1976 TO 2017: THE TRANSFORMATION OF THE TRIBUNAL SYSTEM IN INDIA

Anamika Kundu[*] *and Vasavi Khatri*[†]

Abstract

Tribunals in India owe their existence to the 42nd amendment that brought Art. 323A and Art. 323B into the Indian Constitution. The constitutionality of Administrative Tribunals Act has been challenged in several judgements and this paper studies the impact of some of those landmark judgements. This paper supports the criticisms that L. Chandra Kumar judgement has received. Further, the paper studies the recent Finance Act and argues how these amendments will hinder the functioning of tribunals as a mechanism to reduce judicial delays. Lastly, the paper also offers some recommendations to ensure that the objective with which these tribunals were established can still be effectively realized.

I. Introduction

Courts in India are known to have a huge backlog of cases, one of the most important causal factors of which is said to be the inherent procedural limitations of the judiciary.[1] It was also increasingly felt that judges were not equipped to deal with nuanced technical issues. And thus, the need based genesis of specialized adjudicatory bodies like tribunals took place.

Before launching into the history of tribunalisation, it is

---

* B.A., LL.B. (Hons.) student at West Bengal National University of Juridical Sciences.

† B.A., LL.B. (Hons.) student at National Law University of India, Bangalore.

1 Arun Roy V. and Vishnu Jerome, *Administrative Tribunals in India – A Welcome Departure from Orthodoxy?* 12 STUDENT ADVOC. 60, 60 (2000) (Describing the procedural limitations of the judiciary and defining tribunals).

imperative to understand the meaning of a "tribunal". Lexically, tribunals are "judgement seats; a court of justice; board or committee appointed to adjudicate on claims of a particular kind".[2] The term has not been defined in the Constitution of India but its meaning can be deduced from Supreme Court authorities. They are "adjudicatory bodies (except an ordinary court of law) constituted by the State and invested with judicial and quasi-judicial functions, as distinguished from administrative and executive functions".[3]

II. Evolution of Tribunals in India

The Constitution (Forty-Second) Amendment Act, 1976[4]

---

2 *Id.*

3 *Id.*

4 India Const. Art 323A and Art 323B, *amended by* The Constitution (Forty Second Amendment) Act, 1976.

323A. 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 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);

323B. 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;

added Art. 323A and Art. 323B in the Constitution of India[5]. Pursuant to this amendment, the Administrative Tribunals of India Act (*hereinafter* "ATA") of 1985[6] was enacted. The constitutionality of Section 28 of ATA and Article 323A, which jointly excluded the jurisdiction of all courts except that of the Supreme Court under Article 136, was challenged before a five-judge bench of the Supreme Court in *S.P. Sampath Kumar* v. *Union of India*.[7] It was held that an amendment which did not create a "void"[8] by excluding the jurisdiction of High Courts under Articles 226 and 227, but established another effective mechanism such as that of tribunals would be deemed constitutional.[9] Moreover, such an amendment would not violate the *basic structure* doctrine. According to Misra, J. High Courts were established a long ago and thus were a trusted form of redressal. Thus, merely giving all the powers of the High

---

(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)

5 Constitution of India, Jan. 26, 1950

6 DD Basu, COMMENTARY ON THE CONSTITUTION OF INDIA 5540 (8th ed. 2011).

7 Arun Roy V. and Vishnu Jerome, *Administrative Tribunals in India – A Welcome Departure from Orthodoxy?* 12 STUDENT ADVOC. 60, 64 (2000) (Appeal against the decision of Administrative tribunals)

8 S.P. Sampath Kumar v. Union of India, (1987) 1 S.C.C. 124, ¶8.

9 *Id.*, ¶4.

