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**ADMINISTRATIVE ADJUDICATION: A COMPARATIVE UNDERSTANDING WITH SPECIAL REFERENCE TO TRIBUNALS**

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# Contents

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# Administrative Adjudication:
## A Comparative Understanding With Special Reference to Tribunals

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# I

### Introduction

With the shift in the notion of governance during the last century, from the model traditional theory of *laissez faire*[1] to welfare state, there have been significant developments in the functioning of the respective legal systems, such as with the establishment, recognition and enforcement of certain principles and rules, intended to govern the functions and powers of governmental agencies in order to achieve the required objectives.

Due to this radical change in the philosophy of the role to be played by any 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. With the change in the functions of the state, issues arising therefrom are not purely legal but also policy issues. Bearing these changes, it is not possible for the ordinary courts of law to deal with specialized issues entangled with the socio-economic problems, which has led the way for administrative adjudication of disputes. This paper offers a comparative account of administrative adjudication. The special reference in the paper is the dispensation of justice through the process of tribunalization in the contemporary world.

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1 Laissez faire means a policy of minimum governmental interference in the economic affairs of individuals and society.

# II

## Growth of Administrative Adjudication

As a result of the change in the philosophy, concerning the role and function of a state, a *pheno menal* growth took place in the power and functions of the state.[2] The change in the character of the Government from negative to positive, resulted in the concentration of considerable power in the hands of the executive branch of the government.[3] In the words of Maitland (1888): 'We are becoming a much-governed nation, governed by all the manners of councils and boards and officers, central and local, high and low, exercising the powers which have been committed to them by modern statutes.'[4]

A phenomenon, discernible almost invariably in the contemporary society is that the state has become an active instrument of social and economic policy. A necessary concomitant of the vast increase of social and economic functions of the government has been the creation of administrative bodies that are entrusted with a wide variety of powers including the powers of adjudication of disputes. Therefore, 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.[5]

Once introduced as an exception to the rule of law, as envisaged by Dicey,[6] the number of administrative agencies multiplied so much that today the individual is more affected by administrative decisions than by judgments of the courts of law.[7] These days, an enormous number of cases is heard and decided by agencies other than the ordinary courts of law. Thus, the growth of modern welfare state practice and the emergence of administrative mechanisms are co-related. As Robson has observed that:

'With the extension during the nineteenth and twentieth 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 manner of living, and the elementary necessities of the people, there has arisen need for the technique of adjudication, better filed to respond to the social requirement of the time than the elaborate and costly system of the decision provided by litigation in the courts of Law'.[8]

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2 S. P. Sathe, ADMINISTRATIVE LAW 1 (2014).

3 *See* Law Commission of India, 14th Report on Reforms of the judicial administration 674 (1958).

4 H. A. L. Fisher, Maitland's Constitutional History of England 501 (1955).

5 Noor Mohammed Bilal, Dynamism of Judicial Control and Administrative Adjudication Towards Speedy Justice by Tribunals for Service Matters 24 (2004).

6 A.V. Dicey, An Introduction to the Study of the Law of the Constitution 202 (10th edn…? 1965).

7 Robert Hough Jackson, The Supreme Court in the American System of Government 51 (1951).

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

According to him, the increasing tendency of the withdrawal of disputes from traditional courts and their adjudication by administration, is not the result of a well thought constitutional principle. Its growth has been haphazard and unsystematic. In the process, parliament did not overlook the course of law. Parliament created the possibility of setting up new organs of adjudication, which would do the work more rapidly, economically, efficiently than the ordinary courts. These organs would possess greater technical skills and knowledge and moreover will work with fewer prejudices against the government, which would give greater need to the social interests involved. Additionally, such adjudication organs would decide disputes with conscious efforts, furthering the social policy embodied in the legislation.[9]

The administration, like the courts today are vested with the authority to determine private rights and obligation, by rendering decisions involving individual citizens. It is manifest that the administrative organs exercising such authority are not ordinary courts in the Diceyan sense. 'Judicial' as their functions seems to be, they are not courts in the common law meaning of the term.[10]

Adjudication, therefore, means the exercise of judicial authority; perhaps, the best definition of 'administrative adjudication' can be, that it is the power of the administrative agencies to do the same species of work as courts do. Primarily, the courts settle controversies among parties on the points in disputes. Many administrative agencies do the same things. The disputes which the administrative agencies settle by formal adjudication are usually disputes between citizens on one hand and the government on the other.

