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Important
REPORTS



Tribunals in India

By: Law Commission

For Civil Services Exam

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LAW COMMISSION REPORT ON TRIBUNALS IN INDIA

Law Commission report on tribunals is to consider and answer the questions raised by the Supreme Court in respect of constitution of Tribunals, appointment of their respective Chairman and members and their service conditions. Further, whether power of Judicial Review, a basic feature of the Constitution conferred upon the High Courts under Articles 226 and 227 of the Constitution can be diluted or taken away totally denying the litigants right to approach the High Court in writ jurisdiction against the jurisdiction and order of the Tribunal and also, whether such litigants should not have a right of statutory appeal against an order of the Tribunals, as providing the remedies under Article 136 of the Constitution is admittedly not a right of Appeal rather a means to approach the Supreme Court and it is the discretion of the Supreme Court to entertain the petition or not.

Hereby providing the gist of the report.

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LAW COMMISSION REPORT ON TRIBUNALS IN INDIA

Introduction

'Tribunal' is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between a Court and an administrative body. The exigencies of the situation proclaiming the enforcement of new rights in the wake of escalating State activities and furtherance of the demands of justice have led to the establishment of Tribunals.

The 'domestic tribunal' refers to the administrative agencies designed to regulate the professional conduct and to enforce discipline among the members by exercising investigatory and adjudicatory powers. Whereas, Tribunals are the quasi-judicial bodies established to adjudicate disputes related to specified matters which exercise the jurisdiction according to the Statute establishing them. Similarly, Ombudsman looks into the complaints of grievances suffered by the citizen at the hands of some organ of the administration.

The increase in number of statutory Tribunals mirrors the rise in State activities. Because the legislation has progressively bestowed benefits on individuals and subjected their everyday lives to propagating control and management, the scope for dispute between an individual and the State has emerged.

The Tribunals have the power to adjudicate over a wide range of subjects that impact everyday life. Tribunals function as an effective mechanism to ameliorate the burden of the judiciary. The law Courts with their elaborate procedures, legalistic fronts and attitudes were deemed incapable of rendering speedy and affordable justice to the parties concerned. Particularly in technical cases, it was felt that the nature of the statutes required adjudicatory forums comprising of persons having expert knowledge of the working of these laws. The Tribunals emerged not with the sole promise of speedy, effective, decentralised dispensation of justice but also the expertise and knowledge in specialised areas that was felt to be lacking in the judges of traditional Courts.

Tribunal System in India

Due to growing commercial ventures and activities by the Government in different sectors, along with the expansion of Governmental activities in the social and other similar fields, a need has arisen for availing the services of persons having knowledge in specialised fields for effective and speedier dispensation of justice as the traditional mode of administration of justice by the Courts of law was felt to be unequipped with such expertise to deal with the complex issues arising in the changing scenario.

The Constitution (Forty-Second Amendment) Act of 1976 brought about a massive change in the adjudication of disputes in the country. It provided for the insertion of Articles 323-A and 323-B in the Constitution of India, whereby the goal of establishment of Administrative Tribunals by the Parliament as well as the State Legislatures, to adjudicate the matters specified in the sub-clauses is made possible.

There is a distinction between Article 323-A and 323-B as the former gives exclusive power to the Parliament and the latter gives power to the concerned State Legislature which is concurrent in nature by which the Parliament and the State Legislature can by law, constitute Tribunals for the respective subjects specified therein. This is evident from the explanation appended to Article 323-B of the Constitution. The provisions of both these Articles are to be given effect irrespective of any other provision of the Constitution or any other law for the time being in force.

Administrative Tribunals Act, 1985

The Administrative Tribunals Act, 1985 brings into existence the 'Tribunals' contemplated under Article 323-A(2), to deal with various matters. The Act specifically provides that it will not be applicable to:

- i. Any member of the naval, military or air force or of any other armed forces of the union;
- ii. Any officer or servant of the Supreme Court or of any High Court, and
- iii. Any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a legislature, of that legislature. Later on in the year of 1987, even the officers and servants of the subordinate courts were also excluded from the purview of the Act.

