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ADMINISTRATIVE ADJUDICATION AND DISPENSATION OF JUSTICE THROUGH ARMED FORCES TRIBUNAL IN INDIA: A Way Forward and Challenges

Sanjay Kumar Tyagi[*]

[***Abstract***: *The Constitution (Forty-second Amendment) Act, 1976, made major changes in the settlement of disputes relating to various matters, by introduction of Article 323-B in the Constitution. Article 323-B empowers the Parliament to establish various tribunals to deal with the litigation pertaining to other than the service matters. Many tribunals have been established under this provision including a tribunal to address disputes pertaining to armed forces. The paper studies the growth, development and working of the Armed Forces Tribunal established under Armed Forces Tribunal Act, 2007.]*

I

Introduction

In today's world over and above ministerial functions, the executive is performing many quasi-legislative and quasi-judicial functions.[1] The paradigm shift from the traditional theory of 'laissez faire state' and the ancient idea of 'Police State' to 'Welfare State has taken place. Due to this radical change in the philosophy of the role to be played by the state, its functions have increased many folds. Today it exercises not only sovereign functions, but, as a progressive democratic state, it seeks to ensure social security and public welfare for common masses. The issues arising there from are not purely legal issues. It is also not practicably possible for the traditional courts of law to deal with specialized and technical issues pertaining to the socio- economic problems; this led to gradual use of the administrative process.

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[1] *Ujjam Bai* v. *State of U.P.*, A.I.R. 1962 S.C.1621 wherein the Supreme Court stated that in Police State adjudication of disputes is the jurisdiction of ordinary courts of law, however in practice many judicial functions are being performed by the executive e.g. search, seizure, confiscation of goods, imposing fines and penalty etc., in Modern Welfare State.

The growth of administrative process has been a universal phenomenon of contemporary society, although both pace and the manner of its development have varied greatly from country to country.[2] The complexity of modern concept of governance, leads to delegation of quasi-legislative and quasi-judicial functions to the administrative authorities and tribunals. In most of the countries, redress against administrative wrong is normally obtained largely within the administrative machinery itself. But most of the legal systems demarcate sets of relationships between governors and governed and the areas of administrative activity, in which claims and controversies may be resolved and grievances be redressed through the medium of courts. Such Courts are not necessarily the ordinary courts of law; these may be special administrative courts, and they apply substantive and procedural rules distinct from ordinary law of land, these are Tribunals which include all adjudicating bodies like all quasi-judicial bodies, whether part and parcel of a department or otherwise, such bodies as are outside the control of the department involved in dispute and tribunals created by statutes.[3]

II

Welfare State and Administrative Adjudication

The *laissez-faire* doctrine which was the dominant political philosophy of the 18th and 19th centuries, led to the exploitation of the weaker section and disadvantaged in the society, growth of slums, unhealthy and dangerous conditions of work coupled with widespread poverty. Hence the idea dawned that the individualistic concept of freedom must provide way to a social concept, where state could interfere and impose restrictions on the individual freedom[4] in the interest of the general welfare of the people.[5]

The philosophy of laissez *faire* envisaged minimum governmental control, maximum of free enterprises and contractual freedom.[6] The role of the state was conceived to be negative one. The interest of a State extended primarily to defending the country from external aggression and maintaining internal law and order situation. The main function of the government was to protect the property right of the individual by

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[2] W.G. Friedmann, LAW IN A CHANGING SOCIETY 273 (1964).

[3] Hari Saran Saxena, Central Administrative Tribunal: Redress Against Administrative Wrongs 1 (1996).

[4] Freedom does not mean social isolation i.e. to be left alone. It means to be free from malnutrition, criminal and immoral inferences, unwholesome housing, the terrors or unemployment from unfair methods of business competition.

[5] Rinehart John Swenson, Federal Administrative Law; A study of the Growth, Nature, and Control of Administrative Actions 4 (1952).

[6] M.P. Jain and S. N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW 2 (2013).

making it possible for individual to follow his own self-interest in free competition with every other individual. Hence the best government was one, which governed least.[7] The central idea of the doctrine of *laissez-faire* was the natural right of the individual to acquire and hold private property.