The term 'administrative decision making' is used synonymously with 'administrative adjudication'. English and American views differ on the basis of distinction between a court of law and administrative authority exercising adjudicatory powers. In English law, the distinction between court and an administrative authority agency exercising adjudicatory powers lies in law and policy,[11] whereas, Americans puts a lot of faith in judges therefore, in the judicialization of administrative process.[12]

The basic distinction between courts and the administrative organs with adjudicatory powers in common law world was underlined during well-known attempt, by the committee on minister's power to distinguish between judicial and administrative decisions. As per the view of the committee, a decision presupposes an existing dispute between two or more parties and involves four requirements:

(a) Presentation of the case by the parties;
(b) Ascertainment of question of fact by means of evidence;
(c) Submission of legal arguments on question of law; and

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9 *Id*. at 442.

10 Bernard Schwerts, French Administrative Law and the Common Law World 307 (1954).

11 *See* Report of the Committee on Ministers Powers, Cmd. 1960 (1932).

12 I. P. Massey, ADMINISTRATIVE LAW 122 (2008).

A decision disposing of the whole matter, by a finding upon facts and application of law to the facts so found.[13]

An administrative decision, according to the committee is entirely different in such decisions, there is no legal obligation upon the person charged with the duty of reaching the decision, to consider and weigh submissions and arguments or to collect evidence, and the means which he takes to inform himself before acting, and these are all left to his discretion.[14]

A third kind of decision in which the committee tries to locate the resemblance of administrative adjudication is quasi-judicial decision. A quasi-judicial decision in the committee's view, also presupposes an existing dispute. It always involves the first two requirements of the four, that are required for juridical decision but it doesn't necessarily involve the third, and it never involves the fourth, which is replaced by the administrative action.[15] What emerges from this is that both judicial and quasi- judicial decisions, involves the existence of a disputes between parties. This feature operates the judicial and quasi-judicial; yet speaking in general, a quasi-judicial decision is only an administrative decision, at some stage or due to some element, it possesses judicial characteristics.[16] However, it may involve a particular step or process which may be equally used in judicial decisions.

A great bulk of cases coming before administration is only question of facts, but still they fall in the sphere of administrative adjudication. By their training and temperament an administrative agency may be best suited to decide such question of fact as judges are best master to decide.[17] However, a great number of modern statutes prescribe some general standards for administrative actions, such as, public orders, public interest, just, fair, reasonable etc. The interpretation of these standards, in their application can best be made in the context of relative situations and circumstances which in term are matters of fact and not matter of law.[18] In many cases it is necessary for the adjudicator to decide the cases on the basis of laws. The committee on Minister's power in its report accepted the fact, that a quasi-judicial decision does not necessarily involve legal arguments by the parties on any points of law which may arise.[19]

Lord Atkin in *Rex* v. *The Electricity Commissioner*[20] had observed, that an act of an administrative agency becomes quasi-judicial i.e. as administrative adjudications it has:

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13 *Supra* note 11 at 73.
14 *Id*. at 81.
15 *Id*. at 73-74.
16 *Id*. at 81.
17 A.T. Markose, Judicial Review of Administrative Action in India- A Study of methods 4 (1956).
18 P.C. Jain, Administrative Adjudication – A Comparative Study 4 (1981).
19 *Supra* note 11 at 73-74.
20 (1924) I K.B. 171.

1. legal authority to determine questions affecting rights of subjects, and
2. is under a duty to act judicially.

This criteria was subsequently supported by various judicial decisions in India and in England as well.[21] However, the first text pronounced and propounded by Lord Atkin is generally common to both kinds of acts, quasi-judicial and administrative as well. The second criteria viz., 'the duty to act judicially' emerged as the distinguishing feature between the two. As observed by Lord Hewart in *R* v. *Legislative Committee of the Church Assembly*:[22]

In order that a body may satisfy (conditions) the required test, is not enough that it should have legal authority to determine questions affecting the rights of subjects. There must be superadded to that characteristic the further characteristic, which the body has the duty to act judicially.[23]

The fallacy of these texts, can be figured out, when attention paid to the powers and methods of procedure of the bodies under examination, instead of their functions and their impact on the rights and interests of the persons affected by the decisions. The ascertainment of facts and making of decisions is a duty which each of the three departments of a government is called upon at times to perform and similarity of methods employed is without significance. The real test is the character of the act that is to be performed.