Courts to the tribunals were not enough, there had to be substantial fulfillment of the powers conferred.[10] Therefore, using clause 2(d) of Article 323A, the Act could exclude the High Court's jurisdiction if it could show that it would function as effectively as the High Courts in matters of judicial review.[11]

A decade later, a seven-judge bench in *L. Chandrakumar* v. *Union of India*[12] grappled with the question of whether the superintendence of High Courts over all tribunal courts situated in their territory was a part of the *basic structure* or not. An Andhra Pradesh High Court judgement,[13] which had been impugned in one of the matters of *Chandrakumar* held that Article 323(2)(d) is unconstitutional as it empowers the Executive to exclude the jurisdiction of High Courts under Article 226 along with Section 28 of the ATA[14]. The High Court analysed various provisions of the Constitution and concluded that only the Supreme Court and High Courts have the power to decide whether statutes passed by bodies of the 'State' are valid or not. Judges in the case stated that *Sampath Kumar* did not consider earlier Supreme Court decision that explicitly held that Article 226 and Article 32 was the crux of judicial review in India and formed an important part of the basic structure. [15] Taking into account MN Rao's judgement,[16]*Chandrakumar* held that High Courts and Supreme Court were vested with the power of judicial review under Article 226 and Article 32 respectively. Furthermore, the constitutional safeguards such as judicial review that ensured independence of higher judiciary were not available to the lower

10 *Id.*, at ¶21 (Misra J).
11 *Id.*
12 L. Chandrakumar v. Union of India, A.I.R 1997 S.C. 1125.
13 Sakinala Harinath v. State of Andhra Pradesh, (1994) 1 APLJ 1.
14 A.I.R 1997 S.C. 1125, ¶30.
15 *Id.*, at , ¶32.
16 (1994) 1 APLJ 1, ¶55.

judiciary. These safeguards not only bestow power on the courts to strike down laws, but also contain provisions which give clear guidelines regarding tenure, salaries of judges, etc. Such mechanisms allow for the higher judiciary to function in isolation from other bodies of the State.[17] Therefore, the "exclusion clause" under Article 323A and Section 28 of the Administrative Tribunals Act was unconstitutional[18]. This judgement effectively overruled the *Sampath Kumar*[19] decision and laid down that judges of tribunals could never be effective substitutes to the higher judiciary. It clarified that the Administrative Tribunals Act was made with an intention to supplement the existing judiciary, and not to substitute it. The Court opined that tribunals would be subject to scrutiny before at least Division bench of a High Court, thus enabling litigants to first approach the High Court under Article 226.[20] The supervisory jurisdiction of the High Court is important to ensure the accountability of tribunals as for a case to go to the Supreme Court under Article 136, has to be of an exceptional nature, resulting in inaccessibility to justice.[21]

---

17 *Id.,* at, ¶78.

18 The Administrative Tribunals Act, No. 13 of 1985, Section 28.
28. Exclusion of jurisdiction of courts except the Supreme Court under article 136 of the Constitution. —On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any court except—
(a) the Supreme Court; or
(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

19 (1987) 1 S.C.C. 124.

20 Basu, *supra* note 6, at 10692.

21 V.S. Deshpande, Judicial Review of Legislation, 15 J.I.L.I. 531 (1973).

While the judges in *L. Chandrakumar*[22] were emphatically focused on ensuring that High Courts enjoy the power of judicial review, they did not discuss the power of judicial review exercisable by the tribunals. The pronouncement was merely to the effect that tribunals could not exercise this power to the exclusion of High Court and Supreme Court. The opinion of the court for superintendence was because unnecessary litigation would be disposed of before it went to the High Courts and that the decision of the tribunal would assist the Courts in reaching a comprehensive decision on merits.[23]

This marks the beginning of Indian judicial system's journey along an unprecedented path to reshape the litigation process in the country. Was it in the best interest of the country to bring every issue under the ambit of judicial review of Supreme Court and High Court? What are the implications of this decision on the worsening legal logjam of the country?

