

**ANALYSIS OF THE TRIBUNALS REFORMS (RATIONALISATION AND
CONDITIONS OF SERVICE) ORDINANCE, 2021**

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Abstract

This article seeks to understand the effect of Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 on the justice delivery system of the country. As Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 has been promulgated by President of India on April 4, 2021. Which has initiated the debate about various issues like whether specialised tribunals are required for a sound justice delivery system or conventional courts are sufficient. Another issue is the delay in the delivery of justice by conventional courts because of plethora of cases are pending before them.

Introduction

the term 'tribunal' is used in a significant sense and signifies to only the adjudicatory bodies which exist outside the sphere of the ordinary judicial system. Technically the judicial powers are lies in the Courts which aims to safeguard the rights of the individuals and to provide justice to the citizens. But sometimes ordinary courts fail to provide justice to its citizens because of reasons such as lack of expertise, high no. of cases and complex court procedures so the judicial powers are delegated to the administrative authorities, thus, giving rise to administrative tribunals or administrative adjudicatory bodies which holds quasi-judicial nature.

The 42nd Amendment to the Constitution introduced Part XIV-A which included Article 323A¹ and 323B² providing for constitution of tribunals dealing with administrative matters and other issues. According to these provisions of the Constitution, tribunals are to be organized and established in such a manner that they do not violate the integrity of the judicial system given in the Constitution which forms the basic structure of the Constitution.

¹ India Const. art. 323A, amended by the constitution (forty-second amendment) act, 1976

² India Const. art. 323B, amended by the constitution (forty-second amendment) act, 1976

The introduction of Article 323A³ and 323B⁴ was done with the primary objective of excluding the jurisdiction of the High Courts under Article 226 and 227, except the jurisdiction of the Supreme Court under Article 136 and for originating an efficacious alternative institutional mechanism or authority for specific judicial cases.

The purpose of establishing tribunals to the exclusion of the jurisdiction of the High Courts was done to reduce the pendency and lower the burden of cases. Therefore, tribunals are organised as a part of civil and criminal court system under the supremacy of the Supreme Court of India.

From a functional point of view, an administrative tribunal is neither an exclusively judicial body nor an absolute administrative body but is somewhere between the two. That is why an administrative tribunal is also called 'quasi-judicial' body.

On April 4, 2021, the President has promulgated the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 effective immediately. The Ordinance seeks to dissolve several appellate bodies and transfer their functions to judicial bodies. These acts include, the Cinematograph Act, 1952, the Customs Act, 1962, the Airports Authority of India Act, 1994, the Trade Marks Act, 1999 and the Protection of Plant Varieties and Farmers' Rights Act, 2001 and certain other Acts. Major changes introduced to various statues are following:⁵

Cinematograph Act

The Appellate Tribunal, constituted under this act to hear the appeals from censor board has been dissolved and now High courts have been vested this power.

Copyright Act

the Appellate Board which heard appeals against orders of the Registrar of Copyrights have been dissolve and is replaced by Commercial Courts, defined as below under the ordinance:

“Commercial Court, for the purposes of any State, means a Commercial Court constituted under section 3, or the Commercial Division of a High Court constituted under section 4 of the Commercial Courts Act, 2015.”

³ *India Const. supra Note 1, at 1*

⁴ *India const. supra Note 2, at 1*

⁵ *SCCONLINE.com, <https://www.sconline.com/blog/?p=246590>, May 7, 2021*

Customs Act, 1962

The appellate authority and has been dissolved by the ordinance. And concerned High Court have been assigned power to hear appeals against decisions of the Customs Authority for Advance Rulings.

Patents Act, 1970

The Appellate Board under the Act have been dissolved. which was constituted to hear appeals against decisions, orders or directions of the Controller General of Patents, Designs and Trade Marks or the Central government. Now the High Court has been empowered for the same.

Airports Authority of India Act, 1994

The Airport Appellate Tribunal which was empowered to hear appeals against orders of the eviction officer have been dissolved. This power is now vested with the High Court.

Trade Marks Act, 1999

The Intellectual Property Appellate Board (IPAB) for hearing trade mark case-appeals have been dissolved. Now The power of IPAB has been vested with the High Court.

Geographical Indications of Goods (Registration and Protection) Act, 1999

The Appellate Board under this Act has been replaced by the High Court.

