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Need For Check on the Functioning Of Tribunals in India

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ABSTRACT: Tribunal is a judicial body, created by a legislation to adjudicate a class of disputes. Though, it is a judicial entity for the purpose of administration of law. In Indian Judicial body, the matters are pending for many years, to reduce the pendency of cases it is necessary to established more courts or tribunals. A person only take a support from tribunals because he can be protected and get right remedy for the infringement in a less period of time with a less cost. Through this research paper the author discussed the following procedures, need and what are the problems faced by a common person and how to overcome from all these problems. It is very important to decide the cases as soon as possible. A person files his complaint before tribunal for early disposal of cases and if he is not satisfied from the judgment passed by a judicial member then he has a right to file an appeal before apex court.

KEYWORDS: Court of law, Power of judges, Quasi-judicial body, Statute, Tribunals

I. INTRODUCTION

The emergence of a welfare State led to the State bearing the culpability to take care of people's socio-economic needs. All the aspects of this responsibility cannot be endured by a single branch of State. This is the first part for the executive to assist the judiciary by performing many Quasi-Judicial functions for example levying of fines, penalties etc.

In India tribunals are constituted only for early disposals of matters. There are so many tribunals in every state which deals in handling all the civil, criminals as well as others matters. Such as for matters pertaining to environment, in these matters national green tribunal are dealing, administrative bodies matters deals by administrative tribunal and so many other matters which are solved by other tribunals in India.

Tribunals called a Quasi-Judicial institution because it is setup to deals with the cases such as resolving administrative or tax related disputes. As seen in today time all things get too fast, every person easily know everything in a less time with more proper resources. In our Judiciary system also the things get too fast everything get too fast and it is very easy for a common person, that he know about these and use it very well.

The term "TRIBUNAL" is derived from the word "TRIBUNES," which means "Classical Roman Republic Magistrates." Generally, tribunal means "an entity that has the power to judge, adjudicate on, or decides claims or disputes."

In our Indian Judiciary the work process is very slow; there are lots of examples where a common people lose his hope to get Justice such as pendency of cases in every courts from ground level to apex court, lack of proper maintenance, proper staff, lack of resources and there are so many examples which clearly state Judicial system is too slow, but as per today time, the things are changed, there are so many fast track constitutes for removal of pendency in criminal courts there are lots of tribunals constituted which deals every type disputes and solved them in a less period of time which is very easy for every person of India because he has proper resources to deals in such types of problems.



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II. DISCUSSION

Features of tribunal:

- It is relatively cheap, as compared with court of law
- It should be more approachable
- It is being free from procedural technicality
- It should hear disputes with more efficacious

Principles on which functioning of tribunals are based:

- Fairness
- Equitable
- Representation, legal aid and assistance

The primary aim of the tribunals is to settle the conflicts between government and people. In support of orders inflicting the key penalties of dismissal, removal from service, the Administrative Reform Commission recommended the civil service tribunals to serve as final appeal authorities.

Tribunals have been formed in every state. Each dispute is decided by its own judge. The decisions and rulings of certain states are binding on the state government. The Tribunals have withdrawn the jurisdiction of the respective High Courts in service cases in some Jurisdictions, although they do not exclude the jurisdiction of the High Court concerned in other Jurisdictions.

The settled legal position is that the administrative tribunals' judgments are subject to the superior courts' judicial review. The executive also performs various quasi-legislative and quasi-judicial roles, as shown by the ministerial duties. As per conventional theory, the duty of adjudication of disputes is the exclusive authority of ordinary courts of law, and many judicial functions have been carried out by the executive.

From the establishment of tribunals as a parallel court system, the judiciary has consistently taken steps to lay down the guidelines for their efficient.

Tribunals versus Courts:¹

Tribunals:

- A court is an entity founded by the law and entrusted with judicial powers.
- It is often referred to as a quasi-judicial body; it has the authority to try special cases bestowed on them by statutes.
- The tenure, terms and conditions of service of tribunal members are vested in the possession of the executive.
- Tribunal is not bound by rules but bound by the principle of natural justice

Court of law:

- A court of law is a part of the conventional legal system, whereby the state receives judicial powers.
- Civil courts have the judicial power to try all civil suits unless the knowledge is explicitly known.
- Regarding tenures, terms and so on, judges of the ordinary court of law are independent of the executive.
- A court of law is bound by all the rules of evidence and procedure.