The Act provides for the establishment of three kinds of administrative Tribunals:

- i. The Central Administrative Tribunal,
- ii. The State Administrative Tribunals and
- iii. The Joint Administrative Tribunals

Significance of the Administrative Tribunals

The objective behind establishing the 'Tribunals' was to provide an effective and speedier forum for dispensation of justice, but in the wake of routine appeals arising from the orders of such forums, certain issues have been raised because such appeals are obstructing the constitutional character of the Supreme Court and thus, disturbing the effective working of the Supreme Court as the appeals in these cases do not always involve a question of general public importance. The Supreme Court is primarily expected to deal with matters of constitutional importance and matters involving substantial question of law of general public importance. Due to overburdening, the Supreme Court is unable to timely address such matters.

Most of these tribunals/authorities are a kind of 'Court' performing functions which are of 'judicial' as well as 'quasi-judicial' nature having the trappings of a Court

'What distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasijudicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.'

National Green Tribunal

The Supreme Court, in *M.C. Mehta v. Union of India*, said that as environment cases involve assessment of scientific data, it was desirable to set up dedicated environment courts at a regional level with a Judge and two experts, keeping in view the expertise required for such adjudication. There should be an appeal to the Supreme Court from the decision of the environment Court. The judgment highlighted the difficulties faced by judges while disposing of environmental cases. It further observed that, 'environment Court must be established for expeditious disposal of environmental cases'.

As a consequence, the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997 were enacted. But the same were found to be inadequate giving rise to demand for dealing with the

environmental cases more efficiently and effectively. The Law Commission in its 186th Report suggested multi-faceted Courts with judicial and technical inputs referring to the practice of the environmental Courts in Australia and New Zealand.

As a result NGT was formed as a special fast-track, quasi-judicial body comprising of judges and environment experts to ensure expeditious disposal of cases.

Power of Judicial Review Under the Constitution

Power of judicial review has consistently been held to be a basic feature of the Constitution. Basic features forming core structure of the Constitution cannot be affected otherwise, even the Constitutional amendments would be liable to be struck down. The Constitution confers on the judiciary the power of judicial review which is exclusive in nature. Under the constitution, it is the responsibility of judiciary, to interpret the Constitution and the laws made thereunder.

In I.R. Coelho v. State of Tamil Nadu, 90 the petitioner had challenged the various Central and State laws put in the Ninth Schedule. The nine-Judge Bench held that "validity of any law shall be open to challenge on the ground that it destroys or damages the basic structure of Constitution".

The Court further held:

'equality, rule of law, judicial review and separation of powers, form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary.'

Further in other case also it was held that

'...the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

...the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.'

Features of Tribunals

As a quasi-judicial body, the Tribunal performs the judicial functions for deciding the matters in a judicious manner. It is not bound by law to observe all the technicalities, complexities, refinements, discriminations, and restrictions that are applicable to the courts of record in conducting trials, but at the same time, a Tribunal is required to look at all matters from the standpoint of substance as well as form and be certain that the hearing is conducted and the matter is disposed of with fairness, honesty, and impartiality.

- **Judicial independence:** As the tribunals are vested with judicial powers, there must be a security in tenure, freedom from ordinary monetary worries, freedom from influences and pressures within (from others in the Judiciary) and without (the Executive). It has different dimensions, which includes freedom from other power centres, economic and political, and freedom from prejudices acquired and nourished by the class to which the judges belong. It is for the independence of judiciary that it was sought to be kept apart and separate from the executive. Once the judiciary is manned by people of unimpeachable integrity, who can discharge their responsibility without fear or favour, the objective of independent judiciary will stand achieved.

- **Technical member:** However, if the Tribunals are intended to serve an area which requires specialised knowledge or expertise, the appointment of Technical members in addition to judicial members must always be welcomed, as they can provide an input which may not be available with the judicial members.
- **Uniformity in the appointment system:** Since the Tribunals are entrusted with the duty of adjudicating the cases involving legal questions and nuances of law, adherence to principles of natural justice will enhance the public confidence in their working. The Judicial Member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. The objective of having uniformity in the appointment system can be achieved if the appointments are made to the respective posts as indicated below: i. A person is or has been a Supreme Court Judge or Chief Justice of the High Court as Chairman. ii. A person who has been a judge of the High Court as Vice Chairman. iii. A person who has been a High Court judge or an Advocate who is eligible to be appointed as a Judge of High Court as Judicial Member.
- **Pendency in tribunals:** The Commission observed that the high pendency of cases in some tribunals indicates that the objective of setting them up has not been achieved.