Protection of Plant Varieties and Farmers' Rights Act, 2001

the Plant Varieties Protection Appellate Tribunal established by the Act have been dissolved. Which was constituted to hear appeals against decisions of the Protection of Plant Varieties and Farmers' Rights Authority and the Registrar of Plant Varieties Registry. This power is now lie with the concerned High Court.

Control of National Highways (Land and Traffic) Act, 2002

The Airport Appellate Tribunal was empowered to hear appeals under this Act which has been transferred to the principal Civil Court of original jurisdiction in a district, which includes the High Court in exercise of its ordinary original civil jurisdiction.

Finance Act 2017

The ordinance has also altered the tenure of a chairperson or member in a tribunal to four years in a new subsection (11) introduced under Section 184 of the Finance Act, 2017. This new subsection reads as follows:

“(11) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, —

(i) the Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier;

(ii) the Member of a Tribunal shall hold office for a term of four years or till he attains the age of sixty-seven years, whichever is earlier:

Provided that where a Chairperson or Member is appointed between the 26th day of May, 2017 and the notified date and the term of his office or the age of retirement specified in the order of appointment issued by the Central Government is greater than that which is specified in this section, then, notwithstanding anything contained in this section, the term of office or age of retirement or both, as the case may be, of the Chairperson or Member shall be as specified in the order of appointment subject to a maximum term of office of five years.”

Further, Section 184 has also been replaced by a new Section 184, which has revised qualifications for appointment as Chairperson and members of a tribunal.

Process of rationalisation of tribunals started to take place by the Government of India since 2015. As per the Central government the proposed reforms are formulated in order to streamline the tribunals. It suggested that public exchequer’s burden shall be reduced by reducing down the tribunals’ infrastructure and supporting staff. According to the said statistical by the government, in many sectors the tribunals have not delivered justice in efficient manner.

Supreme Court comprising of Three-Judge bench observed⁶ that establishing tribunals at centre as well as at state level each is necessary for fast and efficient delivery of justice to the citizens who are financially and geographically restrained. The appellate tribunals which are proposed to do away with are considered as the additional layer of litigation, which cause delay.

⁶ *R.K. Jain vs Union of India and ors, 1993 SCR (3) 802*

The Ordinance has started longstanding debates amongst people from various fields. One concern is regarding the specialisation of the courts. It is a fact that Tribunals signifies specialisation of the subject, they are based on. Administrative Tribunals perform 'hybrid function'. Tribunals are equipped with technique and expertise to resolve the complex problems. In the modern era, certain complex matters cannot always be resolved by applying pure legal principles. Administrative Tribunals play an important role of keeping in mind the technicalities and public interest while resolving the issues.

The need of Tribunals has been recognised by the Supreme Court of India in a case⁷, rejected the view that resolving the dispute and delivering the justice to the people by the tribunals violates the basic structure of the Constitution. The supreme Court also observe that the matter which involves technical aspects and require assistance of experts, Tribunals are the judicial institutions established to adjudicate them.

The prime issue is that whether reducing the exchequer burden by scrapping the tribunals will compromise the quality of Justice delivery system. There is a possibility that the High Courts and Commercial Courts may face issues in resolving plethora of cases which require technical expertise in a specified field. This would result into pendency of cases and again fail the objective of Indian Legal System of meeting the needs of the society. Lack of judges in Supreme Court and especially in High Courts is a matter of concern since a long time.

In addition, transferring pending cases before the Appellate Tribunals to Commercial Courts and High Court as provisioned in the proposed Bill, would lead to procedural as well as practical complexities. Law Commission's 245th Report (2014)⁸ suggested that to resolve the backlog issue, well qualified and efficient judges are required to increase the rate of disposal of cases. In this circumstance, scrapping of tribunals may not go well.

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⁷ *Madras Bar Association v. Union of India*, (2015) 8 SCC 583

⁸ *Lawcommissionofindia.nic.in*, <https://lawcommissionofindia.nic.in/reports/Report245.pdf>, May 7, 2021

Conclusion

Tribunals provide justice to the people by infusing expert knowledge in the respective field and also resolve the complex issues in less time because of expertise. We are living in a world which is very complex and require expertise to understand the complex issues properly so we need tribunals to resolve those issues. But where the tribunals are required have to be decided very carefully because excess no. of tribunals may hamper the delivery of justice by giving unreasonable judgements without following the basic principle of justice and fairness and also can create extra burden of public exchequer. From above observation it can be said that before taking any decision the ultimate aim of justice should be in mind.

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