Quasi-judicial functions may, therefore, be defined as the power to perform acts administrative in nature but requiring incidentally the trial and determination of question of fact and law. The test of administrative or judicial character is whether the power or act in question is reasonable, necessary or incidental to proper carrying out of an executive or judicial function.

Referring to the position of administrative adjudication in United States, Pillsbury observes, that the administrative tribunals exercise, both the power to hear and determine and also construe and apply the laws in proper cases. A simpler statement is that where the function of the body is primarily regulatory, and the power to hear and determine is merely incidental to regulatory duty, the function is administrative. However, where the duty is primarily to decide questions of legal rights between private parties, such decisions being the primary object and not merely incidental to regulation, then the function is of 'judicial' nature.[24]

Apart from the fact that the area covered by administrative adjudication in modern welfare state is so varied and all embracing in terms of its effects, on the right and interest of the individuals, jurists are divided in their opinion regarding the explanations

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[21] *Kings* v. *London Country Council*, (1931) 2 K.B. 215; *Province of Bombay* v. *Khushaldas*, A.I.R. 1950 S.C. 222.

[22] (1928) I K.B. 411.

[23] *Id*. at 415.

[24] Worren H. Pilsbury, *Administrative Tribunals*, 36 HARVARD LAW REVIEW 419-22 (1922-23).

of fact and on law. The same question is sometimes called by the court as a question of facts and on different occasions as a question of law.

The differential matrix of law and policy seems to be more vague than real, because judges today rarely act like a slot machines; they do take into consideration policy parameters also while deciding a dispute.[25]

The concept of administrative adjudication is so varied and extensive that even the idea of quasi-judicial power, despite its ambiguity among the legal scholars is undergoing a radical change. What was considered as administrative power some year back is now being considered as a quasi-judicial power.[26] Therefore, the dichotomy of law and fact distinction or the presence of parties or *lis* cannot dilute the ever-expanding horizon of administrative adjudication. The vast adjudicatory paraphernalia created outside the court system is a concomitant of the modern administrative adjudication. The adjudicatory functions of a modern welfare government are so wide and varied that it is difficult to bring them under any bibliographical control. There is no pattern or structural design, discernible in setting up of the adjudicatory bodies which make even the peripheral description of them an unmanageable task. However, the most commonly employed technique of administrative adjudication which has achieved almost universality, is adjudication by Tribunals.

# III

## Nature and Meaning of Administrative Tribunals

Tribunals have grown in response to the need, alternatively providing for specialized forums of disputes settlements that possess certain level of expertise in the field, and are comparatively cheaper, more expeditious and free from technicalities of procedures. The word 'tribunal' lacks precision and cannot be defined in specific terms. The word tribunal is a term used for 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. Tribunal, as per the dictionary meaning is a seat or a bench upon which a judge sits in a court.[27] This meaning is wide, as it includes even the ordinary courts of law, whereas, in administrative law, the expression 'Tribunal' is generally limited to adjudication authorities, other than ordinary courts of law.[28]

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[25] *Supra* note 11.

[26] Per Hegde, J., in *A.K. Kraipak* v. *Union of India*, A.I.R. 1970 S.C. 150 at 154.

[27] *See,* Webester's New World Dictionary 1517 (2nd Edn. 1972).

[28] C. K. Thakkar, ADMINISTRATIVE LAW 224 (1992).

Wraith and Hutchession observed that:

> 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.[29]

According to Robson, an administrative tribunal is the title frequently used in the United States to denote a Commission, Board or Officer which has power to try questions of law and fact, and to make a decision, therefore binding on private person affecting private rights.[30] However, some jurists are of the view that to call special tribunals as administrative tribunal is not entirely appropriate, though the term is in common usage. Tribunals are more properly regarded as part of the machinery of justice.[31]

Fly, L.J. observed, in the *Royal Aquarium and Winter Garden Society* v. *Parkinson*[32] that this word unlike the word court has no ascertainable meaning in English law. Even Dicey, while explaining his concept of 'Rule of Law' used the expressions 'ordinary tribunals' and 'ordinary courts' interchangeably. Dicey observed: '[I]n 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 ordinary tribunals.'[33]