Recommendations of Law Commission

- There shall be uniformity in the appointment, tenure and service conditions for the Chairman, Vice-Chairman and Members appointed in the Tribunals. While making the appointments to the Tribunal, independence shall be maintained.
- There shall be constituted a Selection Board/Committee for the appointment of Chairman, Vice-Chairman and Judicial Members of the Tribunal, which shall be headed by the Chief Justice of India or a sitting judge of the Supreme Court as his nominee and two nominees of the Central Government not below the rank of Secretary to the Government of India to be nominated by the Government. For the selection of Administrative Member, Accountant Member, Technical Member, Expert Member or Revenue Member, there shall be a Selection Committee headed by the nominee of the Central Government, to be appointed in consultation with the Chief Justice of India.
- In case of transfer of jurisdiction of High Court to a Tribunal, the members of the newly constituted Tribunal should possess the qualifications akin to the judges of the High Court. Similarly, in cases where the jurisdiction and the functions transferred were exercised or performed by District Judges, the Members appointed to the Tribunal should possess equivalent qualifications required for appointment as District Judges.
- The Chairman of the Tribunals should generally be the former judge of the Supreme Court or the former Chief Justice of a High Court and Judicial Members should be the former judges of the High Court or persons qualified to be appointed as a Judge of the High Court.
- Administrative Members, if required, should be such persons who have held the post of Secretary to the Government of India or any other equivalent post under the Central Government or a State Government, carrying the scale of pay of a Secretary to the Government of India, for at least two years; OR held a post of Additional Secretary to the Government of India, or any other equivalent post under the Central or State Government, carrying the scale of pay of an Additional Secretary to the Government of India, at least for a period of three years.
- Expert Member/Technical Member/Accountant Member should be a person of ability, integrity and standing, and having special knowledge of and professional experience of not less than fifteen years, in the relevant domain. (can be increased according to the nature of the Tribunal). The appointment of Technical/Expert members in addition to the judicial members be made only where the Tribunals are intended to serve an area which requires specialised knowledge or expertise or professional experience and the exercise of jurisdiction involves consideration of, and decisions into, technical or special aspects.

- While making the appointments to the Tribunal, it must be ensured that the Independence in working is maintained. The terms and conditions of service, other allowances and benefits of the Chairman shall be such as are admissible to a Central Government officer holding posts carrying the pay of Rs.2,50,000/-, as revised from time to time.
- The terms and conditions of service, other allowances and benefits of a Member of a Tribunal shall be such as are admissible to a Central Government officer holding posts carrying the pay of Rs.2,25,000/-, as revised from time to time.
- The terms and conditions of service, other allowances and benefits of Presiding Officer/Member of a Tribunal (to which the jurisdiction and functions exercised or performed by the District Judges are transferred) shall be such as are admissible to a Central Government officer drawing the corresponding pay of a District Judge.
- Vacancy arising in the Tribunal should be filled up as early as possible by initiating the procedure well in time, as early as possible, preferably within six months prior to the occurrence of vacancy.
- The Chairman should hold office for a period of three years or till he attains the age of seventy years, whichever is earlier. Whereas Vice-Chairman and Members should hold the office for a period of three years or till they attain the age of sixty seven years whichever is earlier. It will be appropriate to have uniformity in the service conditions of the Chairman, Vice-Chairman and other Members of the Tribunals to ensure smooth working of the system.
- The Tribunals must have benches in different parts of the country so that people of every geographical area may have easy Access to Justice. Ideally, the benches of the Tribunals should be located at all places where the High Courts situate. In the event of exclusion of jurisdiction of all courts, it is essential to provide for an equally effective alternative mechanism even at grass root level. This could be ensured by providing State- level sittings looking to the quantum of work of a particular Tribunal. Once that is done, the access to justice will stand ensured.
- The Commission observed that tribunals were established to reduce the burden on courts. It recommended that appeals against a tribunal's order should lie before a High Court only where the law establishing such a tribunal does not establish an appellate tribunal. Further, orders of an appellate tribunal may be challenged before the division bench of the High Court having jurisdiction over the appellate tribunal.