Tribunals in India: this can be discussed as Figure 1 below:

¹difference between tribunals and court of laws/blogs

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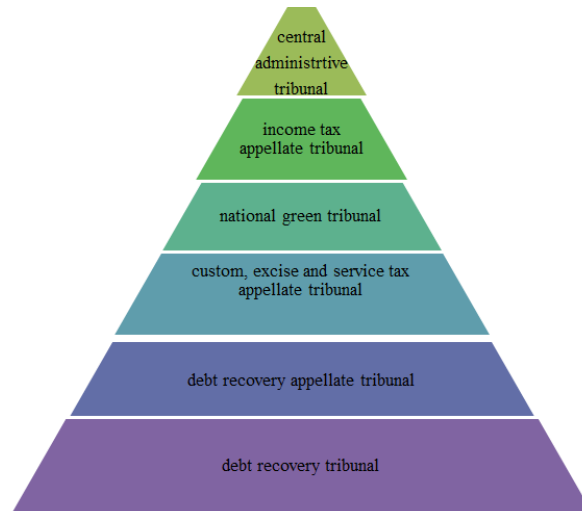


Figure 1: Types of Tribunals

Hierarchical structure of Indian Court system which are shown through figure 2 below:

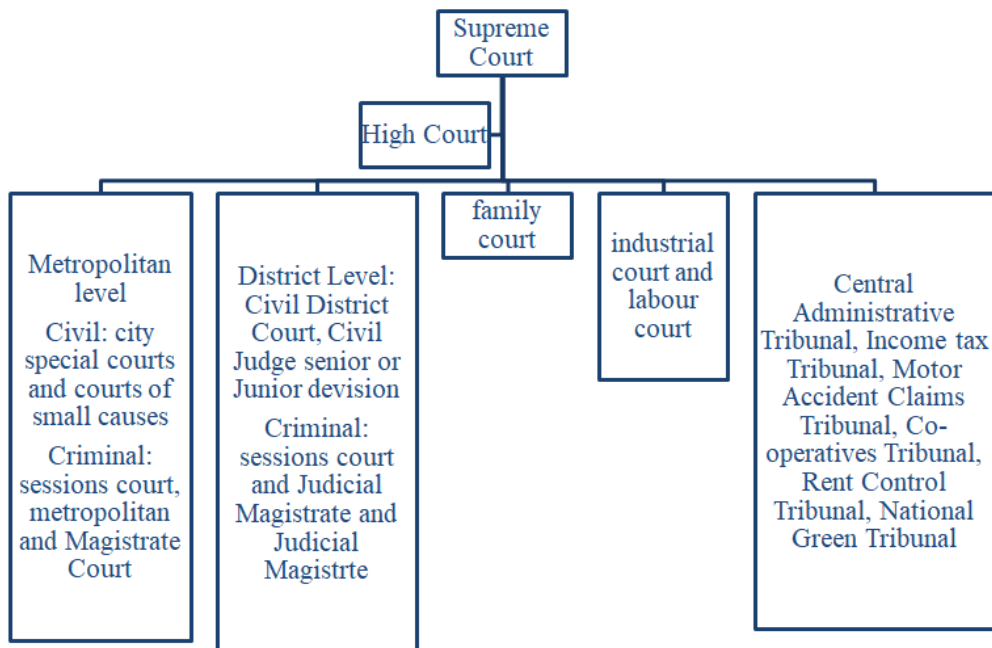


Figure 2: Hierarchical Structure of Courts

Role of the Central Administrative Tribunal:

Parliament enacted the Administrative Tribunal Act, 1985, as per Article 323 A of the Constitution of India. The aim of this act was to provide for the adjudication or trial of disputes and grievances by administrative tribunals with regard to the appointment and conditions of service of persons appointed to public services and posts. The formation of the legislation is an Administrative Tribunal; thus, no appeal or amendment lies against the judgement of an administrative tribunal unless an administrative tribunal makes a decision. Such a right has been conferred by the relevant statute.