III. The Finance Act, 2017 And its Implications on Tribunals

The recent Finance Act passed by the Lok Sabha in March, 2017 has raised several questions on the existing tribunal system due to the amendments proposed by the Act which aim to merge some of the tribunal bodies and do away with some in order to cut down on administrative costs and apparent ineffectiveness.

There have been several amendments proposing the restructuring of twenty-six tribunals. The suggestion to merge eight existing tribunals with the remaining nineteen has raised quite a few eyebrows. For instance, the suggestion to merge the Airports

22 A.I.R 1997 S.C. 1125.
23 *Id.*, at ¶91.

Economic Regulatory Authority Appellate Tribunal with the Telecom Disputes Settlement and Appellate Tribunal makes an odd combination as it is unlikely for the latter to have members with specialized knowledge regarding airports or vice versa.[24] Such suggestions possibly betray the government's priorities - monetary expenditure over speedy justice. Further, such mergers do not seem to be an effective solution to end the backlog of administrative cases.

Currently, all rules pertaining to the appointment, removal etc. of members are specified in their respective Acts. But §179, Finance Act[25] has now directed the transfer of this power to the government. This is in contravention to the Supreme Court's holding in *Madras Bar Association v. Union of India* where it stated that the executive must not interfere in the appointment process to maintain the independence of the judiciary[26]. Judges are impeached from the High courts and Supreme Court by way of vote in the Parliament.. The statutes establishing the tribunals mandate the removal of a member only through a Central Government order after an inquiry has been is conducted by a judge of the Supreme Court. For example, a judge in the National Green Tribunal (*hereinafter* 'NGT') could be only removed through an order by the Central Government after a thorough enquiry has been conducted by a judge of the Supreme Court.[27]. However, with the new rules made by the legislature under the Act, there has been elimination of such a mandate. Now, if the Government receives a complaint against a member, the ministry which has established the tribunal is authorized to look into the

---

24 Prianka Rao, *Finance Bill 2017: Independence of tribunals could be affected,* HINDUSTAN TIMES, Apr. 14, 2017. http://www.hindustantimes.com/analysis/finance-bill-2017-independence-of-tribunals-could-be-affected/story-StaETXJ9sjqNHqRjbriCTI.html

25 The Finance Act of 2017 §179.

26 Madras Bar Association v. Union of India, A.I.R 2015 S.C. 1571.

27 The National Green Tribunal Act, 2010, § 10(2).

complaint.[28] The need for inquiry too is now decided by the ministry which makes a request to the concerned committee as mentioned in Rule 7.[29] This committee is then formed by the ministry which has established the said tribunal.[30]

Rule 4 lays down the method for appointment which states that it is the central government that shall do it on consultation with the Search-cum-Selection Committee. This committee again is mainly constituted by government officials which is a probable violation of the tribunals' independence.[31] It is to be noted that only three out of the nineteen tribunals follow the precedence of the NCLT case which is has been followed by the *Madras Bar Association* case specifying the procedure of tribunal appointments.[32] Every tribunal has a different composition for the search committees. For example, the committee for the selection of the Chairman of the Central Administrative Tribunal (*hereinafter* 'CAT'), the schedule prescribes two members of the judiciary, two members from the government and one expert selected by the Central Government. Whereas, in case of the Intellectual Appellate tribunal, the composition is one from the judiciary, two from the Executive and two nominated experts with no mention of the requisite qualifications.[33]

The process and composition laid down by the rules is

---

28 The Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2017, Rule 8(1).

29 *Id.,* Rule 8(2).

30 *Id.,* Rule 7.

31 *Id.,* Rule 4.