In Halsbury's Laws of England, courts and tribunals are put under the same heading, i.e. authorities exercising powers and performing duties.[34] As a matter of fact, there is no general rule governing tribunals. In England, tribunals differ functionally, operationally and constitutionally. It has been stated that 'the search for the generic leads to the fading of the concept into obscurity and ambiguity'.[35] Tribunals in England varies, 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. On the other hand, they are even subject to directions of the Minister.[36] It is probably because of the lack of singularity in nature, the tribunals inhibit in twilight period, where law and politics are intermingling and on occasions, are the orphaned child of both. 'To the politician they are part of the judicial system, in that they enable the ordinary man to obtain a less-expensive, fair and impartial hearing when he is affected by administrative action; whereas, to the lawyer they are not fully within the legal fold since they are, in certain aspects, an appendage of bureaucracy'.[37] The Frank's Committee also considered the independence of tribunal

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

[30] *Supra* note, 8 at 315.

[31] Woolf & Jowell, De Smith's JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS 34 (7th edn….? 2013).

[32] (1892) Q.B, 431.

[33] *Supra* note 6 at 193.

[34] Vol. 8 (4th ed. 1974) at 529.

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

[36] *Id*.

[37] *Supra* note 29 at 17.

and stated: 'Tribunals should properly be regarded as machinery provided by parliament for adjudication other than as part of the machinery for administration.'[38]

The dichotomy between the judicial system and the administration of government raises a matter of fundamental nature; how is the function of tribunals best viewed? Can it be termed as another form of court, exercising powers and following proceeds, roughly categorized as 'judicial' or carrying out functions, that are part of the machinery of Government? The categorization in absence of an articulate definition and the resemblance with the courts has become notoriously difficult one. The Committee on Minister's power[39] in England attempted to provide dividing lines, but its views are scarcely regarded as even respectable today.[40] Frank's committee Report which dominated the thinking about tribunals did not define it but observed that:

> 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 are, 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 mentions that tribunals are to consist entirely of persons outside the government service. The use of tribunal in legislation undoubtedly bears this connotation, and the intention of parliament to provide for the independence of tribunal is clear and unmistakable.[41]

Further, the committee treated tribunals as machinery provided by parliament for adjudication, rather than as part of the machinery for administration.[42] Since Frank's report, the primary function of tribunals has been considered as adjudication, and as a result tribunal are often compared and contrasted with courts which also perform primarily the same function.[43] The above-mentioned discussion, reflects that there is no clear-cut meaning of tribunals in England and in United States. But some scholars of administrative law try to define 'tribunal' as:

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 also have a defined jurisdiction, which is regular to exercise its powers to hear and determine disputes.[44]

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

39 *Id.* at 73-74.

40 *Supra* note 8.

41 *Supra* note 38 at 9 para 40.

42 *Id*.

43 Peter Cane, An introduction to Administrative Law 325 (1992).

44 *Supra* note 35 at 20.

In India also, although the terms 'court' and 'tribunal' have been used in some articles of the Constitution,[45] nevertheless, the term has not been defined. Therefore, in the Indian context the word 'Tribunal' has at least three meaning.[46]

*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.[47]

*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 type of bodies, as these are endowed to a great extent with the kind of impartiality, that the judge has, because they are not part and parcel of the government departments and that 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.[48]

*Thirdly*, the word 'tribunal' has also been used in article 136 of the Constitution of India.[49] In the absence of a definition of a general application, the characteristics of tribunals, vis-à-vis courts have been subject of debate before the courts. In the first case[50] which came up for consideration before the Supreme Court, the primary question was to ascertain the exact connotations of the words court and tribunal. J. Mahajan 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 in spite 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

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45 Articles 136, 227, Entry 3, List I, Schedule VII of the Constitution of India.

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

47 *Id*.

48 *Id*.

49 *Id*.

50 *Bharat Bank* v. *Employees of Bharat Bank*, A.I.R. 1950 S.C. 188.

tribunals that discharged judicial functions fell within the definition of the expression 'court' …[51]

He then observed that 'before a person or persons can be said to constitute a court, it is held that they derive their powers from the state and are exercising the judicial powers of the state.'[52]

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:[53]

(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[54] the Supreme Court clarified the expression 'tribunal' as used in article 136, does not mean a court, but includes within its ambit all adjudicatory bodies, provided they are constituted by the state and are invested with judicial, as distinguished from purely administrative or executive, functions.

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[51] *Id*. at 194.
[52] *Id*. at 195.
[53] M. P. Singh ed., V. N. SHUKLA'S CONSTITUTION OF INDIA 511 (11th edn….?2011).
[54] *Supra* note 50.

