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**LAW COMMISSION OF INDIA**

**Report No.272**

**Assessment of Statutory Frameworks of  
Tribunals in India**

**October, 2017**

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27th October, 2017

Dear Shri Ravi Shankar Prasad Ji,

The Supreme Court, in *Gujarat Urja Vikas Nigam Ltd v. Essar Power Ltd*, (2016) 9 SCC 103, has asked the Law Commission of India to, *inter alia*, to consider, changes required to be made in the statutory framework constituting various Tribunals keeping the very objective of their establishment and the procedure and terms and conditions for appointment of Chairperson and Members to such Tribunals.

The Commission considered working of the tribunal system in our country and foreign countries, reports of the earlier Law Commissions and various Committees, judicial pronouncements of the Supreme Court and High Courts, and analysed the provisions in the existing laws constituting Tribunals along with the relevant data available on the subject. After examination, the Law Commission has drawn a detailed step-by-step procedure for improving the working of the tribunal system in the country.

I have the privilege of forwarding the Two Hundred and Seventy Second Report of the Commission titled "**Assessment of Statutory Framework of Tribunals in India**" for consideration by the Central Government.

With warmest regards,

Yours sincerely,

[Dr. Justice B.S. Chauhan]

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## CHAPTER – I

### INTRODUCTION

1.1. The term ‘Tribunal’ is derived from the word ‘Tribunes’, which means ‘Magistrates of the Classical Roman Republic’. Tribunal is referred to as the office of the ‘Tribunes’ i.e., a Roman official under the monarchy and the republic with the function of protecting the plebeian citizen from arbitrary action by the patrician magistrates. A Tribunal, generally, is any person or institution having an authority to judge, adjudicate on, or to determine claims or disputes – whether or not it is called a tribunal in its title.<sup>1</sup>

1.2. ‘Tribunal’ is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between a Court and an administrative body. The exigencies of the situation proclaiming the enforcement of new rights in the wake of escalating State activities and furtherance of the demands of justice have led to the establishment of Tribunals.<sup>2</sup>

1.3. The delay in justice administration, is one of the biggest obstacles which have been tackled with the establishment of Tribunals.<sup>3</sup> According to H.W.R Wade, “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 number of small claims. The process of Courts of law is elaborate, slow and costly....Commissioners of customs and excise were given judicial powers more than three centuries ago. Tax tribunals were in fact established as far back as the 18<sup>th</sup> century.”<sup>4</sup>

1.4. In due course of time, a need for a system of adjudication has arisen which is more suited to give response to the emerging requirements of the society which may

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<sup>1</sup> Walker, David M., *Oxford Companion to Law*, Oxford University Press, ISBN 0-19-866110-X, 1980 at p.1239.

<sup>2</sup> Kagzi, M.C.J, *The Indian Administrative Law*, Metropolitan Book Co. Pvt. Ltd., Delhi, 3<sup>rd</sup> edn., 1973 at pp. 276 and 279.

<sup>3</sup> Sinha, S. B., “Judicial Reform in Justice-Delivery System” (2004) 4 SCC (Jour) 35.

<sup>4</sup> Wade, H.W.R & Forsyth, C.F., *Administrative Law*, Oxford University Press, United Kingdom, 10<sup>th</sup> edn., 2009 at p. 773.

not be so elaborate and costly as provided by the Courts of law. The primary reason for the creation of Tribunals was to overcome the crisis of delays and backlogs in the administration of justice. Therefore, the Administrative Tribunals have been established to overcome the major lacuna present in the Justice delivery system in the light of the legal maxim *Lex dilationes semper exhorret* which means ‘The law always abhors delays’.<sup>5</sup>

1.5. The delay in disposal of cases relating to civil matters is significantly increasing arrears, and the courts seem helpless in this matter. “The necessities of the modern collectivist State with the aim of the creation of a socialist society are multipurpose”. The State has ceased to be neutral with the giving up of the philosophy of *laissez faire* and has become vigorous so as to affect every man in every sphere.<sup>6</sup>

1.6. To overcome the situation that arose due to the pendency of cases in various Courts, domestic tribunals and other Tribunals have been established under different Statutes, hereinafter referred to as the Tribunals. A ‘tribunal’ in the legal perspective is different from a domestic tribunal. The ‘domestic tribunal’ refers to the administrative agencies designed to regulate the professional conduct and to enforce discipline among the members by exercising investigatory and adjudicatory powers. Whereas, Tribunals are the quasi-judicial bodies established to adjudicate disputes related to specified matters which exercise the jurisdiction according to the Statute establishing them. Similarly, Ombudsman looks into the complaints of grievances suffered by the citizen at the hands of some organ of the administration.