32 *See* Prashant Reddy https://spicyip.com/2017/06/government-of-india-launches-occupy-the-tribunals-movement-with-new-rules-on-appointments-to-the-ipab-18-other-tribunals.html

33 The Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2017, Schedule.

discomforting as the complaints will be scrutinised by the body who is supposed to be held accountable for the misdoings. For instance, if a complaint is filed against a judicial member of the NGT, the complaint shall be looked into by the Ministry of Environment, the body that should be answerable in the first place.[34] Again, in case of the Intellectual Property Appellate Board, it has the power to decide matters of the Patents Office and the Trade Marks Registry. Both these offices function under the Department of Industrial Trade and Policy which has been given powers to scrutinise complaints.[35]

Coming to the problem of compensation, the members who currently hold these positions in the tribunals to be merged will be paid salary equivalent to three months for the premature termination of their office. §180, Finance Act[36] provides for absorbing the officers and other support staff of the eight tribunals into the principal ministry but there is no fall back option for the tribunal judges except the inadequate compensation. There has been no clear stance on whether they are entitled to any kind of retirement benefits either.[37] Every tribunal is set up by special acts which prohibit change of service terms once appointed. But the amendments do not pay them for the remainder of their term which may disincentivise competent individuals from accepting such appointments.

Regarding terms of service, for instance, §417A has been

---

34 Prashant Reddy, *Has the Government signed the death warrant for the judicial independence of 19 tribunals?*, Scroll, (June 5, 2017 5:00 pm) https://scroll.in/article/839588/has-the-government-signed-the-death-warrant-for-the-judicial-independence-of-19-tribunals.

35 *Id.*

36 The Finance Act of 2017 §179.

37 Prashant Reddy, *Finance Bill 2017 debate: Changes made to tribunals are unconstitutional and ill-considered,* SCROLL, (Mar. 27, 2017 7:30 am)https://scroll.in/article/832884/changes-made-to-tribunals-in-the-finance-bill-are-unconstitutional-and-ill-considered

inserted into the Companies Act which will provide for the qualifications and terms and conditions of service of the Chairperson and Members, and this section is to be governed by §184 of the Finance Act.[38] This essentially gives the government complete power to decide who to appoint in such tribunals, thereby, violating the doctrine of separation of powers which forms the basic structure of the Constitution. Survival of a healthy democracy is contingent upon an independent judiciary. According to the doctrine of separation of powers, judiciary should be insulated from influence of executive and legislature. In *Rojer Mathew* v. *South Indian Bank*,[39] the Supreme Court reiterated that independence of judiciary and separation of powers are the cardinal principles which cannot be ignored while setting up tribunals. Even in *Union of India* v. R. *Gandhi, Madras Bar Association*, it was held that the power to legislature to constitute these tribunals is limited. This limitation has been read into the competence of the legislature to prescribe qualifications of judicial officers. Once the selection criteria and qualifications have been laid down by the legislature, superior courts can exercise their power of judicial review to ensure that the criteria and qualifications are adequate and appropriate.[40] In fact, conferment of this kind of power on the government has been criticised even in the 272nd Law Commission Report. The Commission recommends constitution of a committee for appointment of Chairman, Vice Chairman and judicial members of the tribunal. But this recommendation comes with the caveat that the committee cannot be headed by a member of the government since Central Government is a litigant in substantial number of disputes before tribunals especially in matters of taxation.[41] It will

38 The Finance Act of 2017 §184.
39 2018 SCC Online SC 500.
40 (2010) 11 SCC 1.
41 Para 5.18

harm the entire democratic process if it is to appoint those who will be dealing with such cases. If the government is a litigant and is also authorised to appoint the officers who would hear the arguments, a conflict of interest is bound to arise.[42]

The amendment also empowers the Central government to establish new tribunals to which the amendments apply without approval required from the parent tribunal. This kind of unchecked power is an abuse of democracy as various ministries can now introduce any new tribunal according to their whims and fancies.[43]

The amendments proposed by the Act is only shedding negative light on the functioning of the tribunal system and is a portrayal of the diminishing priority of the government to address the problems of the judiciary.