The apex court in *Meenakshi Mills's* case[55] reiterated the position held in *Jaswant Sugar Mills* case[56] regarding the tests to decide whether the body or authority is Tribunal or not in following words:

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

Owing to the absence of any clear-cut definition of the very word tribunal, it appears to be identical to ordinary court, but they are separate from the regular court and are special court constituted with inherent power of the state. Therefore, to ascertain the meaning of the word 'tribunals' the difference between court and tribunal has to be ascertained.

# IV

## Differences between Courts and Tribunals

While comparing administrative tribunal with the courts it may be said that administrative tribunals are those which exercise judicial functions separate from the courts and tend to be more accessible, less formal and less expensive.

The term 'Courts' refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the state for administration of justice that is for exercise of the judicial power of the state to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Justice Hidayatullah after analyzing the meaning of the word 'court' in various statutes observed in *Harinagar Sugar Mills Ltd.* v. *Shyma Sunder*:

All tribunals are not court, though all courts are tribunals. The word 'court' is used to designate, those by the state for administration of justice, the exercise of judicial power of state to maintain and up-hold rights and punish wrongs, whenever there is infringement.[57]

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[55] *Workmen of Meenakshi Mills Ltd.* v. *Meenakshi Mills Ltd.,* A.I.R. 1994 S.C. 2696.
[56] *Jaswant Sugar Mills Ltd.* v. *Lashmi Chand*, A.I.R. 1963 S.C. 677.
[57] A.I.R. 1961 S.C. 1669.

By 'Courts' is meant Courts of Civil Judicature and by 'Tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws. A Court in the strict sense is a Tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature, maintained by the State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word 'judicial', be noted, is itself capable of two meanings. They were admirably stated by Lopes, L.J. in *Royal Aquarium and Summer and Winter Garden Society* v. *Parkinson*,[58] in these words:

> The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind - that is, a mind to determine what is fair and just in respect of the matters under consideration.
> That an officer is required to decide matters before him 'judicially' in the second sense does not make him a Court or even a Tribunal, because that only establishes that he is following a standard of conduct and is free from bias or interest.

In every State there are administrative bodies or authorities which are required to deal with matters within their jurisdiction in an administrative manner and their decisions are described as administrative decisions. In reaching their administrative decisions, administrative bodies can and often to take into consideration questions of policy. It is not unlikely that even in the process of reaching administrative divisions, the administrative bodies or authorities are required to act fairly and objectively and would in many cases have to follow the principles of natural justice. However, the authority to reach decision conferred on such administrative bodies is clearly distinct and separate from the judicial power conferred on courts, and the decisions pronounced by administrative bodies are similarly distinct and separate in character from judicial decision pronounced by courts.

Tribunals which fall under the purview of article 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the court one common characteristic; both the courts and the tribunals are constituted by the state and are invested with judicial as distinguished from purely administrative or executive functions (vide *Durga Shankar Mehta* v. *Raghuraj Singh*, 1955 (1) SCR 267). They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the courts is regularly prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure. The procedure which the Tribunals have to follow, may not always be so strictly prescribed, but the approach adopted by both the courts and the Tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of courts, so in the case of

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[58] (1892) 1 Q.B. 431.

Tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge.

In *Kihoto Hollohan* v. *Zachillhu*,[59] a Constitution Bench reiterated the above position and added the following:

> Where there is a lis - an affirmation by one party and denial by another - and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide, there is an exercise of judicial power. That authority is called a Tribunal, if it does not have all the trappings of a court.

In *S.P. Sampath Kumar* v. *Union of India*,[60] this Court expressed the view that the Parliament can without in any way violating the basic structure doctrine, make effective alternative institutional mechanisms or arrangements for judicial review.

Though both Courts and Tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and Tribunals. They are:[61]

(a) Courts are established by the State and are entrusted with the State's inherent judicial power for the administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are Tribunals. But all Tribunals are not courts.
(b) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member or can have a combination of a Judicial Member and a Technical Member who is an `expert' in the field to which Tribunal relates. Some highly specialized fact-finding Tribunals may have only Technical Members, but they are rare and are exceptions.
(c) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and Evidence Act, requiring an elaborate procedure in decision making, Tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of Evidence Act.

