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Tribunals – NEED OF THE HOUR

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Our judicial system is over burdened with huge number of pending cases due to which general public at large is facing extreme difficulties. As the proverb 'Justice delayed is justice denied' is proving true presently. Although there are many reasons for the pendency of the cases, One of the main cause of these pendencies is the cumbersome procedure of the courts.

All though legislative, judiciary and executive are putting up their best efforts to reduce this pendency by adopting various methods as use of technology, increasing number of courts and by establishing special courts and tribunal etc.

The best dispute-settling machinery that has been evolved so far outside the court system is a tribunal. The reason is that tribunals are separate and distinct from the administration and are, thus, independent of administrative or political control. Being independent of administration, tribunal is in a position to decide cases impartially arising between the administration and a citizen.

What is Tribunal

Articles 323A and 323B provide for proliferation of tribunal system in India Article 323A provides that Parliament may by law establish tribunals for adjudication of disputes concerning recruitment and conditions of service of persons appointed to service under Central, State or any local or other authority, or a corporation owned or controlled by the Government. The law made by Parliament for the purpose may specify the jurisdiction and procedure of these tribunals.Under Article 2(d), the parliamentary law may exclude the jurisdiction of all courts except that of the Supreme Court under Article 136, with respect to the service matters falling within the perview of these tribunals

Article 323(1) and Article 323(2) empower the appropriate legislature to provide, bylaw, foe adjudication or trial by tribunals of any disputes and offences with respect to the following matters:(

(i)Texation (ii) Foreign Exchange (ii) Industrial and labour Disputes (iv)Land Reforms (v)Ceiling on Urban Property (vi) Election to Parliament or State Legislature (Vii)Production ,Procurement, supply and distribution of foodstuffs and other essential goods and control of prices of such goods. (viii) Rent , regulation of tenancy issues including the the right,title and intrest of landlords andtenants (ix) Offences against laws with respect to these matters.

"Tribunal" is the key word in Article 136 on which depends the appellate jurisdiction of the Supreme Court. The word Tribunal has no fixed connotation. Literally the word Tribunal means "seat of justice". The word "Tribunal" has been used in Art 136 in contradistinction to "courts". The Supreme Court can hear an appeal not only from a court as such but also from any other decision – making body which though not a court as such yet may be characterized as a "Tribunal". The constitution does not define the term "tribunal" and it is therefore for the supreme court itself to articulate the meaning of the word "Tribunal". Before the Supreme

Court can hear appeal from an adjudicatory body, it is necessary for the court to characterize it as a "Tribunal".

A number of adjudicatory bodies have been held to be tribunals by the Supreme Court and appeals have been heard therefrom as for example, the appellate Tribunal functioning under the Indian Income Tax Act, 1961, the Labour Tribunals under the Industrial dispute Act, 1947, the Election Tribunals, the Railway Rates tribunal, the Custodian General of Evacuee Property etc.

The very first case which came before the Supreme Court calling for the characterization of the term "Tribunal" in Art 136 was Bharat Bank V/S Employees of Bharat Bank. The question which arose before Supreme Court in the instant case was whether the Supreme Court can entertain an appeal under Article 136 against an award of the Industrial Tribunal.

"The intention of the constitution by the use of the word "Tribunal" in the Article seems to have been to include within the scope of article 136 tribunals adorned with similar trapping as court but strictly not coming within that definition."

This was a epoch-making decision as it gave an expensive orientation to Art 136 and at the same time brought the vast network of the quasi – judicial bodies under judicial control which would promote the Rule of Law in the country. It classifies that the expression "Tribunal" as used in the Article 136 does not mean a court, but includes within its ambit all adjudicatory bodies, provided they are constituted by the state and are vested with judicial, as distinguished from purely administrative or executive functions.

In deciding whether an authority acting judicially and dealing with the right of citizens is a tribunal or not, the principle incident is the investiture of the 'trappings " of a court', such as authority to determine matters in cases initiated by parties, sitting in public, power to compel attendence of witnesses and to examine them on oath, duty to follow fundamental rules of evidence (though not the strict rules of the Evidence Act), provision for imposing sanctions by way of imprisonment, fine, damages, or mandatory or prohibitory orders to enforce obedience to their commands. The list is illustrative; some, though not necessary all such trappings, with ordinarily make the authority which is under a duty to act judicially, a 'Tribunal'.