1.7. The increase in number of statutory Tribunals mirrors the rise in State activities. Because the legislation has progressively bestowed benefits on individuals and subjected their everyday lives to propagating control and management, the scope for dispute between an individual and the State has emerged.<sup>7</sup> Tribunals are cheaper (cost effective) than Courts but their constitution and functions are different from the Courts.

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<sup>5</sup> K. I. Vibhute, “Administrative Tribunals and the High Courts: A Plea for Judicial Review” 29 *JILI* 524 (1987).

<sup>6</sup> *Supra* Note 2 at 271.

<sup>7</sup> Elliott, Mark, Beatson, Jack, Matthews, Martin, *Administrative Law: Text and Materials*, Oxford University Press, New York, 3<sup>rd</sup> edn., 2005 at p. 679.

However, a Tribunal is more suited than a Court to undertake the task after considering all relevant issues of law, fact, policy and discretion.<sup>8</sup>

1.8. According to Chantal Stebbings, “The reasons for the diversity, lack of coherence, uncertainty of status and inherent individual weaknesses which have rendered both theoretical analysis and practical reform so problems lie to a considerable extent in the historico-legal context of the statutory administrative tribunal as an institution in the nineteenth century.” He further adds, “The term ‘tribunal’, not being a term of art, referred to any dispute-resolution body or process, from the regular courts of law, through domestic bodies regulating clubs, societies and professions, to ministers making decisions in the course of their administrative duties.”<sup>9</sup>

1.9. According to Neil Hawke, “Administrative tribunals might well be referred to as ‘administrative courts’ since usually their task is to adjudicate disputes which arise from the statutory regulation of a wide variety of situations, some of which will involve decisions or other action by administrative agencies, or relationship between private individuals.”<sup>10</sup>

1.10. The Franks’ Report (1957) identified the advantages of Tribunals as *‘cheapness (cost effectiveness), accessibility, freedom from technicality, expedition and expert knowledge of their particular subject.’* It enumerated three broad principles that should govern the operation of the Tribunals as well as the planning inquiries, which are openness, fairness and impartiality in the following words:

*‘Tribunals are not ordinary courts, but neither are they appendages of Government Departments. Much of the official evidence ... appeared to reflect the view that tribunals should properly be regarded as part of the machinery of administration, for which the Government must retain a close and continuing responsibility. Thus, for example, tribunals in the social services field would be regarded as adjuncts to the administration of the*

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<sup>8</sup> Groves, Matthew, Lee, H. P., *Australian Administrative Law: Fundamentals, Principles and Doctrines*, Cambridge University Press, New York, 1<sup>st</sup> edn., 2007 at p. 77.

<sup>9</sup> Stebbings, Chantal, *Legal Foundations of Tribunals in Nineteenth Century England*, Cambridge University Press, New York, 1<sup>st</sup> edn., 2006 at p. 3.

<sup>10</sup> Hawke, Neil, *Introduction to Administrative Law*, Cavendish Publishing Limited, United Kingdom, 1<sup>st</sup> edn., 1998 at p. 65.

*services themselves. We do not accept this view. We consider that tribunals should properly be regarded as machinery provided by Parliament for adjudication rather than as part of the machinery of administration. The essential point 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 an official in a special statutory position... Although the relevant statutes do not in all cases expressly enact that tribunals are to consist entirely of persons outside the Government service, the use of the term 'tribunal' in legislation undoubtedly bears this connotation, and the intention of Parliament to provide for the independence of tribunals is clear and unmistakable.'*<sup>11</sup>

1.11. According to Robin Creyke, “Tribunals generally have more speedy processes and less formal procedures than courts, including an absence of any requirement to follow rules of evidence. Tribunals are generally cheaper than Courts and there may be limits on legal representation in Tribunal hearings.”<sup>12</sup>