On the basis of these decisions of the Supreme Court, it can be concluded that the basic and fundamental feature which is common to both the courts and the tribunals, is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign state. Traditionally tribunals were considered essentially and as a primary means, a part derived of the executive branch, exercising executive as well as judicial functions. But today most of the tribunals enjoy full measure of independence and there is no question of their being subject to political control or subject to any dictation by

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[59] (1992) Supp (2) S.C.C. 651.
[60] (1987) 1 S.C.C. 124.
[61] *Union of India* v. *R. Gandhi, President Madras Bar Association*, 2010 (5) S.C.A.L.E. 514.

some executive officials as to how they decide cases, both for constitution and composition they are independent. In terms of their independence from the executive, they are more or less court of law in disguise.[62]

The product which emerges from above discussion is, that on the functional side there is no clear-cut distinction between a court and tribunal. Both are vested with the inherent judicial power of state to hear and determine disputes. However, a court of law is normally a body, which is historically and formally to be so regarded, whereas tribunal is a body entertaining matters of a specialized nature for which they are created. A tribunal possesses expertise in a particular branch of litigation.

The position of members of a tribunal lies somewhere between a judge and a civil servant. The powers on a tribunal are conferred direction by the statutes and therefore, are not subject to the administrative control of the executive.[63]

Most tribunals are appellate bodies, whose function is to hear appeals against the substance of discretionary administrative decision made by administrative officer of subordinate tribunal. Tribunals are not primarily concerned about the legality of administrative decision, but with the substance & administrative decision.

# V

## Need and Importance of Tribunal

A significant aspect of expansion of functions of administration in modern era is, that the power of adjudication is being given to administrative authorities. Normally, the function of adjudication of disputes between two persons, or between the state and person, is vested in courts. However, it will be wrong to suppose that the courts today enjoy a monopoly of the entire adjudicatory power. Today, the courts are not the exclusive instrumentalities for adjudication of disputes. Side by side with the courts, innumerable administrative bodies have sprung up to discharge adjudicatory function in a variety of situations. These bodies are created by legislation; they decide questions of fact, as well as of law, and determine a variety of applications, claims, and controversies and disputes not only between government department and an individual, but also between two individuals. Now adjudication is resumed by administration in a very close resemblance with the work performed by judiciary. Justice by tribunal in its offing is a big way around the world resulting in ouster of jurisdiction of the courts. [64]

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[62] H.W.R. Wade, GOVERNMENT AND CITIZEN'S RIGHT: NEW PROBLEMS NEW INSTITUTIONS ( first vithal Bhai Patel Memorial Lectures at Institute of Constitutional and Parliamentary Studies, New Delhi, 1974).

[63] M. P. Jain & S. N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW 316 (2013).

[64] *Id*.

This trend of vesting adjudicatory functions in officials, administrative agencies institutions or tribunals outside the hierarchy of regular courts is becoming increasingly pronounced with the passage of time. The system of adjudication, by bodies outside the system of regular law courts, is becoming more and more important and pervasive with the lapse of time. This trend is manifesting practically in every democratic country around the world. This is universal modern phenomenon in democracies.[65]

The main causes for the evolution of the system of administrative adjudication are practically the same as have led to the emergence of delegated legislation, *viz.*, expansion in governmental operations, activities, functions and responsibilities because of the socio-economic changes which are taking place in the countries. The modern government has come to undertake many functions and regulate many activities. New laws are being enacted to modify existing interpersonal rights and obligations or create new ones. These laws generate a number of occasions, when a person may be at issue with the administration, or with another citizen or body as regards his rights and obligations. This creates the need to adjudicate upon disputes, which has necessitated the development of technique of administrative adjudication that may better respond to the social needs than the elaborate and costly system of decision through court litigation.[66] These are the following reasons which compelled the need of the tribunals:

### *A. Procedural Rigidity in Regular Courts and Speedy Justice*

In the current scenario, with the operation of newly enacted socio-economic legislation, if left with the regular courts for adjudication then it will place huge burden on the judicial machinery clogging it beyond redemption, and will slow down the administrative process. Properly constituted tribunal can lighten the work of courts, resulting in imminence benefit to the people who suffered a great deal because of delayed justice. Most of the cases arising in course of administrative functioning, the formality of atmosphere such as procedural rigidity is not adequate for quick disposal of cases. In most of the cases, what is needed is an informal atmosphere untrammeled by too elaborate and technical rules of procedure or evidence. Effective implementation of new policies demands speedy, less expensive and decentralized determinations of a large number of cases. These advantages are offered by tribunals. These advantages have been highlighted by the Supreme Court in *Union of India* v. *R. Gandhi, President Madras Bar Association*[67] in following words:

> The courts function under archaic and elaborate procedural laws and highly technical Evidence Law. To ensure fair play and avoidance of judicial error, the procedural laws provide for appeals, revisions and reviews, and allow parties to file innumerable applications and raise vexatious objections as a result of which the main matters get pushed to the background. All litigation in courts get inevitably delayed which leads to frustration and dissatisfaction among

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[65] *Id*.