IV. Enlargement of Jurisdiction of High Courts vis-à-vis Tribunals

The judges in *L. Chandrakumar's* case agreed that tribunals provided expert bodies to deal with specialized categories of disputes, and that there was a dire need for speedy disposal of cases in a system abundant with delays.[44] However, the judgement defeated the purpose behind the establishment of these tribunals. Creation of Administrative Tribunals has no meaning if all the cases adjudicated by them are allowed to be heard before the concerned High Court as

---

42 Mandira Kala, *How Finance Bill amendments affect Tribunals*, THE INDIAN EXPRESS, Mar. 27, 2017 http://indianexpress.com/article/explained/budget-2017-finance-bill-amendments-tribunals-arun-jaitley-4586925/

43 Prianka Rao, *Finance Bill 2017: Independence of tribunals could be affected,* HINDUSTAN TIMES, Apr. 14, 2017. http://www.hindustantimes.com/analysis/finance-bill-2017-independence-of-tribunals-could-be-affected/story-StaETXJ9sjqNHqRjbriCTI.html.

44 L. Chandrakumar v. Union of India, A.I.R 1997 S.C. 1125.

well. This section thus argues that enlargement of jurisdiction of High Courts is a change in an undesired direction.

The constitutional validity of various provisions has been scrutinized by the Supreme Court on several occasions. In *Sampath Kumar*,[45] the Supreme Court directed the carrying out of certain measures to ensure that the functioning of tribunals is constitutional in nature. Pursuant to these directions, the jurisdiction of Supreme Court under Art. 32 was restored. These Administrative Tribunals then became effective and real substitutes for HCs.

In *L. Chandrakumar*[46] the Court held that tribunals play a supplemental role and cannot act as substitutes of High Court. It granted litigants the freedom to appeal the decisions of these tribunals in High Courts. Perhaps one of the most baneful fallouts of this judgement is that orders of Administrative Tribunals are now being routinely challenged before High Courts.[47] The Law Commission has expressed its opinion against the *L. Chandrakumar* judgement in many of its reports. The Commission has recommended that the original conception of Administrative Tribunals should be restored and appeals to High Courts are unnecessary. If an appeal is to be provided, it should lie with the Supreme Court only.[48] However, it ought to be noted that barring the High Court to take cognizance of appeals coming from tribunals is not only restricting the path of justice, but also making tribunals a

---

45 S.P. Sampath Kumar v. Union of India, (1987) 1 S.C.C. 124.

46 L. Chandrakumar, *supra* note 15.

47 Indian Law Commission Report No. 215 L. Chandra Kumar be revisited by Larger Bench of Supreme Court (Dec. 2008), paragraph 1.11, available at http://lawcommissionofindia.nic.in/reports/report215.pdf

48 Indian Law Commission Report No. 215 L. Chandra Kumar be revisited by Larger Bench of Supreme Court (Dec. 2008), paragraph 1.16, available at http://lawcommissionofindia.nic.in/reports/report215.pdf

substitute to High Courts even though the mode of appointment for the two is starkly different.[49] Therefore, even if there is a bar to the High Court's jurisdiction, there needs to be an alternative method to appeal as going directly to the Supreme Court is not a feasible prospect at all times due to time constraints, economic resources and legal aid.

The Commission has emphatically recommended the constitution of a National Appellate Administrative Tribunal dedicated solely for the purpose of adjudicating appeals against the orders of Administrative Tribunals.[50] Such a tribunal would be in line with the Council of Tribunals as established in UK. This body would be similar to the National Consumer Disputes Redressal Commission and enjoy a status higher than that of a High Court but lower than a Supreme Court.[51] An appeal against its orders would lie with the Supreme Court. The Law Commission opines that this is one of the most effective methods of dealing with issues that cropped up after the *L. Chandrakumar* judgement.