Industry, commerce and banking were almost governed by itself and not by any regulatory body. It was believed that if men were free to make their self-interested decisions whether to buy or sell, there would be production and exchange of the greatest amount of goods and services at the least price. It was thought, that a market was itself capable of creating and exchanging the necessities for a good life, better than any conscious human agency could. These views expressed as universal and timeless truths, were a reaction to mercantilist controls of government. The governments of the country were largely controlled by the industrialist and the capitalists. Times proved nevertheless, a miscalculation, deeper than any failure, however, gross, to appreciate the deficiencies of the market mechanism. The political economists made the extraordinary and unforgivable error of assuming that manpower could or would be reduced to lowest price, at which labor would be delivered, that is to say, bare subsistence, and should there be more labor than would be brought at the price, the price would fall below bare subsistence, until the excess was withdrawn by death.[8] In the words of A.R. Desai:

> 'Injustice and misery were very much visible when the Indian society passed from its agrarian structure to the industrial pattern. The change was indeed resolute. Karl Marx also acknowledged forces unleashed by the early industrialization. The unabated inequalities of the transitional period brought in their wake un-redressed misery in the early days. New entrepreneurs who took pride in the mass production of goods had little respect for the intervening laws even when it made only a marginal inroad into their domain. The massive profits he made with the exploitation of many victims of his undiminished lust for money and economic power got legitimacy under the convenient smoke-screen of laissez faire.'[9]

As a result of the reactions against *laissez faire* doctrine, the political dogma of collectivism emerged which favoured state intervention, social control and regulation of individuals' enterprise. The idea dawned that the individualistic concept of freedom must provide way to a social concept where state could interfere and impose restrictions on the individual freedom in the interest of the general welfare of the people.[10] The state started to act in the interest of social justice and collective growth. In course of time, out of the dogma of collectivism there emerged the concept of the social welfare state which lay emphasis on the role of the state as a vehicle of socio-economic regeneration and welfare of the people. The limited role of the state concerning defense and preservation

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7 Louis L. Jatte and N.L. Nathans on, ADMINISTRATIVE LAW – CASES AND MATERIALS 8 (1976).

8 *Id*.

9 A.R. Desai, Agrarian Struggle in India after Independence 15 (1986).

10 *Supra* note 6 at 4.

of law and order was not considered sufficient. Instead the state had to concern itself with the welfare of its individual members.[11]

As a result of the change in the philosophy as to the role and function of a state, a phenomenal growth took place in the power and functions of the state.[12] In the words of Maitland, 'We are becoming a much governed nation, governed by all manner of councils and boards and officers, central and local, high and low, exercising the powers which have been committed to them by modern status'.[13] The change in the character of the government from negative to positive resulted in the conception of considerable power in the hands of the executive branch of the government.[14]

The Constitutional reforms which became rampant global phenomena, in the 19th Century started giving shape to the modern administrative state. Even a casual glance at the history of English law would show that Parliament started imposing controls and regulations by such statues as the Factories Act, the Public Heath Acts and the Railway legislation between years 1865 and 1900. However, administrative actions taken under the statutes or otherwise were not subject to judicial control in the modern form, although some of the basic rules, such as, the principles of natural justice, were enforced. India being a country under the colonial rule of English rules end up inheriting their laws and regulations predefined by the English jurisprudence. After Independence of India, the model of governance focused more on enactment of welfare laws which vested the power of decision making in the hands of the administration.[15]

These quasi-judicial powers acquired by the administration inevitably built up back log of a huge number of cases in regard to the manner and transparency of the decisions reached by the administrative bodies. The Courts held that these bodies must maintain procedural safeguards while arriving at their decisions and observe principles of natural justice. There has been a universal and widely acceptable principle that the judicial functions of the state are no longer the monopoly of the courts of justice alone, but are being increasingly shared by various administrative agencies as well.[16] In the words of Robson:

> 'With the extension during the 19th and 20th centuries, of the functions of government to one new field after another, with the progressive limitations of the rights of the individual in the interests of health, safety and general welfare of the community as a whole with the development of collective control over the conditions of employment the

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[11] J.F. Garner, ADMINISTRATIVE LAW 5 (1979).

[12] S.P. Sathe, ADMINISTRATIVE LAW 1(2001).

[13] Maitland, Constitutional History of England 501 (1955).

[14] Law Commission of India, 14th Report on *Reforms of the Judicial Administration* 674 (1958).

[15] Noor Mohammed Bilal, DYNAMISM OF JUDICIAL CONTROL AND ADMINISTRATIVE ADJUDICATION TOWARDS SPEEDY JUSTICE BY THE TRIBUNALS FOR SERVICE MATTER 24 (2004) wherein he provides that: A necessary concomitant of the vast increase of social and economic functions of the government has been the creation of administrative bodies entrusted with a wide variety of powers including the powers of adjudication of disputes.