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Eight tribunals have been merged as per finance act, 2017 which are discussed below:

- The Employees Provident Fund Appellate Tribunal merged with The Industrial Tribunal
- The Copyright Board merged with the Intellectual Property Appellate Board.
- The Railways Rates Tribunal merged with The Railways Claims Tribunal
- The Appellate Tribunal for Foreign Exchange merged with the Appellate Tribunal (Forfeiture of Property) Act, 1976
- The National Highways Tribunal merged with The Airport Appellate Tribunal
- The Cyber Appellate Tribunal and The Airports Economic Regulatory Authority Appellate Tribunal with the Settlement and Appellate Tribunal
- The Competition Appellate Tribunal merged with the National Company Law Appellate Tribunal²

Recommendation of Law Commission on issues with tribunals in India:

- The duties of the court under the government agency, which may be a litigant before them, render the executive submissive to the tribunals. This allows the autonomous operation of the courts to be a concern.
- The Law Commission suggested that a committee led down by the Supreme Court in its various Judgments.
- The Law Commission has also recommended that, under the aegis of the Ministry of Law and Justice, the tribunals be periodically supervised by a single nodal agency to ensure continuity in matters.
- In India, 90 percent is pending before all tribunals which show high pendency of cases.
- In the case of L.Chandra Kumar v. Union of India, the Supreme Court held that clause 2(d) of Article 323 A and clause 3(d) of Article 323 B were unconstitutional, to the degree that they gave Parliament the power to exclude the jurisdiction of the High Court and of the Supreme Court. It was further noted that all the administrative tribunals' judgments are subject to review before the High Court's divisional bench, under the jurisdiction of which the tribunal concerned falls.

Selection procedure of members:

- The Commission specified that the choice of representatives should be unbiased. It proposed that there should be limited involvement of government departments, because the government is usually a party in litigation.
- The Commission recommended that a selection committee headed by the Chief Justice of India or a sitting Judge of the Supreme Court could nominate the chairman, vice-chairman, and judicial members of the tribunals.
- The commission announced that there is currently no uniformity in the retirement age of members of the tribunal. It proposed that the appointment, tenure and service conditions of the chairman should be consistent, that the vice-chairman should hold office for three years or until the age of 70, whichever is earlier. The Vice-President could hold office for a term of three years or until the age of 67.

Appeal: The establishment of a tribunal in India is solely intended to minimize the strain on all courts. It only advises that appeals against a tribunal's order should be brought before the High Court only if an appeals tribunal is not established by the statute creating such a tribunal. On the other hand, until the division bench of the High Court has jurisdiction over the appeal court, the orders of an appeal tribunal may be challenged.

Need of Tribunal:

- To handle the situation due to the pendency of matters in various courts, tribunals, commissions.
- This will be handled by lawyers and specialists in the fields under the jurisdiction of the tribunal to reduce the workload of the courts, to expedite decisions and to provide a forum.

Reason to existence:

- To resolve the dispute between a private person and a central government department.
- Dispute which require the application of specialized knowledge.
- The provision of a speedier and cheaper procedure which is afforded by the ordinary courts.
- The desire to have specific issues dealt with by persons with an intimate knowledge and experience of the problems involved with a wide general jurisdiction might not acquire.

How tribunals retrench the jurisdiction of ordinary courts?

²Finance act, 2017



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- Being a Quasi-Judicial body tribunals go against the doctrine of separation of powers and allows dilution of judicial mechanism.
- Consulting a direct right to appeal to the SC from tribunals has changed the Supreme Court from a constitutional court to a mere apex court and has also emerged in arrears of cases.

Competency of Tribunals: In Indian Court system, tribunals like NGT, NCLAT, CAT has a backlog as effective institutions of rendering justice due to following benefits which are described as:

- *Versatility in procedures*: it is flexible in nature and evidence ordeals of courts are not followed, rather it goes by the principle of natural justice.
- *Provide efficiency*: in dispensing justice due to cost and time effectiveness.
- *Unburdening of judiciary*: this procedure helps in reducing the burden of judiciary, though appeals can be made there.
- *Specialization*: through involvement of experts with less time and increase effectiveness.

