Journal Homepage: -www.journalijar.com
INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)
Article DOI:10.21474/IJAR01/5293
DOI URL: http://dx.doi.org/10.21474/IJAR01/5293

*RESEARCH ARTICLE*

# COMPREHENSIVE MODIFICATIONS IN TRIBUNALS IN INDIA: AN ANALYSIS.

**Dr.G.Indira Priya Darsini.**
Asst. Professor, Department of Law, Sri PadmavatiMahilaVisvavidyalayam, Tirupati

*Manuscript Info* *Manuscript History*

Received: 01 July 2017
Final Accepted: 03 August 2017
Published: September 2017

***Abstract*: -**
The government of India after assuming welfare state focussed more on passing of welfare enactments where decision making power vested in the hands of the administration. One of the innovative provisions adopted by the Forty-second Amendment of the Constitution was the provision for the setting up of Administrative Tribunals. The main objective of establishing tribunals is to provide a speedy and inexpensive trail. The other significant ground for institution of tribunals was that the ordinary courts are habituated to deal cases according to law with complex formalities. While adjudication of disputes are not necessarily on the basis of technical questions of law in administrational issues, but the need of the hour requires consideration of the public interest. Further, tribunals are bodies having technical expertise dealing fairly with the issues by following the principles of natural justice. The technicalities, inadequacy and effectiveness of judicial system lead to multiplicity of administrative tribunals.These quasi-judicial powers acquired by the administration must maintain inevitably procedural safeguards & transparency while arriving at their decisions and observe Principles of Natural Justice. These administrative bodies which are established in public interest have been comprehensively modified in Finance Act 2017. As Justice Blackstone said it is precisely in situations such as these that the subdivision of power into different channels was designed to prevent power rushing down in one single torrent, sweeping away all it encounters in its wake

*Copy Right, IJAR, 2017,. All rights reserved.*

## Introduction:-

The Constitution of India, being a product of the philosophy of welfare state, was bound to recognize the existence of tribunals. Therefore Tribunals were added in the Constitution by Constitution (Forty-second Amendment) Act,

**Corresponding Author: -G. Indira Priya Darsini.**

1976 in Part XIV-A, in two articles i.e., 323-A and 323-B. While article *323-A deals with Administrative Tribunals;* article *323-B deals with tribunals for other matters.* In general sense, the 'tribunals' are *not courts of normal jurisdiction,* but they have very specific and predefined work area.[1]

The basic objective of the administrative tribunals is to take out certain matters of disputes between the citizen and government agencies of purview of the regular courts of law and to reduce the pressure on the Civil Courts, to make the dispute redressal process quick, less expensive and relatively free from technical procedures. Tribunals have grown in response to the need to provide for specialized forums of dispute settlement that would possess some expertise and policy commitment.

Doctrine of Separation of Powers

The central institutional feature of the Constitution to be separation of powers which means limited government. It would prevent a single branch from consolidating strength to act tyrannically. The best protection was the interest of each branch in jealously defending its prerogatives. That is what the framers naturally assumed. Some of the articles in the Indian constitution which emphasizes the separation of powers are the following:

Article 50 puts an obligation over the state to separate the judiciary from the executive.[2] However, Article 50 falls under the Directive Principles of State policy (DPSP) and hence is not enforceable.

The legislatures cannot discuss the conduct of a judge of the High Court or Supreme Court. They can do so only in matters of impeachment.[3] The courts cannot inquire the validity of the proceedings of the legislatures.[4] The President and Governors enjoy immunity from court proceedings.[5]

As the doctrine of separation of powers is not codified in the constitution, there is a necessity that each pillar of the State to evolve a healthy trend that respects the powers and responsibilities of other organs of the government. The doctrine of separation of powers is a part of the basic structure of the Indian Constitution even though it is not specifically mentioned in it. Hence, no law and amendment can be passed violating it. The system of checks and balances is essential for the proper functioning of three organs of the government. Different organs of the state impose checks and balances on the other. Checks and balances acts in such a way that no organ of the state becomes too powerful. The constitution of India makes sure that the discretionary power bestowed upon any organ of the state does not breach the principles of democracy. For instance, the legislature can impeach judges but as per the condition i.e. two third majority.[6]

*"The doctrine of the separation of powers was adopted .... not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction ...., to save the people from autocracy."*[7]

It is precisely in situations such as these that the subdivision of power into different channels was designed to prevent power rushing down in one single torrent, sweeping away all it encounters in its wake.[8]

**Tribunalisation and Finance Act 2017:-**

Under Article *323-B tribunals for other matters* has been constituted each under different enactment. The Finance Act, 2017, being passed as a money bill attempted to rationalize the functioning of multiple tribunals. The current situation of emergence of collusion, complicity, connivance and incestuous institutions in myriad ways show powerful administrative tribunals and assumed powers to appoint and remove their chiefs, triggering fears that the move will undermine the authority and independence of these quasi-judicial institutions.

---

* Asst. Professor, Department of Law, Sri PadmavatiMahilaVisvavidyalayam, Tirupati

[1] Serwai ,HM,Constitutionsl law of India; Thakker, C.K., Administrative Law, Eastern Book Company : Lucknow.