Whether a body is a "Tribunal" or not can be decided by applying several tests:

(i) It should not be an "administrative" body pure and simple, but a "quasi-judicial" body as well.
(ii) It should be under an obligation to act "judicially".
(iii) It should have some "trapping of a court".
(iv) It should be constituted by the state.
(v) The state should confer on it, its inherent judicial power, i.e., power to adjudicate upon disputes.

These criteria are not exhaustive but illustrative. A body does not have to fulfill all these criteria to be characterized as a tribunal. How much of each of these criteria should la body posses before being characterized as a "Tribunal" has been left vague and indefinite.

NEED FOR TRIBUNALS

A tribunal is set up by legislation to adjudicate upon disputes in a specified area. A tribunal may settle disputes between an individual and the state, or between one individual and another. Some tribunals may be set up to make first decisions; some tribunals may hear appeals from decisions of other tribunals or of other adjudicatory bodies. Appeals from some tribunals may go to the courts. There is always the possibility of judicial review of tribunal decisions in India because of certain constitutional provisions.

In India, in recent years, the world of tribunal has grown substantially in both size and variety. Some tribunals have been set up in recent years with multiple objectives in view; to expedite decisions; to reduce load of work on the courts, especially the High Courts; to provide a forum consisting of lawyers as well as experts in the area of disputes falling within the jurisdictional sphere of the concerned tribunal.

A tribunal usually follows a procedure akin to, but somewhat less formal than the court procedure. The objectives in establishing tribunals are manifold:

(I) To provide a dispute-setting mechanism as an alternative to ordinary courts, but rather near to court mode, so as to act as a court- substitute mechanism with a view to relieve the courts of some work load.

(II) To transfer settling of some disputes from administrative officials to autonomous dispute settling mechanism so as to provide an independent element in adjudicative process and thus improve the quality of decisions.

(III) To provide an appellate form from the decisions made in the first instance by officials so as to act as a control mechanism over the Administration.

The emerging modern trend in democratic countries is to move the adjudicatory powers, to the extent feasible, from departments and administrators to tribunals so that more and more decisions may be made according to procedural rules and objective considerations—an ideal extremely difficult to achieve in a departmental structure. To introduce some objectivity in the decision making process, and to give a sense of confidence to the affected person in the decisional process, tribunals ought to be created. A tribunal is also able to give better procedural safeguards to the litigants before it than an administrator acting in an adjudicative capacity. Thus, as an adjudicatory mechanism, a tribunal offers better safeguards to the individual than a mere administrative authority making a decision. A tribunal can be used to make an initial decision instead of leaving the same to the bureaucracy to make; or, a tribunal can be use to hear appeals from, or review decisions taken by, the bureaucracy in the first instance. It cannot be regarded as a good system of adjudication where a decision taken by one administrative officer is reviewed by another officer and there is no review of the decision by an outside body like an tribunal. Many examples can be found of such an arrangement. Under S.3 of the U.P. Control of Rent Act, permission of the district magistrate, or failing him that of the commissioner, is needed to file a suit in a civil court to evict a tenant from any premises. Under s.7F, the State Government can review the grant or refuse to grant permission under S.3. and may make such orders as may be necessary. Under S.10 of the Mines and mineral (Development & Regulation) Act, 1957, an application for a mining license is to be made to the State

Government. Under Rule 54 of the Mineral Concession Rules, 1960, the Central Government acts as a provisional authority against any order passed by the State Government. Such a system cannot be regarded as a good system by any standard. As has been disclosed in several court cases, bureaucrats and administrators while exercising adjudicative powers do not function very satisfactorily. These persons are not able to shed their bureaucratic or administrative approach while acting as adjudicators. That is why autonomous tribunals are preferable to administrators for exercising adjudicatory function.

Tribunal procedure is less formal than that of the courts but is more formal than that followed by the bureaucrats and so it may be a good mean between the two extreme approaches. To hand over a decision to an autonomous tribunal may also result in insulating the decision from current political pressures which may otherwise be ought to bear if the decision is made purely within a department. Also, by deciding cases over and over again in the specified area, the tribunal may become a specialist decision making body in that area thus resulting in uniformity, efficiency and predictability of decisions in that area.

There is another notable aspect of the tribunal system. The tribunal is also emerging as a control-mechanism over the Administration, i.e., even if an initial decision is arrived at within a departmental, it may be reviewed by a tribunal and thus, a control-installed over departmental decisional process. An independent tribunal can provide a reasonable safeguard to the individual in his dealings with the state, as well as to rectify any administrative abuse.