[16] *See* Noor Mohammed Bilal; *Id*.

> manner of living, and the elementary necessities of the people there has arisen need for a technique of adjudication better filed to respond to the social requirement of the time than the elaborate and costly system of the decision making provided by litigation in the courts of Law.'[17]

The administration, like courts is today vested with the authority to adjudicate over disputes between administration and the private individuals and the tendency of vesting adjudicatory functions outside the regular law courts is increased with the passage of time.

Tribunals have grown in response to the need to provide for certain specialized forums to primarily settle disputes, such bodies were supposed to possess some expertise in the concerned area, and be cheap, expeditious and free from technical procedures than a regular court of law.

III

Meaning of Tribunal

The word 'tribunal' lacks technical precision and its meaning is not very articulate and therefore it is difficult to define it scientifically. The word tribunal is a name given to various types of administrative bodies, the only common element running through these bodies is that they are quasi-judicial and are required to observe principles of natural justice while determining issues before them.[18] Tribunal as per dictionary meaning is a seat or a bench upon which a judge sit in a court.[19]

It may be said that tribunal are a specialized group of a judicial body which are akin to our courts of law. They are normally setup under statutory power which also governs their constitutional functions and procedures. Tribunal is a body or authority, which is invested with the judicial power to adjudicate the questions of law or fact, affecting the right of the citizens in the judicial matters.

In their attempt to define tribunals Wraith and Hutchession observed, 'Tribunal is an unusually fluid expression. There are for instance, 'tribunals' which draws their jurisdiction from statute but which are nonetheless not statutorily defined as tribunals'.[20]

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[17] William A. Robson, Justice and Administrative Law: A Study of the British Constitution 33 (1957).

[18] This meaning is very wide as it includes even the ordinary courts of law, whereas, in administrative law, the expression is generally limited to adjudication authorities other than ordinary courts of law.

[19] Webster's New World Dictionary 1517 (1972).

[20] R.E. Wraith and P. G. Houtchesson, ADMINISTRATIVE TRIBUNALS 15 (1973).

While Robson stated that, an administrative tribunal is with title frequently used in the United States to denote a Commission, Board or Officer which has the power to try questions of law and fact, and to make a decision, thereby binding on private person and affecting private rights.[21] However, some jurists are of the view that it may be not entirely appropriate to call special tribunals as administrative tribunal. Tribunals are more properly regarded as part of the machinery of justice.[22]

Dicey while explaining his concept of 'Rule of Law' used the expressions 'ordinary tribunals' and 'ordinary courts' interchangeably thereby putting them at the same status. Dicey observed:

> '…in the second place, when we speak of the Rule of Law as a characteristic of our country … no man is above the law… is subject in the ordinary law of the realm and amenable to the jurisdiction of law ordinary tribunals.'[23]

It may interest us to note that even in Halsbury's Laws of England, Courts and tribunals are put under the same heading in authorities exercising powers and performing duties.[24] Tribunals in England differ functionally, operationally and constitutionally. There is no general rule governing tribunals. It has been stated that 'the search for the generic leads to the fading of the concept into obscurity and ambiguity'.[25]

Tribunals in England vary from bodies independent of government departments to bodies manned by civil servants and working within the departmental premises. In some cases, even appeal lies to the Minister from decisions of the tribunals. In some cases, they are even subject to directions of the Minister.[26]

The Frank's committee also considered the issue of independence of tribunal and stated, 'Tribunals should properly be regarded as machinery provided by parliament for adjudication other than as part of the machinery for administration'.[27]

The Categorization in absence of an articulate definition and the resemblance with the courts has become notoriously difficult one. Frank's committee Report which dominated the thinking about tribunals did not define it but rather observed following:

> 'Tribunals are not ordinary courts, but neither are they appendage to the Government Departments … We consider that tribunals should properly be regarded as machinery provided by the parliament for the adjudication rather than as part of the machinery of administration. The essential points is that in all these cases parliament has deliberately provided for a decision outside and independent of the Department concerned either at first instance… or on appeal from a decision of a minister or of a official in a special statutory position… Although the relevant statutes do not in all cases expressly enact

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[21] *Supra* note 17 at 315.

[22] De Smith, Woolf and Jowell, Judicial Review of Administrative Actions 34 (2013).