1.12. As per Robson, “*administrative tribunals do their work more rapidly, more cheaply, more efficiently than the ordinary courts .... possess greater technical knowledge and fewer prejudices against government; .... give greater heed to the social interests involved .... decide disputes with conscious effort at furthering the social policy embodied in the legislation.*”<sup>13</sup>

1.13. The Tribunals have the power to adjudicate over a wide range of subjects that impact everyday life. Tribunals function as an effective mechanism to ameliorate the burden of the judiciary. The law Courts with their elaborate procedures, legalistic fronts and attitudes were deemed incapable of rendering speedy and affordable justice to the parties concerned. Particularly in technical cases, it was felt that the nature of the statutes required adjudicatory forums comprising of persons having expert knowledge of the working of these laws. The Tribunals emerged not with the sole promise of speedy, effective, decentralised dispensation of justice but also the expertise and

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<sup>11</sup> Drewry, Gavin, “The Judicialisation of Administrative Tribunals in the UK: From Hewart to Leggatt” 28 *TRAS* 51 (2009).

<sup>12</sup> *Supra* Note 7.

<sup>13</sup> *Supra* Note 2 at 284.

knowledge in specialised areas that was felt to be lacking in the judges of traditional Courts.<sup>14</sup> According to M. C. J. Kagzi, “*The provisions declaring the proceedings before the tribunal judicial proceedings, giving it the powers of a civil court for certain procedural matters, and requiring it to hear the parties go to prove that the tribunal is required to act judicially and not mere judiciously.*”<sup>15</sup>

1.14. The Law Commission of India in its 14<sup>th</sup> Report (1958) titled “*Reform of Judicial Administration*” recommended the establishment of an appellate Tribunal or Tribunals at the Centre and in the States. Later, in its 58<sup>th</sup> Report (1974) titled ‘*Structure and Jurisdiction of the Higher Judiciary*’, the Law Commission urged that separate high powered Tribunal or Commission should be set up to deal with the service matters and that approaching the Courts should be the last resort.

1.15. The High Court Arrears Committee set up under the chairmanship of Justice J. C. Shah (1969), recommended for setting up of an independent Tribunal to handle service matters pending before the High Courts and the Supreme Court. Later on, the Swaran Singh Committee which was appointed to study, ‘the required changes in fundamental laws’, recommended in 1976 that the Administrative Tribunals may be set up under a Central law, both at the State level and at the Centre to decide cases relating to service matters.

1.16. Based on the recommendations of the Swaran Singh Committee, Part XIV-A was added by the Constitution (Forty-second Amendment) Act, 1976, titled as ‘Tribunals’ which provided for the establishment of ‘Administrative Tribunals’ under Article 323-A and ‘Tribunals for other matters’ under Article 323-B. The main objective of establishing Tribunals as set out in the Statement of Objects and Reasons of The Constitution (Forty-Second Amendment) Act, 1976 is as under:

*‘To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic*

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<sup>14</sup> Jain, M.P., Jain, S.N., *Principles of Administrative Law* 1989, Lexis Nexis, India, 7<sup>th</sup> edn., 2011 at p. 1996.

<sup>15</sup> Supra Note 2 at 279.

*development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution.'*

1.17. With the enactment of Administrative Tribunals Act, 1985, a large number of cases relating to service matters pending before various Courts were brought within the jurisdiction of the Tribunals. Administrative Tribunals created under Article 323A have been freed from technical rules of Indian Evidence Act, 1872 and procedural shackles of the Code of Civil Procedure, 1908 but, at the same time, they have been vested with the powers of Civil Court in respect of some matters including the review of their own decisions and are bound by the principles of natural justice.<sup>16</sup>

1.18. The Tribunal has to exercise its powers in a judicious manner by observing the principles of natural justice or in accordance with the statutory provisions under which the Tribunal is established. There may be a *lis* between the contending parties before a statutory authority, which has to act judiciously to determine the same. There may not be a *lis* between the contending parties, the tribunal/authority may have to determine the rights and liabilities of the subject. In both the situations, it will be known as a quasi-judicial function. The word 'quasi' means 'not exactly'. "Where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act."<sup>17</sup>

1.19. The Law Commission of India in its 124<sup>th</sup> Report (1988) titled '*The High Court Arrears - A Fresh Look*', while taking note of the recommendations of "*The High Courts Arrears Committee*" (1969) observed that:

*'1.15. ... It is here a germ for the first time of creating specialist Tribunals as alternatives to the High Court with a view to curtailing the jurisdiction of the High*

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<sup>16</sup> Basu, Durga Das, *Commentary on the Constitution of India*, Lexis Nexis, New Delhi, 8<sup>th</sup> edn., 2011 at p. 10650; See also, *State of West Bengal v. Kamal Sengupta*, (2008) 8 SCC 612.