Issues:

- *Appeal*: every State constitutes tribunals were originally setup to provide specialized justice delivery to reduce the burden of cases on ordinary courts.
- *Pendency of cases*: in present time also many courts have so many pendency regarding case laws, if a case file in a court then its judgment come after many years, or there are many other reasons for a long pendency of cases. For the early disposal of cases tribunals has been constituted but the present situation is few tribunals also don't have proper resources, infrastructure to work smoothly and perform the functions originally envisioned leading to high pendency rates thus providing unfruitful to deliver justice through a fast procedure.
- *Appointments of Judicial Members*: in many tribunals there are many post of judicial members is vacant for that reason also the case decided after many years.
- *Functioning*: the information provided under this system is too slow. There are many reasons where cases decided in long time for example websites of Indian court system is too slow and on some websites the information is provided wrongly. If content is available then it is not updated with latest versions and so on.
- *Accessibility*: accessibility is low due to scant geographic availability so for that reason also the justice delivered late and the fee of cases is too high which is not easy for a poor people.

Process of Rectification:

- *Appointment of members*: in every state the process of appointment of members shall be fair and impartial so that judicial system can work effectively. It is more important than the vacant post also filled so that there is early disposal of pendency of matters.
- *Accessibility*: tribunals must have benches in different parts so as to ensure that they can be accessible easily.
- *Qualifications*: qualifications shall not be in impartial way. In a leading case of Union of India vs. R. Gandhi (2010), the Supreme Court held that a court's existing jurisdiction should be transferred to a court, its member should be persons of a rank, capacity and status nearly equal to the court's rank, status and capacity as far as possible.

Categories of Tribunals in India:

- Administrative bodies exercising quasi-judicial functions.
- Administrative adjudicatory bodies outside the jurisdiction of the conflict department: disputes occur only if the judiciary is free of prejudice. The income tax appeal tribunal, for instance, is regulated by the Ministry of Law and the Ministry of Finance and Expenditure.
- Under Article 136 of the Constitution, the authority exercises the state's inherent judicial powers: because the roles of the agency are deemed to be essential over regulation, composition and procedure, it is possible to define even departmental bodies as tribunals.
- Under Article 323 A and 323 B of the Constitution, tribunals of constitutional origin were created and enjoyed the powers and rank of a high court.

Advantages of tribunals in India:

- Tribunals offer adaptability when compared to ordinary courts that have to attach the strict procedures.
- Their process is cheaper and provides speedy justice with early disposal of cases.
- The process followed by tribunals is too easy and accessible for every person.



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- They are also providing certain reliefs to the ordinary courts that are already over burdened with suits.
- Loopholes:
- Rule of law discussed that arbitrary power is not exercised by institutions or individuals.
 - Regular courts have a uniform code of procedures i.e. civil or criminal. But, tribunals are working on its own procedure and there is no uniform civil code of procedure.
 - Sometimes these tribunals are handled by subject matter experts who have no experience in dealing with judicial proceedings. Hence, they end up adopting summary procedures as well.

The concept of Natural Justice:

- In the Constitution of India, the principle of natural justice includes certain rights such as right to be heard and right to an impartial decision maker. Any party who has a right to be heard is entitled to reasonable prior notice of the proceedings so that every party have an advance option to present his case in easy way as per he wants. The right to proper notice also includes the right to know the case that must be met; or how other party responds the reply of notice.
- *Fairness in judicial system:* in certain cases, the governing legislation will contemplate a very informal kind of decision. In many cases, particularly where the impact of a decision may be relatively minor, a party to administrative proceedings may not be entitled to full natural justice.

III. CONCLUSION

From the whole study it has been concluded that, the administration is a part of the Indian Government. It is necessary all should follow the rules and laws implement by government, if the work cannot be done as per laws then it create problem for every person. The need of tribunal is for early disposal of cases, because in our Indian judicial system there are lots of cases which are pending before all courts of India and it is very important to decide those pending cases as soon as possible. In India a person or a victim want justice in quick way. As seen in today's time mostly cases are solved through e-platforms such as arbitration, IPR and so on which are filed in earlier time and decided as well as in a less time. This is the reason to established tribunals in India because it is less expensive also and quality of justice and justice get easily.

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