[23] Maitland, Constitutional History of England 193 (1955).

[24] Halsbury's Laws of England 529 (1974).

[25] *Supra* note 7.

[26] *Id.*

[27] Report of the Committee on Administrative Tribunals and Enquiries 9 (Cmd. 218-1957).

> that tribunals are to consist entirely of persons outside the government service, the use of the tribunal in legislation undoubtedly bears this connotation, and the intention of parliament to provide for the independence of tribunal is clear and unmistakable.'[28]

Further the Committee treated tribunals as machinery provided by parliament for adjudication rather than as part of the machinery for administration.[29] Since the Frank's report, the primary function of tribunals has been seen as adjudication, and as a result tribunals are often compared and contrasted with courts which also perform primarily the same function.[30]

After analyzing the characteristics of the tribunals as spelled out in detail by the Frank's committee, Farmer observed that it is tempting to conclude that as such there is no basic or essential difference between the courts and the tribunals.[31] However, Able Smith and Stevens says that such differences as do exist between courts and tribunals, are not in any sense fundamental but at most differences in degree.[32] Lord Hadane in *Local Govt. Board* v. *Avoided*,[33] speaking about their procedural flexibility said, 'what their procedure is to be in detail depends upon the nature of tribunals'. Garner observed:

> 'In absence of a definition in any statute, for an investigating agency to be properly described as 'tribunal' it must be constituted under the statutory authority; it must have a regular or permanent existence' and it must have also a defined jurisdiction which it is regular to exercise it powers to hear and determine disputes.'[34]

While concluding these characteristics, he observed that tribunal connotes something similar to or approaching a judicial body.[35]

In India also, although the words court and tribunal have been used in several articles of the Constitution,[36] the term have not been defined ever. The General clauses Act also does not define this term. So far as the word court is concerned, though it has been defended in certain statutes, the definition in those enactments seems to have been made for specific purpose of the concerned statues.[37]

Though the term 'tribunal' has not been defined, either in the Constitution or in any of the related legislations, there have been cases wherein courts have laid down the requisites of a tribunal.

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[28] *Id*. at 9 (para 40).

[29] *Ibid*.

[30] Peter Cane, An introduction to Administrative Law 325 (1992).

[31] *See* Noor Mohammed Bilal, *Supra* note 15 at 189 (2004).

[32] Able Smith and Stevens, In search of Justice: Law, Society and the Legal System 220-21 (1968).

[33] (1915) A.C. 120.

[34] *Supra* note 11 at 20.

[35] *Ibid*.

[36] Articles 136, 227, Entry 3 List I-VII schedule of the Constitution of India, 1950.

[37] For example, Sec. 20 IPC defines 'a court of justice 'to mean a 'judge who is empowered by law to act judicially alone.

In *Jaswant Sugar Mills*,[38] it was held that to determine whether an authority acting judicially was a tribunal or not, the 'principle incident' was whether it was invested with the trappings of a court, such as having the authority to determine matters, authority to compel the attendance of witnesses, the duty to follow the essential rules of evidence and the power to impose sanctions.

Engineering Mazdoor Sabha v. *Hind Cycles* [39] it was held that the three essential requisites for a body to be a tribunal is to have the trappings of a court, had to be established by the state and it had to be vested with the inherent judicial power of the state. However, these criteria are illustrative and not exhaustive.[40] With regard to the functioning of a tribunal, tribunals do not have to follow any uniform procedure as laid down under the Code of Civil Procedure[41] and under the Indian Evidence Act of 1872 but they have to follow the principles of natural justice.[42]

The word Tribunal has at least three meaning in Indian context.[43] Firstly, all quasi-judicial bodies, whether part and parcel of a department or otherwise, are regarded as tribunals. The only distinguished feature of these departmental bodies, as against purely 'administrative' bodies, in most cases would be that in process of arriving at their decisions they may have to observe some or all the norms of fair hearing or principles of natural justice.[44] Secondly, a narrow approach has been taken to view that only such bodies are tribunals as are outside the control of the department involved in the dispute, either because they are under the control of some other department or because of the nature of their composition or because they adjudicate on disputes between private parties. The most important aspects of the judicial mind are the independent mental process of the judge- the psychological process which arises out of his non-identification in the matters in issue before him. The types of bodies as these are endowed to a great extent with the kind of impartiality which the judge has because they are not the part and parcel of the government departments which prevents them from being biased towards departmental policies. Perhaps even within this narrow approach, those quasi-judicial bodies which are departmental but which decide disputes between private parties may be regarded as tribunals because of their impartiality in relation to the contesting parties before them.[45] Thirdly, the word "tribunal" has also been used in article 136 of the Constitution of India.