<sup>17</sup> Quasi-Judicial, Justice (R) Shabbir Ahmed, available at: <http://sja.gos.pk/assets/articles/Quasi%20Judicial.pdf> (last visited on 25-09-2017); See also *Rex v. Electricity Commissioners*, (1924) 1 KB 171.

*Court to control the inflow of work which may indirectly help in tackling the problem of arrears and backlog of cases. ...*

*1.21. ... The Law Commission is of the firm view that, wherever possible, proliferating appellate and wide original jurisdiction should be controlled or curtailed without impairing the quality of justice. ...*

*1.27. To sum up, the approach of the commission is to reduce number of appeals, to set up specialist courts/tribunals, simultaneously eliminating the jurisdiction of the High Court which, when translated into action by implementing the reports submitted by the present Law Commission, would, on a very superficial assessment, reduce the inflow of work into the High Court by nearly 45% of its present inflow.’ [Emphasis added]*

1.20. The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in paragraph 13.3 of its Seventeenth Report on the Administrative Tribunals (Amendment) Bill, 2006, observed that “....After making the provision for an appeal to the High Court, the very purpose for which this Central Administrative Tribunal was constituted, will be defeated because these were constituted for a specific purpose that employees should get the speedy remedy and the High Courts should not be over-burdened.”

1.21. The Law Commission in 215<sup>th</sup> Report (2008) titled “*L. Chandra Kumar be revisited by Larger bench of Supreme Court of India*”, pointed out that the Administrative Tribunals were conceived and constituted as an effective and real substitute for the High Courts as regards service matters are concerned. The power of judicial review of the High Courts cannot be called as inviolable as that of the Supreme Court. The very objective behind the establishment of the Administrative Tribunals will stand defeated if all the cases adjudicated by them have to go before the concerned High Court. However, the Commission did not record any explanation/reason as to how the power of judicial review of the High Court could be less inviolable than the Supreme Court, particularly after the seven-Judge Bench judgment in *L. Chandra Kumar v. Union of India*.<sup>18</sup>

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<sup>18</sup> AIR 1997 SC 1125.

1.22. In *Gujarat Urja Vikas Nigam Ltd v. Essar Power Ltd*,<sup>19</sup> the Supreme Court of India made a reference to the Commission to examine and submit a Report pertaining to various issues relating to the Tribunals with regard to persons appointed, manner of appointment, duration of appointment etc., routine appeals to the Supreme Court affecting the constitutional role assigned to the Supreme Court, direct statutory appeals to the Supreme Court from the order of Tribunals bypassing the High Courts and to exclude jurisdiction of all the Courts in absence of equally effective alternative mechanism for Access to Justice at grass root level. The reference is in the following words:

*'The questions which may be required to be examined by the Law Commission are:*

- I. *Whether any changes in the statutory framework constituting various Tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of judgment of this Court in Madras Bar Association (Supra) or on any other consideration from the point of view of strengthening the rule of law?*
- II. *Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time?*
- III. *Whether direct statutory appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affect access to justice to litigants in remote areas of the country?*
- IV. *Whether it is desirable to exclude jurisdiction of all courts in absence of equally effective alternative mechanism for access to justice at grass root level as has been done in provisions of TDSAT Act (Sections 14 and 15)?*
- V. *Any other incidental or connected issue which may be considered appropriate?'*

1.23. It is in this backdrop, the Commission has to consider and answer the questions raised by the Supreme Court in respect of constitution of Tribunals, appointment of

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<sup>19</sup> (2016) 9 SCC 103.

their respective Chairman and members and their service conditions. Further, whether power of Judicial Review, a basic feature of the Constitution conferred upon the High Courts under Articles 226 and 227 of the Constitution can be diluted or taken away totally denying the litigants right to approach the High Court in writ jurisdiction against the jurisdiction and order of the Tribunal and also, whether such litigants should not have a right of statutory appeal against an order of the Tribunals, as providing the remedies under Article 136 of the Constitution is admittedly not a right of Appeal rather a means to approach the Supreme Court and it is the discretion of the Supreme Court to entertain the petition or not.