The tribunal system is a modern necessity, and as a system of adjudication, it has come to stay in modern democracies. However, there are certain dangers inherent in the tribunal system which ought not to be ignored. There is a great merit and value in an independent judiciary administering law and justice in an open court and this value should not be sacrificed the altar of the tribunal system. As the Franks Committee has stated:

"But as a matter of general principle we are firmly of the opinion that a decision should be entrusted to a court rather than to a tribunal in the absence of special considerations which make a tribunal more suitable."

DIFFERENCE BETWEEN COURT AND TRIBUNAL

The tribunals contrast with traditional courts in may respects. Some of the basic characteristic of the courts are; they are bound by the prescribed rules of procedure and evidence; their proceedings are conducted in public; lawyers are entitled to appear before them; they are body of general jurisdiction; the judge sitting in a court hears himself and decides a case and gives reasons for his decisions; court fee is required to file a case and above all they are independent of executive as judges have a tenure independent of the executive will. As against this the tribunals are not generally governed by the provisions of the procedural and evidence laws; their proceedings are not generally required to be conducted in the public; they have a specialized jurisdiction; there may be statutory prohibition on the lawyers to appear before them (though very often this is not so); they don't require fee; a very good example for this is Central administrative Tribunal where a complaint sent by post is also looked into.

The material difference between a court and tribunal, however, lies in the manner of appointment of their members and control over them. Appointment, posting, promotion and

conditions of service etc. of the members of tribunals are almost entirely in the hands of executive. They do not usually have same security of tenure as the judges have; the later retire at a given age while the former are appointed for a short term only, say 5 or 7 years and may or may not be reappointed. The position of members of tribunals lies somewhere between ajudge and a civil servant. Unlike the judge of a subordinate court, a member of the tribunal is not under the control of the High Court in matters of appointment etc., but at the same time trhe degree of Executive control over him is less than what it is in the case of a civil servant. Therefore, if adjudicatory functions must be left to bodies outside the courts, and this has to be done in view of the modern exigencies, then the tribunal, as described here is much more acceptable as a forum of adjudication than an ordinary civil servant, or a department by itself sitting, as an adjudicator. Being autonomous of Government departments, Tribunals may cultivate that mental attitude which is necessary to decide cases free from bias towards departmental policies which may not be true of a civil servant or a department. A civil servant's personal involvement with the departmental policies, and his keen desire to push through the implementation of such policies leave him little scope to take a detached view.

Then members of a tribunal may be appointed both from amongst lawyers and those having special qualifications and skills needed to handle a particular type of cases; they are men of status as in quite a large number of cases, members are appointed from amongst sitting or retired judges, their special position , status and qualification create a psychological effect on the minds of the bureaucracy not to interfere with their work and this gives a confidence to the public that their rights would not be ignored.

The position of a civil servant is very different. It is not necessary he be a person well versed in law although he is called upon to decide questions of law and fact. When an administrator sits as a decision maker, he is imbued, consciously or unconsciously, with bias towards official policies or administrative expediency. It is not possible for him to rise above a pro- departmental attitude because of his personal involvement with – departmental policies and his keen desire to push through their implementation, neutrality of action in a controversy between the – department and an individual is difficult to expect from him. Even though no directions may be legally issued to him while he discharges a quasi – judicial function, which in itself is a doubtful proposition, still his senior may, and often does, issue instructions to him behind the scene. If he does not obey them, it may affect his future career – denial of promotion, transfer to a less responsible position, and even taking of disciplinary action on one ground or the other. Such risks do not exist in the case of of members of a tribunal. That these are not mere imaginary or fanciful fears, but such things do actually happen in life, can be shown by referring to Mahadayal V. Commercial Tax Officer AIR 1958 SC 667, a case involving assessment of sales tax. Many such cases must be occurring every day in actual practice without the knowledge of the affected persons, and without the court's supervisory jurisdiction being invoked. The institution of autonomous tribunals would minimize such unfair practices. The courts require long time to settle the dispute but tribunals are set uo to give a speedy settlement of the disputes.

Conclusion

In view of the above discussion it can be concluded that Tribunals can play a major role in reducing the pendencies of huge number of judicial cases which can help in providing timely

justice to the public and strengthen the judicial system in our country. Further this will relieve our courts from the pressure of huge pendency of cases . However, the suggestions of law commission and guidelines devised by Honourable Supreme Court should be followed by our Parliament and legislatures to make the justice delivery system more expeditious and inexpensive and more trustworthy.

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