In the absence of a clear definition for general application, the characteristics of tribunals *vis-à-vis* courts have been a subject of debate before the courts for a long time. In the first case[46] which came up for consideration before the Supreme Court, the primary question

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[38] Jaswant Sugar Mills v. Lakshmi Chand, A.I.R. 1963 S.C. 677.

[39] A.I.R. 1963 S.C. 874.

[40] M.P. Jain and S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW 713 (2007).

[41] *Supra* note 12 at 297.

[42] *Supra* note 40 at 803.

[43] S.N. Jain, Administrative Tribunals in India: Existing and Proposed 6 (1977).

[44] *Id.*

[45] *Id.*

[46] *Bharat Bank* v. *Employees of Bharat Bank,* AIR 1950 SC 188.

was to ascertain the exact connotations of the words court and tribunal. Mahajan J., who delivered the principal judgment in the case, observed:

> 'It must be presumed that the draftsmen of the institution knew well the fact that there were number of tribunals constituted in this country previous to coming into force of this constitution which were performing certain administrative, quasi-judicial or domestic functions, that some of them have even the trapping of the court, but inspire of those could not be given that description. It must be presumed that the constitution makers were aware of the fact that the higher court in this country had local that all tribunals that discharged judicial functions fell within the definition of the expression 'court'.[47]

He then observed, 'Before a person or persons can be said to constitute a court is held that they derive their powers from the state and are exercising the judicial powers of the state'.[48]Thereafter, he proceeded to hold that the expression tribunal as used in Article 136 of the Constitution of India does not mean the same thing as court but included within its ambit. All adjudicatory bodies provided they are constituted by the state and invested with the judicial powers of State. A body or authority for being characterized as a tribunal for the purposes of Article 136 of the Constitution must possess the following features[49]:

(a) It must be a body or authority invested by law with power to determine questions of disputes affecting the rights of citizen.
(b) Such body or authority in arriving at the decision must be under a duty to act judicially. Whether an authority has a duty to act judicially is to be gathered from the provisions of the Act under which it is constituted. Generally speaking, if the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of the facts by means of evidence if the dispute be on a question of fact, and if the dispute be on a question of law on the presentation of legal arguments, and the decision result in the disposal of the matter on findings based upon those questions of law and fact, then such a body or authority acts judicially.
(c) Such a body must be invested with the judicial power of the state. This means that the authority required to act judicially, though not a court in strict sense, should be invested with the 'trapping of the court', such as authority to determine matters in case initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence, provisions for imposing sanctions to enforce obedience to its command. Such trapping will ordinarily make the authority which is under duty to act judicially, a tribunal.

In its epoch-making decision in *Bharat Bank Case*[50] the Supreme Court clarified the expression 'tribunal' as used in article 136 does not mean a court, but includes within its

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[47] *Id*. at p. 194.

[48] *Id*. at p. 195.

[49] V.N. Shukla, CONSTITUTION OF INDIA 511 (M. P. Singh ed. 2011).

[50] *Supra* note 46.

ambit all adjudicatory bodies, provided they are constituted by the state and are invested with judicial, as distinguished from purely administrative or executive, functions. Further, the apex court in *Workmen of Meenakshi Mills Ltd*. v. *Meenakshi Mills Ltd*.[51] reiterated the position held in *Jaswant Sugar Mills Case*[52] regarding the tests to decide whether the body or authority is Tribunal or not in following words:

1. It should not be an administrative body pure and simple, but a quasi-judicial body as well;
2. It should be under an obligation to act judicially;
3. It should have some trapping of the court;
4. It should be constituted by the state;
5. The state should confer on it its inherent judicial power, i.e., power to adjudicate upon disputes.

Owing to the absence of availability, of any clear-cut definition of the very word tribunal appears to be identical to ordinary courts of law but they are distinct from the regular court and constitute special court with inherent powers.