## CHAPTER – II

### TRIBUNAL SYSTEM: A GLOBAL PERSPECTIVE

2.1 Almost all the nations have enacted laws dealing with the Tribunals within their Constitutional framework. In several countries, including France, though the adjudicatory forums other than the regular courts discharge the function of adjudication, the same is not considered as a judicial function and these forums are not recognised as Courts. So far as the United Kingdom and India are concerned, the adjudicatory functions discharged by the institutions other than the regular civil and criminal Courts are treated as supplementary to the Courts.<sup>20</sup>

#### A. Tribunal System in France

2.2 The French judicial system provides for a special Tribunal known as the *Tribunal des Conflits* for disposing of conflicts that involve both judicial and administrative functions. The matters that come before this Tribunal are complex and are governed by the complicated rules of procedure<sup>21</sup> France has a dual legal system unlike the English-speaking countries.<sup>22</sup> However, the judicial review is not absolute in France as some administrative acts are exempted from the purview of judicial control. Also, the judicial review of administrative acts in France is subject to time limits<sup>23</sup>.

2.3 The *Council d'Etat* was established for the adjudication of disputes between an individual and State officials who acted in violation of law. In the course of time, a proper system of Three-Tier Tribunals was created. The *Council d'Etat* has been converted from an executive into a judicial or quasi-judicial body by the gradual separation from its executive functions by way of transferring the executive functions to the Committees (sections) which have assumed the role of the Courts.<sup>24</sup> *Tribunal*

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<sup>20</sup> Malik, Lokendra; Lata, Kusum; Kaur, Avneet, *Constitutional Government in India* (Satyam Law International, New Delhi, 2016) at p. 191.

<sup>21</sup> Bartlett, C. A. Hereshoff, "The French Judicial System" 33 *CLT* 952 (1913).

<sup>22</sup> *Supra* 19 at p. 190.

<sup>23</sup> Ziy Bekir Bugucam, "Common Principles of Judicial Review of Administration in Europe: A Comparative study of France, the UK, the ECHR, and the EU" 5 *LJR* 78 (December, 2011).

<sup>24</sup> Dicey, A.V., *The Law of the Constitution*, Oxford University Press, United Kingdom, 1<sup>st</sup> edn., 2013 at p. 347.

*Administratif* is the Original Court in France having a wide jurisdiction covering almost all kinds of administrative cases. The decisions of the *Tribunal Administratif* and other similar institutions are subject to appeal or revision before the *Conseil d'Etat*.

2.4 The *Cour administrative d'appel* considers appeals against the judgments of the *Tribunal Administratif*. But, neither have they had the jurisdiction to consider appeals involving a question/issue of the legality of municipal and cantonal elections nor to consider appeals against regulations on the grounds that the authority has exceeded its powers.

2.5 In common law Countries, unlike France, there is a better coordination between forums performing 'administrative adjudication' and forums vested with the task of 'judicial adjudication'. The administrative forums operate under judicial supervision. In India, the framers of the Constitution did not accept the French system and entrusted the power of judicial review to the High Courts and the Supreme Court.

## **B. Tribunal System in England**

2.6 Tribunals are one of the most important pillars of the judicial system of England. A large number of Tribunals have been created to deal with various issues such as social security, property rights, employment, immigration, mental health etc. Most of the Tribunals are concerned with the claims by citizens against the State. Examples of tribunals which operate in the United Kingdom are Employment Tribunals which are concerned with the disputes between private individuals and organisations, Leasehold Valuation Tribunals that are concerned with the disputes between lessees and lessors, over service charges or the valuation of properties.<sup>25</sup> Besides this, there are other Tribunals also which deal with the matters falling within their respective jurisdiction. There are significant differences between Tribunals and Ordinary Courts in England which can be summarised as:

- i. There is a special expertise and experience of members. Most of the Tribunals are presided over by a lawyer (serving judge in some

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<sup>25</sup> Creyke, Robin, *Tribunals in the Common Law World*, The Federation Press, United Kingdom, 2008 at p. 20.

cases), he or she will normally be sitting with non-lawyers either having specialised qualifications or laymen or women with specialised qualifications.

