunals because our Indian judiciary is overburden with backlog of cases which leads to delay in justice and as famously said “Justice delayed is Justice denied” and Tribunals therefore, reduce the burden of Judiciary. Tribunals offer first opportunity of appeal and bring speed for dispute resolution as the tribunals are not bound to follow procedure law but they are required to abide by Natural Justice for adjudication. Earlier only the Supreme Court had the power of judicial review over the matters of the Tribunals and the High Courts were barred from such supervisory jurisdiction which meant that only Supreme Court can review the decision of tribunal under Art 136 of Constitution. And the Supreme Court accepted this position in *S. P. Sampath Kumar v Union of India*,<sup>2</sup> but in the case of *L. Chandra Kumar v Union of India*,<sup>3</sup> and *R Gandhi v union of India*<sup>4</sup> it was held by Supreme Court that since judicial review is considered as the basic structure of the Constitution and therefore, the power of reviewing of High Court and Supreme Court cannot be taken away and similarly they have the supervisory power over the decisions of the Tribunal.<sup>5</sup> But sometime we saw that tribunals are not functioning properly due to lack of human and financial resources. So, we have a need to reform the functioning of tribunals for our desirable outcomes. The paper shall conclude by providing practical recommendations for improving functioning of Tribunals.

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<sup>2</sup>(AIR 1987 SC).

<sup>3</sup>(AIR 1997 SC).

<sup>4</sup>(2010) 6 SCR 857 Supreme Court.

<sup>5</sup>D.D. BASU, CONSTITUTIONAL LAW OF INDIA 641-645 (8<sup>th</sup> ed.2009).

### **Research Objective**

The study tries to understand the purpose for which the Tribunal was incorporated in our Constitution and the journey so far. Whether the Tribunals are serving the purpose for which it was introduced. And what is the opinion of the judiciary in respect of Tribunals and their working. The study shall conclude by suggesting the measures to overcome the difficulties being faced by the Tribunals in their working in the present scenario.

### **Research Methodology**

Research shall be a doctrinal research which shall include information from primary as well as secondary sources, which will be utilized to make the study advanced, orderly and methodical. Relevant provisions of various laws, articles, judicial decisions, Constitutional norms and national measures will be taken as important research tools. The loopholes will be evaluated on the basis of ground reality, legal provisions, practices and court opinions. An analysis shall be made to evaluate the recent initiatives and measures taken at the National level including the judicial decisions for rising above the diagnosed bottlenecks.

### **Need of Tribunals for Speedy, Impartial and Cheaper Justice**

Martine Luther said that, injustice anywhere is a threat to justice everywhere and it is essential for judiciary that justice should be cheaper, impartial and speedy. But in India, judiciary is facing the problem of procedural rigidity due to which justice is delayed and more litigation are pending in judicial system making it overburden. So, judiciary is not adequate enough to provide speedy, impartial and cheaper justice which society needs. For reducing the pressure of judiciary, Tribunals play a very important role in adjudication of cases relating to different subject matters and achieve the desired objectives.

### **Advantages of Tribunals**

1. Quick with no long waits for the case to be heard and it is dealt with speedily;
2. Cheap, as no fees are charged;
3. Staffed by experts who specialise in particular areas;
4. Characterised by an informal atmosphere and procedure;
5. Allowed not to follow its own precedents, although tribunals do have to follow court precedents.

### **Disadvantages of Tribunals**

1. There is an unfair disparity between represented and unrepresented parties as the unrepresented parties due to financial or other reasons cannot get legal aid and on the

other side richer parties are allowed to employ skilled representation they are consequently more likely to win.

2. The no-costs rule and short of legal aid punish poor litigants, although they do keep costs down.
3. The lack of fees encourages poor applicants but on the other hand it will open the gates for ill-founded claims.
4. Due to various hardships in procedural law Tribunals become complex over time - as did the courts.
5. It can still be difficult for the people who go to tribunals to represent themselves because of the inherent difficulty in presenting a case in any environment

### **Tribunals and Legislature**

It is to be noted that neither Article 323A nor Article 323B are self-executing provisions. These are enabling provisions. They merely authorise the specified Legislature to make laws to set up such tribunals and to include therein ancillary provisions. In the other words, they only offer the constitutional authority for such legislation. A law under Article 323A can be enacted by parliament alone, and law under Article 323B can be enacted by both parliament and state legislature.

### **Access of Judiciary into Tribunals**

Courts have supervisory jurisdiction over the actions of public tribunals, boards, officers and public decision makers. Where any party have been affected by decisions of tribunals, boards or other public decision makers may bring an application in court to have the administrative decision reviewed by the court. This is called judicial review. But Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, excludes the jurisdiction of High Courts over the matters of the tribunals. Even the writ jurisdiction of Supreme Court could be excluded. Supreme Court accepted this situation in *Sampath Kumar v Union of India*.<sup>6</sup> However the Supreme Court changed its position in *L. Chandra Kumar v Union of India*.<sup>7</sup> The Court ruled that since judicial review is a fundamental feature of the Constitution. The Court has observed:

*“The jurisdiction conferred upon High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is the part of inviolable basic structure of Indian Constitution.”*<sup>8</sup>

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<sup>6</sup>AIR 1987 SC 386.

<sup>7</sup>AIR 1997 SC 1125.

<sup>8</sup>M.P JAIN, INDIAN CONSTITUTIONAL LAW 505 (6<sup>th</sup> ed. 2011).