[2]Article 50

[3]Articles 121 and 211

[4]Articles 122 and 212

[5]Article 361

[6]Ernesto P. Maceda, Jr., Requiem for separation of powersSEARCH FOR TRUTH , (The Philippine Star), http://www.philstar.com/opinion/2017/06/03/1706080/requiem-separation-powers

[7]Justice Louis D. Brandeis

[8]Justice Blackstone

The government has restructured and merged certain existing tribunals in pursuant to the Finance Act 2017:[9]

1. the Competition Appellate Tribunal will be merged with the National Company Law Appellate Tribunal;
2. the Airports Economic Regulatory Authority Appellate Tribunal and the Cyber Appellate Tribunal will be merged with the Telecom Dispute Settlement and Appellate Tribunal;
3. the National Highways Tribunal will be merged with the Airport Appellate Tribunal;
4. the Employees Provident Fund Appellate Tribunal will be merged with the Industrial Tribunal;
5. the Copyright Board will be merged with the Intellectual Property Appellate Board;
6. the Railways Rates Tribunal will be merged with the Railways Claims Tribunal; and
7. the Appellate Tribunal for Foreign Exchange will be merged with Appellate Tribunal (constituted under relevant foreign exchange manipulation legislation).

As a result, what used to be 26 tribunals are now down to 19. The rationalization has raised questions about the independence of these adjudicatory bodies. The qualifications, tenure, conditions of service, removal and emoluments of the chairpersons and members of these tribunals will all be under the control of the Centre While several of these mergers appear to have merit on grounds of functional similarity; there are a few mergers, which might raise eyebrows. It's not immediately apparent, for example, why the Airports Economic Regulatory Authority Appellate Tribunal is to be merged with the Cyber Appellate Tribunal and the Telecom Dispute Settlement and Appellate Tribunal? Questions have also been raised on the constitutionality of merging these tribunals through a *Finance Act*.[10]

**Rationalising tribunals:-**

Analysis rationalizing tribunals would lead to efficiency, will speed up dispute resolution and curb wasteful expenditure and ensure uniform service conditions. May prevent overlap e.g. Competition Appellate Tribunal will be merged with the National Company Law Appellate Tribunal. Since both deal with similar matters, it will particularly help in cases where a single transaction is overseen by both. E.g. Idea - Vodafone merger.[11]

The important issue is the doctrine of separation of powers whether violated. Rationalizing tribunals might lead to overburdening the tribunals with more cases than it could handle. Allowing the executive to determine appointment, reappointment and removal of members might affect the independent functioning of Tribunal and could pose a conflict of interest. [12] Tribunals are constituted for want of expertise and this would be defeated. They are judicial in the sense that the tribunals have to decide facts and apply them impartially, without considering executive policy. They are administrative because the reasons for preferring them to the ordinary courts of law are administrative reasons. The Supreme Court in Jaswant Sugar Mills vs. Lakshmi Chand laid down the test to determine whether an authority is a tribunal or not: Power of adjudication must be derived from a statute. Tribunals are not bound by strict rules of evidence and must possess the power to summon witnesses, administer oath, compel production of evidence, etc. They are to exercise their functions objectively and judicially and independently of executive policy, immune from any administrative interference in the discharge of their judicial functions.[13]The National Green Tribunal was set up as a part of India's commitment under the Rio Declaration. In addition, it was to guarantee the legal right to environment which is a part of the Right to Life under Article 21 of the Constitution as decided in number of Supreme Court decisions. The Supreme Court order and various guidelines for appointment of judicial members in tribunals, and maintained that by snatching away the power of appointment from the judiciary, the Centre aims to centralize power which shall be unconstitutional and in violation of the doctrine of separation of powers and independence of judiciary. The Central Government, through the Finance Act, 2017[14], by a seemingly innocuous but very insidious amendment, has altered the very foundation of the National Green Tribunal.[15]Increasing control of the Centre over tribunals will be contrary to 2014 Supreme Court order[16] that held appointments to appellate tribunals must be free of executive interference.

[9] Finance Act 2017

[10] Ran Chakrabarti, AnubhaSital and ShringarikaPriyadarshini, India: The Finance Act, 2017 - Implications & Constitutionality?, IndusLaw, April 2017

[11] Insights Mind maps, www.insightsonindia.com

[12] ibid

[13] AIR 1963 SC 677 at 687

[14] The Rules called The Tribunal, Appellate Tribunals and Other Authorities (Qualifications, Experiences and other conditions of service of members) Rules, 2017 ("New Rules")

[15] http://www.livelaw.in/finance-act-2017-cripples-national-green-tribunalngt/

[16] Madras Bar Association vs. UOI

## Conclusion:-

Justice Pal has underlined how increasing tribunalisation as a serious encroachment on the judiciary's independence. Judicial function is facing consistent mutilation through tribunalisation. Sadly, both the bar and the bench appear structurally complicit in it. The judiciary has been "timorous" in not contesting these tribunals that forces it to share its adjudicating powers with the executive. This is contrary to the constitutional scheme of the separation of powers between judiciary and the executive.[17]

India has a number of tribunals with appellate jurisdiction of specific sectors. The Centre has to ensure specialization. Senior Experts can be appointed from diverse specialization to deal with varied matters. Similar to High courts dealing all matters have dedicated benches tribunals also deal specific cases by respective benches. Uniformity in administrative rules will help in streamlining the functioning of these quasi-judicial bodies and ensure that vacancies aren't kept pending for long. The government must ensure the independence of the tribunal – a requirement that is part of the basic structure of the constitution.

[17] 5th V M Tarkunde memorial lecture on 'An Independent Judiciary' Justice Ruma Pal, former Supreme Court judge