IV

Growth of Administrative Tribunals in India

A brief survey of various statues clearly demonstrates the fact that tribunals have functioned in India from the middle of nineteenth century. The Public Servants Inquiries Act, 1850 provided for a tribunal to be constituted for inquiring into cases of misbehaviour of public servants. The Opium Act of 1857 authorised the formation of a tribunal for licensing and imposing penalty with regard to cultivation of poppy. The Wastelands Claims Act of 1863, provided for a tribunal to adjudicatory bodies created under different legislations to discharge a number of functions.[53] The prominent amongst them, being the Railway Rates Tribunal under the Indian Railways Act, 1890, to dispose of complaints relating to the railway rates.

With the enormous growth of administrative law in India law in India in the post-Independence period, the government and its various instrumentalities came to exercise a wide variety of administrative powers. The changing role of government in welfare state led to appointment of officers of state who could discharge various functions at any point of time. This resulted in tremendous growth in civil services because without

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[51] A.I.R. 1994 S.C. 2696.

[52] *Jaswant Sugar Mills Ltd.* v. *Lashmi Chand,* A.I.R. 1963 S.C. 677.

[53] Ganges Tolls Act, 1867; The Sea Customs Act, 1978; The Explosive Act, 1884; The Land Acquisition Act, 1894; The Indian Railways Act, 1890; The Pension's Collector Act, 1871; The Indian Registration Act, 1908; The Patents and Designs Act, 1911, etc.

a huge army of civil servants it is not possible to realize its cherished dream which is the cornerstone of the Indian Constitution.

The existing system of courts proved to be inadequate to meet the needs of adjudicating various kinds of disputes that arose in these fields. There are a number of reasons which paved the way for the establishment of specialized administrative tribunals which include want of technical expertise, required to adjudicate a dispute, consumption of more time by the courts, rigid procedural formalities involved and court fees required to be paid by the litigants, etc. However, it would be far from the truth to say that the tribunals in India came to be established only after the Independence. There existed many industrial tribunals, labor courts, income tax tribunals and juvenile courts not only in pre-Independence India, but also in USA and UK. In the post-Independence era there had been a substantial growth of tribunals not only numerically but also from the point of various specialized areas like industrial law, taxation, motor vehicle accidents, customs and excise, consumer protection, environmental matters and service matters.

From the theoretical point of view, the tribunals in India are not different in any substantial manner from the tribunals in England or the agencies in the United States. Tribunals in India are presumed to be free from the executive influence. Judicial trappings are a familiar feature of the tribunals in India. True to its origin, the tribunals in India still follow the British lead.

The Law Commission of India in 1958 made a rapid survey of the developments in the United Kingdom, United States and France. It did not, however, say a single word about the composition, structure and the detailed procedure etc., of adjudicatory bodies in India.[54] The Law Commission acknowledged the value of the work of the tribunals and the need for permitting them to exist as a supplement to the courts in view of certain inherent advantages like speed, cheapness, procedural simplicity and availability of special knowledge.[55] Like the Donoughmore Committee and the Frank's Committee, the Law Commission of India, did not support supplanting the law courts and substituting them by administrative courts on the French model. The commission only emphasized that the administrative tribunals may be imbued with greater judicial spirit and insisted on the observance of the principles of natural justice.[56] The recommendations of the study team on tribunals, set-up by the Administrative Reform Commission departed substantially from those of the Law Commission of India. The study team after acknowledging the restricted nature of the constitutional protection favored the installation of tribunals of wide powers which could decide a case on facts as well as Law.[57]

Ultimately the Constitution (Forty-second Amendment) Act, 1976 had made major changes in the settlement of disputes relating to various matters, by introduction of Article 323-B in the Constitution. Article 323-B empowers the Parliament to establish

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[54] *See* Report of the Law Commission of India (14th Report, 1958).

[55] *Id*.

[56] *Id*.

[57] *See* Report of the Study Team on Tribunals 4 (March, 1967).

various tribunals to deal with the litigation pertaining to other than the service matters. Many tribunals have been established under this provision including a tribunal to address disputes pertaining to armed forces.

In India, the process of establishment of tribunals has not developed as system but catering the need of the time various tribunals were established in India like Administrative Tribunal, Labor Tribunal, National Green Tribunal for environmental protection, and National Company Law Tribunal and Armed Forces Tribunal. Keeping in mind the scope of this working to do in-depth study of the growth, development and working of the Armed Forces Tribunal established under Armed Forces Tribunal Act, 2007.