- ii. Flexibility enables the Tribunal to develop and vary its procedure to suit the characteristics of the jurisdiction and the needs of its users whether unrepresented individuals or sophisticated city institutions.<sup>26</sup>

2.7 In England, Tribunals emerged as exclusive judicial bodies in the twentieth century with the establishment of Local Pension Committee under the Old Age Pensions Act, 1908 and the Umpire under the National Insurance Act, 1911. Since then, there has been an increasing recognition of judicial status of the Tribunals as they have developed their own distinctive identity.<sup>27</sup>

2.8 In 1932, the Donoughmore Committee which was set up to consider the safeguards that were required on judicial and quasi-judicial decisions in order to secure the supremacy of law – a constitutional principle, submitted its Report.<sup>28</sup> The Committee recommended that judicial decisions should be left to the ordinary Courts of law. Tribunals should be established on special grounds and only if their advantages over the ordinary Courts were beyond question, that the rules of natural justice must be observed and the Courts be given adequate power to ensure that they acted within their domain.<sup>29</sup> The Committee observed :

*The word ‘quasi’, when prefixed to a legal term, generally means that the thing which is described the word, has some of the legal attributes denoted and connoted by the legal term, but that it has not all of them.*

2.9 In 1957, the Franks’ Committee<sup>30</sup> made a number of specific recommendations and most of them were implemented by the Tribunals and Inquiries Act 1958. These are:

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<sup>26</sup> Id. at 21.

<sup>27</sup> Legal Action Group, “Introduction to Tribunals” 15 (2011).

<sup>28</sup> Ibid.

<sup>29</sup> Id. at 4.

<sup>30</sup> Supra Note 11 at 47.

- i. Establishment of a Council on Tribunals (an advisory ‘non-departmental public body’) to oversee the constitution and working of the various Tribunals. The Chairmen of Tribunals should be appointed by the Lord Chancellor. The members of Tribunals should be appointed by the Council on Tribunals rather than by ministers: this was rejected, though ministers were required to ‘have regard to’ any general recommendations about membership that the Council might make.
- ii. Tribunal Chairman should be legally qualified. This was implemented in respect of some categories of tribunal, but not others.
- iii. A Tribunal should give written notice of its decision and the reasons for it. The 1958 Act merely left it to the Tribunals to give their reasons on request.
- iv. Hearings should generally take place in the public.
- v. There should be a right of appeal to the High Court on points of law: this was broadly implemented by way of a ‘case-stated’ procedure.<sup>31</sup>
- vi. Parties should be entitled to legal representation and legal aid should be available.

2.10 In 2001, Sir Andrew Leggatt Committee reviewed the existing Tribunal system and submitted its report titled ‘*Tribunals for Users – One System, One Service*’. As per the Report, there were perceived deficiencies in the Court system, such as delay, expense, technicality and formality, lack of expertise and conservative social and political views. Hence, a new ‘independent, coherent, professional, cost-effective, user friendly’ and structurally reformed Tribunal system was proposed with the intention to strengthen independence, unified administration and harmonised procedures. The Report *inter alia* suggested:

- a. The Lord Chancellor should assume responsibility for all appointments to Tribunals (in consultation, as necessary).
- b. The Tribunal System should be divided into Divisions in a structure which is at once apparent to the user in accordance with the subject-matter
- c. Members should be appointed to a specific Division, with the ability to sit in other divisions after necessary training.
- d. There should be a single route of appeal against the decision of all the Tribunals, to a single appellate Division.

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<sup>31</sup> Supra Note 10 at 47.

- e. There should be Presidents for each of the nine first-tier Divisions. Where possible, there should be made full-time appointments. They should normally be Circuit judges, or senior lawyers.
- f. There should be a Tribunals Service Committee to produce a service approach of the highest quality and responsive to the user.
- g. The Tribunals Service should be an executive agency of the Lord Chancellor's Department, separate from the Court Service.