While the *L. Chandrakumar* judgement takes away the expeditiousness that Administrative Tribunals sought to bring, there is a more significant but less ballyhooed issue that needs to be discussed. The judges treated the power of judicial review of High Courts and Supreme Court on the same platform.[52] The Law Commission on the other hand, is of the view that power of judicial

---

49 Gujarat Urja Vikas Nigam Ltd. v. ESSAR Power Ltd., (2016) 9 S.C.C. 103.

50 Indian Law Commission Report No. 215 L. Chandra Kumar be revisited by Larger Bench of Supreme Court (Dec. 2008), paragraph 3.1, available at http://lawcommissionofindia.nic.in/reports/report215.pdf

51 *Id.*

52 Indian Law Commission Report No. 215 L. Chandra Kumar be revisited by Larger Bench of Supreme Court (Dec. 2008), paragraph 5.23, available at http://lawcommissionofindia.nic.in/reports/report215.pdf.

review of High Courts under Article 226 is not as inviolable as that of Supreme Court under Article 32. It bases this argument on the fact that Article 32(4) explicitly preserves the supremacy of Supreme Court but there is no such provision with respect to Article 226.[53]

Post *Keshavananda Bharti*, it has become possible for SC strike down constitutional amendments on the grounds of unconstitutionality. This power was extended to HCs as well. Due to *L. Chandra Kumar* decision, this power can be exercised by HCs in matter related to tribunals as well, yet another criticism of the decision. It is proposed that the SC reserve to itself the power of judicial review. If that is not done and if all matters of tribunals are to be reviewed by High Courts, they would be free to strike down different parts of Constitutional amendments in different states and thus lead to a fragmented application of the Constitution. Therefore, while trying to uphold the basic structure of the Constitution, the Supreme Court has given a decision which challenges the integrity of the Constitution itself, because it unwittingly equates the powers of the Supreme Court and the High Court under Art. 32 and Art. 226 respectively, and as has been already discussed in the previous section of the paper, the power of judicial review of HCs is not as inviolable as that of SC.

Supreme Court's doubts and lack of confidence in the functioning of Administrative Tribunals are justifiable. However, undermining the role that these tribunals play in distribution of justice and divesting them of their powers and responsibilities is not the answer. The Court should perhaps adopt a more libertarian paternalism and simply nudge these tribunals to follow uniform procedures.

---

53 *Id.*

V. Recommendations and Conclusion

As has been made apparent throughout the course of the paper, the researchers are of the view that the problems cropping up post *L. Chandrakumar* judgement need to be subverted. Tribunals will not be as effective in alleviating the problem of judicial delays if their orders are allowed to be appealed in High Courts. However, tribunals cannot be given absolute powers without any checks and balances. Therefore, as recommended by the Law Commission, there can be a system of intra-tribunal appeal, which is followed in every High Court as well.[54] Apart from this, there can be zonal benches for every tribunals where an appeal can be filed to a larger bench of the same tribunal.[55] If none of the given methods work out, here are several ways in which the objective behind establishment of tribunals can still be realized.

The Supreme Court's judgement which extends High Courts' power of judicial review could be perceived as the judicial system's lack of confidence in tribunals. This distrust perhaps stems from the fact that most of the judges in these tribunals are members of the executive. These judges may not be qualified to decide cases or could be affected by their political biases. The High Courts being of constitutional creation have more authority in the eyes of the entire judicial system with the Supreme Court time and again reaffirming the position of the High Court's in the country. Additionally, the

---

54 Indian Law Commission Report No. 215 L. Chandra Kumar be revisited by Larger Bench of Supreme Court (Dec. 2008), paragraph 8.2, available at http://lawcommissionofindia.nic.in/reports/report215.pdf.