V

Armed Forces Tribunal (AFT)

Having regard to the fact that a large number of cases relating to service matters of the members of the Army, Navy and Air Forces of Union have been pending in the courts for a long time, the question of constituting an independent adjudicatory forum for the Defense personnel has been engaging the attention of the Central Government for quite some time. In 1982, the Supreme Court in *Prithi Pal Singh Bedi* v. *Union of India and others*[58] held that the absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the Government to take steps to provide for at least one judicial review in service matters. It was found that the internal grievance redressal system was not satisfactory for their being absence of independent appellate authority, the regular courts did not have the expertise to understand the harm caused to the individual due to use of highly technical phrases. Prior to establishment of the tribunal the delivery justice system in the armed forces and thereafter in the regular courts, was not speedy and was expensive. The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20th August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.[59]

By virtue of The Supreme Court judgment in *Prithi Pal Singh Bedi* v. *Union of India*[60] and the 169th law Commission Report, it was proposed to enact a new legislation to constitute The Armed Forces Tribunal for the adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the courts- martial of the members of the three services (Army, Navy and Air Force), to provide for speedy and less expensive justice to the members of the above said Armed Forces of the Union.

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58 A.I.R. 1982 S.C. 1413.

59 The Armed Forces Tribunal Act, 2007 (55 of 2007).

60 *Prithi Pal Singh Bedi* v. *Union of India,* A.I.R. 1982 S.C. 1413.

The Armed Forces Tribunal Act 2007, was passed by the Parliament which led to the formation of the Armed Forces Tribunal with the power provided for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolments and conditions of service in respect of persons subject to the Army Act, 1950, The Navy Act, 1957 and the Air Force Act, 1950.

Establishment of an independent Armed Forces Tribunal is aimed at fortifying the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters.

The Armed Forces Tribunal Act, 2007 seek to provide for judicial appeal on points of law and facts against the verdicts of courts-martial which is a crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. Besides the Principal Bench in New Delhi, AFT has Regional Benches at Chandigarh, Lucknow, Kolkata, Guwahati, Chennai, Kochi, Mumbai and Jaipur. With the exception of the Chandigarh and Lucknow Regional Benches, which have three benches each, all other locations have a single bench. Each Bench comprises of a Judicial Member and an Administrative Member.

The Judicial Members are retired High Court Judges and Administrative Members are retired Members of the Armed Forces who have held rank of Major General/ equivalent or above for a period of three years or more, Judge Advocate General (JAG), who have held the appointment for at least one year are also entitled to be appointed as the Administrative Member. The Tribunal shall transact their proceedings as per the Armed Forces Tribunal (Procedure) Rules, 2008. The Tribunal will oust the jurisdiction of all courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various courts. Ultimately, it will result in speedy and less expensive dispensation of justice to the Members of the above- mentioned three Armed Forces of the Union. The Tribunal shall exercise all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial[61] or any matter connected therewith or incidental thereto. As an unprecedented move the Act empowers the Tribunal the power to grant bail to any person accused of an offence and who is in military custody, with or without any conditions which it considers necessary. Under the Army Act there is no provision for release of an accused on bail during the course of trial.

Further the Tribunal is also empowered to allow an appeal against conviction by a court martial where the finding of the court martial is legally not sustainable due to any reason whatsoever; or the finding involves wrong decision on a question of law; or there was a material irregularity in the course of trial resulting in miscarriage of justice. But, in any other case, it may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant. The Tribunal may allow an appeal against conviction, and pass appropriate order thereon. The

[61] The Armed Forces Tribunal Act, 2007, (Act 55 of 2007), s 15(2).

Tribunal may have the powers to substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings or if sentence is found to be excessive, illegal or unjust.

It is also interesting to note that notwithstanding any other provisions of the Act, the Tribunal shall be deemed to be a criminal court for the purposes of jurisdiction and powers and for which the relevant sections of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973 shall apply.

VI

Working of Armed Forces Tribunal

The Armed Forces Tribunal Act 2007, was passed by the Parliament and led to the formation of AFT with the power provided for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolments and conditions of service in respect of persons subject to the Army Act, 1950, The Navy Act, 1957 and the Air Force Act, 1950. It can further provide for appeals arising out of orders, findings or sentences of courts- martial held under the said Acts and for matters connected therewith or incidental thereto. Besides the Principal Bench in New Delhi, AFT has Regional Benches at Chandigarh, Lucknow, Kolkata, Guwahati, Chennai, Kochi, Mumbai, Jaipur, Jabalpur and Jammu. With the exception of the Chandigarh and Lucknow Regional Benches, which have three benches each, all other locations have a single bench.