The Court ruled that “High Court has writ jurisdiction under Article 226/227 of the Constitution over all decisions of the tribunals.”<sup>9</sup> Previous rule was that, against all decisions of the tribunals direct appeals lie into the Supreme Court under Article 136. But in the case of *State of H.P. v. Pawan Kumar Rajput*,<sup>10</sup> court ruled that no appeal from the decision of a tribunal will directly lie to the Supreme Court under Article 136. Firstly, aggrieved party have to move High Court under article 226/227 against the decisions of tribunals, thereafter against the decisions of High Court, aggrieved party could move to Supreme Court under article 136.<sup>11</sup>

In *L Chandra Kumar v Union of India*<sup>12</sup> Supreme Court held that judicial review is the basic structure of Indian Constitution, and Court has declared Clause 2(d) of Article 323A and Clause 3(d) of Article 323B unconstitutional which bar the jurisdiction of High Courts under Article 226/227 and that of the Supreme Court under Article 32, it means that power of judicial review cannot be ejected by any Constitutional or Statutory provision.

In the case of *Ashish Kumar Roy v. Union of India*<sup>13</sup> Supreme Court also held that under Article 227, supervisory Jurisdiction of High Courts has been declared to be the part of the basic structure of Indian Constitution.<sup>14</sup>

In present scenario where we have greater need of tribunals for cheaper and speedy justice in the society, a question has been raised that, can parliament create tribunals for matters other than the matters of Article 323A and Article 323B?

This question has been raised because parliament enacted a law RDB Act 1993, (Recovery of Debts due to Banks and Financial Institution Act 1993), for establishment of Debt Recovery Tribunals. Supreme Court has cleared above ambiguity in the case of *Union of India v Delhi High Court Bar Association*,<sup>15</sup> Court held that under Article 323A and 323B parliament has power to enact the laws for tribunals for the matters specified therein. But it does not mean that parliament has no power to enact the laws relating to tribunals on subject matters other than the Article 323A and Article 323B. Parliament has exclusive power to make law in respect of entry 1 and residuary area not covered under list II and III.

### **Problems faced by Tribunals**

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<sup>9</sup>State of West Bengal v. Ashish Kumar Roy, (2005) 10 SCC 110: AIR 2005 SC 254.

<sup>10</sup>(2006) 9 SCC 161.

<sup>11</sup>*Supra Note 8.*

<sup>12</sup>AIR 1997 SC 1125.

<sup>13</sup> AIR 1999 Cal 242.

<sup>14</sup>*Supra Note 8.*

<sup>15</sup> AIR 2002 SC 1479; See also *State of Karnataka v. Vishwa Bharti House Building Co-op Society*, AIR 2003 SC 1043.

Administrative tribunals were initially set up to provide specialised justice delivery and to reduce the burden of backlogs on regular courts. However, appeals from tribunals have inevitably managed to enter the mainstream judicial system. After the Supreme Court's decision in *L. Chandra Kumar v Union of India*<sup>16</sup> in 1997, appeals from tribunals began reaching the High Court which in turn increased the burden of the court. The result is that the court system is now getting choked by cases from tribunals.

The result is that the court system is now getting congested by cases from tribunals. According to recent news reports, work in most benches of the AFT (Armed Force Tribunal) has stopped because judicial members have not been appointed. Out of 17 benches, only five are currently functioning, among which the Chandigarh Bench works with only one judicial member of the sanctioned three.

Generally, the appointments of the Tribunals are in the control of the executive. The government identify and appoint the members of the tribunals, and it also determines and makes appropriate staffing hires. This is problematic because often there is a lack of understanding of the staffing requirements in tribunals and to further complicate the understanding of tribunals, there is a lack of information available on the functioning of tribunals. Websites are routinely non-existent, unresponsive or not updated.

### **Reforming the Tribunals**

Three recent attempts at reforming the tribunal system have been made:

1. 74th Parliamentary Standing Committee Report on the "The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014".
2. Finance Act, 2017.
3. 272nd Law Commission of India Report on "Assessment of Statutory Frameworks of Tribunals in India".

Both the judiciary as well as the legislature have tried to reform the tribunals framework in India. Tribunals are the parallel system of adjudication and therefore they shall also be ensured that they enjoy same level of independence as courts. From R.K. Jain to L. Chandra Kumar, the courts have tried to shed light on the issue of malfunctioning of tribunals and have offered recommendations. A consistent recommendation has been to entrust the Ministry of Law and Justice with the duty to administer tribunals.

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<sup>16</sup>*Supra* Note 12.

Problems pertaining to the lack of independence, ad-hoc regulation and by passing the jurisdiction of High Courts have been the major criticisms against the tribunal system in India. Therefore, any attempts at reform must adequately address these issues.

### **Suggestions**

1. Human and financial resources are the need of the Tribunal and if the government could provide these resources it will help in its functioning effectively.
2. Composition of the tribunals should be reorganised and it shall be made multi-member body including a sitting or retired judge of the Supreme Court or a high court with domain experts on these tribunals.
3. There should be a legislation which would make the regulators of the Tribunal accountable to Parliament, to enable them to function independently.
4. Structured interactions and periodic reporting between the Tribunals and Courts should be made mandatory which will enable Parliament to review regulatory actions.

### **Conclusion**

This paper has attempted to trace the origins of tribunals and provided an exhaustive assessment of problems in India's tribunals' framework. It is significant to recognise that a reform can only be conceived and effectively implemented if all stakeholders together works for it which should include and involve members of the judiciary, executive, tribunals, practising advocates, civil society, bureaucrats, etc. The Tribunals in India are imparting cheap justice by adopting procedures which are free from technicalities and thereby expeditious justice is provided. Therefore, the smooth functioning of such institution should be ensured and the reforms needed should be executed.