[66] *Id*. at 643.

[67] 2010 (5) S.C.A.L.E. 514.

> litigants. In view of the huge pendency, courts are not able to bestow attention and give priority to cases arising under special legislations. Therefore, there is a need to transfer some selected areas of litigation dealt with by traditional courts to special Tribunals. As Tribunals are free from the shackles of procedural laws and Evidence Law. They can provide easy access to speedy justice in a `cost- affordable' and `user-friendly' manner.

Similarly, Leggatt Committee also highlighted the advantage of tribunal in these words:

> Tribunal's procedures and approach to overseeing the preparation of cases and their hearing can be simpler and more informal than the courts, even after the civil justice reforms. Most users ought therefore to be capable of preparing and presenting their cases to the tribunal themselves, providing they have the right kind of help. Enabling that kind of direct participation is an important jurisdiction for establishing tribunals at all.[68]

### *B. Exigency of Modern Government*

Another important reason for the new development is that while the courts are accustomed to deal with cases primarily according to law, exigency of modern administration often makes it incumbent, that some kind of controversies be disposed by applying not law, pure and simple, but considerations of policies as well. Such factors are considerations of socio-economic policy, financial position of government, foreign exchange position, priorities and allocations between competing claims and the like. In the words of Wade and Phillip:[69] '[M]odern government gives rise to many disputes which cannot appropriately be solved by applying legal principles or standards and depends ultimately on what is desirable in the public interest as matter of social policy.'

It is only administrative adjudication which can take care of such matters. An ordinary court of law is hardly fit instrument for such exercise. The judges most often tend to be too literal or technical in their interpretation of legislation and such an approach may not be suitable to most of the modern socio-economic legislations. All these factors, lead to the necessity of entrusting the task of adjudication upon disputes under modern bodies other than courts which can have flexibilities of approach.[70]

### *C. Specialization and Expertise*

A judge is a generalist, while many newly generated cases arising out of modern administrative process, require an expertise in various disciplines other than law. In several required cases, judge need to possess an expert knowledge of particular subjects to which these cases relate. An expert may be in better position to adjudicate upon such subject matters rather than a generalist lawyer-judges. Administrative tribunals have

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[68] LEGGATT COMMITTEE REPORT, Report on Tribunal for Users-One System One Service, *March 2001*.

[69] Wade and Phillips, CONSTITUTIONAL LAW 699 (7th edn. 1965).

[70] *Supra* note 63 at 644.

such kind of advantage over regular courts. This position is established by the Supreme Court in *Union of India* v. *R. Gandhi, President Madras Bar Association*[71]:

> Tribunals should have a Judicial Member and a Technical Member. The Judicial Member of natural justice such as fair hearing and reasoned orders. The Judicial Member will act as a bulwark against apprehensions of bias and will ensure compliance with basic principles and also ensure impartiality, fairness and reasonableness in consideration. The presence of Technical Member ensures the availability of expertise and experience related to the field of adjudication for which the special Tribunal is created, thereby improving the quality of adjudication and decision-making.

The United Kingdom has a rich experience of functioning of several types of Tribunals as dispute resolution-and-grievance settlement mechanisms, in regard to varied social welfare legislations. Several Committees were constituted to study the functioning of the Tribunals, two of which require special mention. The first is the *Franks Report* which emphasized that Tribunals should be independent, accessible, prompt, expert, informal and cheap. The second is the report of the Committee constituted to undertake the review of delivery of justice through Tribunals, with Sir Andrew Leggatt as Chairman. The *Leggatt Committee* submitted its report to the Lord High Chancellor of Great Britain in March, 2001. The Committee explained the advantages of Tribunals, provided they could function independently and coherently.