The Armed Forces Tribunal was established with the purposes to set provide speedy, less expensive and quality justice. and same could be analyzed through the following table of two benches as provided by the Principal Bench of Armed Forces Tribunal vide letter No- 9 (21)/2019/AFT/PB/Judicial II dated 17th Dec., 2019 which is as under:

Principal Bench, New Delhi

Filing of cases (filed and transferred) as on 30-11-2019	Disposal of cases as on 30-11-2019	Pendency of cases as on 30-11-2019
1494	1429	65

Lucknow Bench

Filing of cases (filed and transferred) as on 30-11-2019	Disposal of cases as on 30-11-2019	Pendency of cases as on 30-11-2019
2286	2236	50

The above-mentioned data reflects very rosy picture about working of Armed Forces Tribunal keeping pace with objectives of its establishment to provide speedy and cost-

effective justice to the armed forces. The data is reflecting speedy disposal of cases by, Principal Bench, New Delhi and Lucknow Bench, i.e., 94.65 per cent and 97.82 per cent respectively out of total cases filed and transferred. But some issues are still raising concern needs to be answered.

VII

Challenges

The disturbing information as published in the India Today[62] is that the Armed Forces Tribunal (AFT) meant to provide justice to the aggrieved forces personnel is severely affected due to non-functional benches. The pending cases in the AFT, set up only 10 years ago as dedicated courts in the three services, have spiraled to 16000.

The publisher further shown the grim picture about the Armed Forces Tribunal that only three of the 11 benches functional, it is a long wait for justice for the litigants. The benches located in Chandigarh and Srinagar are functional apart from the principal bench in Delhi which is headed by the Tribunal's Chairperson. The principal bench alone has around 4,500 pending cases with most litigants making a beeline to it.[63] This news shows the present state of AFT is a clear departure from its goal for which it was established, i.e., to provide speedy justice to the litigants.

News is further eye opener which was published in the Times of India in September[64] considering the shortage of members in the Armed Forces Tribunal the Chandigarh bench of the tribunal has disposed of around 250 cases while holding two marathon sessions on 23 and 24 September 2019. This news shows unsatisfactory state of functioning of AFT and its dispensation of justice. Along with this problem as faced by the AFT some more short comings are as under:

As far speedy justice is concerned the trend shows a quite satisfactory report, but whether they are providing quality justice, this remains a valid question for the consumer of justice which could be analyzed.

One aspect on the quality justice can also be analyzed that it is not consist of all judicial members to decide the disputes of member of armed forces, therefore, element of bias may come while deciding the dispute as administrative members are coming from department concerned.

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[62] *Available at*: https://www.indiatoday.in/india/story/armed-forces-tribunal-1571874-2019-07-21 (last visited on 6 Dec. 2019).

[63] *Id*.

[64] *Available at*: https://timesofindia.indiatimes.com/city/chandigarh/chandigarh-armed-forces-tribunal-disposes-around-250-cases-in-two-days/articleshow/71279540.cms (last visited on 6 Dec. 2019).

Another drawback is judicial review power as they are analyzing service rules whether it was arbitrary or not? But as per judgment of *L. Chandra Kumar* this power can only be exercised by constitutional court. This aspect also needs some research.

In the Armed Forces Tribunal Act, there is no provision of contempt of court as far as executions of its orders are concerned like Administrative Tribunals Act, 1985. This also poses serious threat to the satisfaction of consumer of justice and their trust in the institution.

While on one account the reason for enactment of this law was to reduce the cost of litigation for the litigant, section 30 of the enactment provides that an appeal against the final order of the tribunal shall lie only to the Supreme Court and not to the High Court[65]. The appeal shall be preferred within a period of ninety days of the impugned order. It is not secreted that the cost of litigation in the Supreme Court is very high and may not be suitable to all pocket sizes. For some litigants getting justice may become a distant dream.

VIII

Conclusion

More than 10 years have been passed since the enactment of the Armed Forces Tribunal Act, 2007; it became necessary to see how the tribunal is functioning in actual practice. Sufficient time has been passed since the establishment of the Armed Forces Tribunal. Now it's time to take stock of the situation with a view to find out that whether it has served the purpose and objective for which it was established. These are certain aspect which requires attention for proper and effective functioning of Armed Forces Tribunal.

[65] Which has writ and superintendence jurisdiction under article 226 and 227.