55 Venkatesan J., *Let appeals against tribunal order go straight to the Supreme Court suggests Law Commission,* The Hindu, Sept. 18, 2008. https://www.thehindu.com/todays-paper/tp-national/Let-appeals-against-tribunal-order-go-straight-to-Supreme-Court-suggests-Law-Commission/article15305678.ece

power for the issuance of writs emanates from the Constitution and cannot be given to a tribunal without an amendment. Such an amendment cannot exist as conferment of power of judicial review is a 'sovereign function' bestowed on courts which cannot be given to a tribunal which are not creations of the constitution[56]– more than a lack of confidence, this arises from the fact that the High Court's jurisdiction and power of judicial review has been constitutionally provided for; and further that there is a rather large corpus of judicial precedent that has been created in exercise of such powers.

Moreover, these tribunals do not necessarily rely on the Civil Procedure Code or the Indian Evidence Act.[57] Though they conform to natural law principles, their application is not uniform. This is the area of the Administrative Tribunals Act that needs to be developed. Firstly, a uniform set of procedural rules should be formulated keeping in mind the expeditiousness that these tribunals are supposed to offer. Lack of uniformity leads to varied methods used to come to a decision. There must be formulation of at least broad guidelines embodied into the statutes of each tribunal. The power to come up with such rules should lie with the tribunal itself. However, additional power must be granted to the supervisory body to ensure that the rules are in conformity with judicial practices and not extremely informal. This is one of the responsibilities of the Council of Tribunals in UK and should be incorporated in our system as well.[58] Being given powers of a Civil Court[59] it imperative to have at least a wide set of guidelines replicating that of other civil courts.

---

56 Indian Law Commission Report No. 272 Assessment of Statutory Frameworks of Tribunals in India (Oct. 2017), paragraph 8.10, available at http://lawcommissionofindia.nic.in/reports/Report272.pdf.

57 M.P. Jain and S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW 803 (6th ed. 2007).

58 Wraith and Hutchesson, Administrative Tribunals 131 (1973).

59 The Administrative Tribunals Act, 1985, §22(3).

Secondly, the Supreme Court in *L. Chandrakumar* judgement set out to protect the basic structure of the Constitution but overlooked the sphere in which the basic structure was actually being violated. The spirit of the Constitution provides for separation of powers but the ATA essentially resulted in an unwieldy amalgamation of the executive and judiciary, i.e., members of executive performing judicial functions.[60] An independent judiciary is a necessity for a functional democracy. Being free from external influence is the only way there can be adherence to rule of law.[61] Thus, the blatant violation of the doctrine of separation of powers is another area of the ATA that needs more attention.

The Finance Act, 2017 made some massive changes in the tribunal system with a motive to make it more economic and efficient. It is obvious that these changes have created a chaotic labyrinth instead of resolving any issues. Therefore, in order to save money and time, thirdly, the ATA could include provisions that limit the time consumed in deciding every case, and thereby save resources that are used in delivering a judgement.

Fourthly, a supervisory body could be created under the aegis of the Ministry of Law and Justice or under the Law Commission. As long as this body reduces the burden that *L. Chandrakumar* judgement imposes on High Courts, it will ensure smooth functioning of both, the tribunals and the judiciary. In the United Kingdom, there is a provision in the Tribunals Act which allows for an Administrative Justice and Tribunals Council[62] which is supposed to oversee the functioning of various tribunals and make sure that they are working

---

60 *Id.*

61 Registrar (Admn.) High Court of Orissa v. Kanta Satapathy, A.I.R. 1999 S.C. 3265.

62 Tribunals, Courts and Enforcement Act, 2007, sch. 7 part 1 (Eng.)

efficiently and making justice fair and accessible to the masses. This kind of a body would make administrative justice system in our country less problematic. The composition of such a council can consist various stakeholders such as judges of the Supreme Court nominated by the Chief Justice of India, judges of the High Courts, Executive members with the minimum level being Secretary of the Government and lastly, a senior advocate nominated by the Bar Council of India.[63]