Choosing a tribunal to decide disputes should bring two distinctive advantages for users. First, tribunal decisions are often made jointly by a panel of people who pool legal and other expert knowledge and are better for that range of skills. Secondly, tribunal's procedures and approach to overseeing the preparation of cases and their hearing can be simpler and more informal than the courts, even after the civil justice reforms. Most users ought therefore to be capable of preparing and presenting their cases to the tribunal themselves, provided they have the right kind of help. Enabling that kind of direct participation is an important jurisdiction for establishing tribunals at all.

De Smith sets out the advantages of Tribunals thus:

> In the design of an administrative justice system, a Tribunal may be preferred to an ordinary court because its members have specialized knowledge of the subject-matter, because it will be more informal in its trappings and procedure, because it may be better at finding facts, applying flexible standards and exercising discretionary powers, and because it may be cheaper, more accessible and more expeditious than the High Court. Many of the decisions given to Tribunals concern the merits of cases with relatively little legal content, and in such cases a Tribunal, usually consisting of a legally qualified Tribunal judge, and two lay members, may be preferred to a court. Indeed, dissatisfaction with the over-technical and allegedly unsympathetic approach of the courts towards social welfare legislation led to a transfer of functions to

[71] 2010 (5) S.C.A.L.E. 514.

> special Tribunals; the Workmen's Compensation Acts were administered by the ordinary courts, but the National Insurance (Industrial Injuries) scheme was applied by Tribunals. It is, however, unrealistic to imagine that technicalities and difficult legal issues can somehow be avoided by entrusting the administration of complex legislation to Tribunals rather than the courts.[72]

### *D. Easy Accessibility and Less Expensive*

Some of the reasons, therefore, for entrusting adjudication of certain matters by the legislature to bodies, other than courts *inter alia* are, less expensiveness, easy accessibility, expeditious disposal of disputes, expertise, freedom from technicality, and flexibility. The various adjudicatory bodies have grown not to satisfy any political dogma or philosophy, but out of practical necessity to cope with certain problems of public concern. Wade also refers to the advantage of Tribunals in these words:

> The social legislation of the twentieth century demanded Tribunals for purely administrative reasons: they could offer speedier, cheaper and more accessible justice, essential for the administration of welfare schemes involving large numbers of small claims. The process of the courts of law is elaborate, slow and costly. Its defects are those of its merits, for the object is to provide the highest standard of justice; generally speaking, the public wants the best possible article, and is prepared to pay for it. But in administering social services, the aim is different. The object is not the best article at any price but the best article that is consistent with efficient administration. Disputes must be disposed of quickly and cheaply, for the benefit of the public purse as well as for that of the claimant. Thus, when in 1946 workmen's compensation claims were removed from the courts and brought within the Tribunal system, much unproductive and expensive litigation, particularly on whether an accident occurred in the course of employment, came to an end. The whole system is based on compromise, and it is from the dilemma of weighing quality against convenience that many of its problems arise.[73]

An accompanying advantage is that of expertise. Qualified surveyors sit on the Lands Tribunal and experts in tax law sit as Special Commissioners of Income Tax. Specialized Tribunals can deal both more expertly and more rapidly with special classes of cases, whereas in the High Court, counsel may take a day or more to explain to the judge, how some statutory scheme is designed to operate. Even without technical expertise, a specialized Tribunal quickly builds up expertise in its own field. Where there is a continuous flow of claims of a particular class, there is every advantage in a special jurisdiction.[74]

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[72] *Supra* note 31 at 50 Para 1.085.

[73] Wade & C. F. Forsyth, ADMINISTRATIVE LAW 773-74 (11th edn. 2015).

[74] W.G. Friedmann, LAW IN A CHANGING SOCIETY 540 (1964).

# VI

## Conclusion

The genesis and proliferation of tribunals is a mile stone in the present day legal science. By the end of laissez faire, the tribunal system was accepted as an item in the agenda of modern government, mainly because of its advantages. The initial Dicey's objection against the administrative adjudication slowly dried up and passed the way later for the growth of the same as welfare state has to discharge a variety of functions. The social legislation which is result of welfare state notion, expanded the function of government and brought most extensive and pervasive system of administrative tribunal in most of the modern democracies including India. Hence, tribunalization as a dispute solving mechanism has come into existence as a supplementary to the traditional judicial system. Tribunals were demanded for purely administrative reason as they could offer speedier, less expensive and more accessible justice which are essential for administration of welfare scheme.