Additionally, the chairman of tribunals of such a council ought to be a person with legal qualifications. Even though UK implemented this only for certain tribunals, we must do it for each and every tribunal[64]. The popular Legatt committee report has observed that a major chunk of cases in the UK have been adjudicated by tribunals. Moreover, it has time and again emphasised that not only do tribunals need to be independent, but that the independence should be visible to the public eye. For this to take place extensive power ought to be given to the Lord Chancellor and in our case the Chief Justice of India. Again, the report has reiterated the fact that there needs an urgent uniformity across the tribunals of our country especially in areas of appointment, removal etc. This report is a visible call for reformation in our system as well.[65]

Lastly, the way our constitution is built makes it inevitable for the SC and HCs to do away with the power of judicial review and

---

63 Vidhi Centre for Legal Policy, Reforming the Tribunals framework in India: An interim report (Apr. 2018), available at https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/5b1e34c5758d467b0ba1e206/1528706268669/8th+June%2C+Final+Draft.pdf.

64 Gavin Drewry, The Judicialisation of Administrative Tribunals in the UK: From Hewart to Leggatt, 28 TRAS 51 (2009),

65 Arvind P. Datar, Tribunals: A tragic obsession (Feb. 2013), available at http://india-seminar.com/2013/642/642_arvind_p_datar.htm.

removal of this will lead to a direct importation of the French tribunal system. In France, the administrative tribunal system is in complete isolation from the Executive even though it is part of it.[66] This cannot be done in India as the constitution is considered to be supreme law in our country and does not allow for amendments by popular will as done in France. But there have to be certain structural changes introduced in the Constitution in order to enhance the system of tribunals in India and give way for alternative modes of resolving disputes. With such an immense load of cases, it is necessary to look at additional systems of redressal.

Bibliography

Articles

1. Arun Roy V. and Vishnu Jerome, *Administrative Tribunals in India – A Welcome Departure from Orthodoxy?* 12 STUDENT ADVOC. 60 (2000)

Books

1. DD Basu, COMMENTARY ON THE CONSTITUTION OF INDIA (8th ed. 2011).

2. M.P. Jain and S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW (6th ed. 2007).

Case laws

1. S.P. Sampath Kumar v. Union of India, (1987) 1 S.C.C. 124.

2.L. Chandrakumar v. Union of India, A.I.R 1997 S.C. 1125.

3. Madras Bar Association v. Union of India, A.I.R 2015 S.C. 1571.

---

66 M. P. Singh, Administrative Justice in India: The Urgency of Reforms, (2013) 1 SCC J-65.

Newspaper articles

1. Prianka Rao, *Finance Bill 2017: Independence of tribunals could be affected,* HINDUSTAN TIMES, Apr. 14, 2017. http://www.hindustantimes.com/analysis/finance-bill-2017-independence-of-tribunals-could-be-affected/story-StaETXJ9sjqNHqRjbriCTI.html

2. Mandira Kala, *How Finance Bill amendments affect Tribunals*, THE INDIAN EXPRESS, Mar. 27, 2017 http://indianexpress.com/article/explained/budget-2017-finance-bill-amendments-tribunals-arun-jaitley-4586925/

3. Prashant Reddy, *Finance Bill 2017 debate: Changes made to tribunals are unconstitutional and ill-considered,* SCROLL, (Mar. 27, 2017 7:30 am) https://scroll.in/article/832884/changes-made-to-tribunals-in-the-finance-bill-are-unconstitutional-and-ill-considered

Statutes

1. The Finance Act of 2017.

2. Tribunals, Courts and Enforcement Act, 2007, sch. 7 part 1 (Eng.)

3. The Administrative Tribunals Act, No. 13 of 1985.

Reports

1. Indian Law Commission Report No. 215 L. Chandra Kumar be revisited by Larger Bench of Supreme Court (Dec. 2008), available at http://lawcommissionofindia.nic.in/reports/report215.pdf

Constitution

1. India Const. Art 323A and Art 323B, *amended by* The Constitution (Forty Second Amendment) Act, 1976

2. Constitution of India, Jan. 26, 1950