2.11 The British Parliament enacted the Tribunals, Courts and Enforcement Act, 2007. The Act, instead of providing for a single Tribunal system, introduced a new system of two generic Tribunals along with providing for a unified appeal structure. Power was given to the Lord Chancellor to transfer the jurisdiction of existing Tribunals to the two new Tribunals. He was also vested with the general duty to provide administrative support to the new Tribunals. A Tribunal service called the 'Transforming Public Services' was set up to provide common administrative support to the newly created Tribunals.<sup>32</sup>

### **C. Tribunal System in the United States**

2.12 The United States Supreme Court is generally considered as an Appellate Court as it reviews the decisions of all the lower courts in the country including the State Supreme Courts.<sup>33</sup> Due to strict adherence to the doctrine of separation of powers, it does not exercise administrative adjudication.

2.13 According to the US Constitution, judicial power cannot be vested in administrative bodies which are not Courts. The power exercised by administrative Tribunals is not 'judicial' but only 'quasi-judicial'. The essential attributes of judicial power are, the finality of decisions, free from any interference from the other two branches of the State, i.e., the Executive and the Legislature.

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<sup>32</sup> Excerpts from the 'Explanatory Notes to the Tribunals, Courts and Enforcement Act, 2007' prepared by the Ministry of Justice, British Parliament.

<sup>33</sup> Outline of the U.S. Legal System, 28 *BIIPUSDS* (2004).

2.14 The administrative Tribunals deal with multiple problems which require expert knowledge and experience. United States of America has followed a natural line of evolution. The American Bar Association appointed a Special Committee on Administrative Law in 1933. The Report of the Special Committee called for greater judicial control over administrative agencies. This led to the appointment of the Attorney General's Committee by President Roosevelt in the year 1939 to investigate the need for procedural reforms in the field of Administrative Law. The Report of the Committee resulted in the enactment of Administrative Procedure Act, 1946, which constituted a statutory code relating to the judicial control of administrative action in the USA.

2.15 The Act constitutes a great landmark in the development of Administrative Law. The procedure to be followed while discharging various functions and definite avenues of judicial review are codified in the Act. The Statute empowers the Courts to review decisions of administrative bodies only on questions of law and interpretation of statutes. However, the Supreme Court has clarified that there should not be literal interpretation of the provisions as that would render the scope of judicial review meaningless.

#### **D. Tribunal System in Canada**

2.16 The administrative justice sector in Canada is very large and well-established. Tribunal system, having distinct character and voice are considered as one of the two pillars of Canada's justice system.<sup>34</sup> But the emergence of the Tribunal sector is a recent phenomenon which was established to regulate the aspects related to expanding economy, administration of social programs etc.<sup>35</sup>

2.17 Administrative Tribunals in Canada make decisions on behalf of the federal and the provincial Governments when it is impractical or inappropriate for such Government to do so. Tribunals are set up by the federal or provincial legislation, known as "empowering legislation." Tribunals are commonly known as

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<sup>34</sup> Supra note 20 at 7.

<sup>35</sup> Id. at 9.

‘Commissions’ or ‘Boards’, and make decisions about a wide variety of issues, including disputes between people or between people and the Government. Their decisions may be reviewed by the Courts. Because Tribunals engage in fact-finding and have the power to impact personal rights, they are often seen as “quasi-judicial.”<sup>36</sup>

2.18 Administrative Tribunals are independent and specialised Governmental agencies established under the federal or provincial legislation to implement the legislative policy. Appointment to such agencies is usually by Order-in-Council. Members are ordinarily chosen for their expertise and their experience in the particular sector which is regulated by the legislation.

2.19 Different kinds of Administrative Tribunals and Boards deal with disputes relating to the interpretation and application of laws and regulations, such as entitlement to employment insurance or disability benefits, refugee claims, and human rights. Administrative Tribunals are less formal than Courts and are not part of the Court system. However, they play an essential role in resolving disputes in the Canadian society. Decisions of Administrative Tribunals may be reviewed by the Court to ensure that the Tribunals act fairly and according to the law.<sup>37</sup>

2.20 Many Administrative Tribunals have a hearing process to determine conflicting rights and obligations or to assign rights or entitlements between the disputing parties. Many Tribunals have wide powers to summon witnesses and records and to take evidence under oath. These Tribunals get their powers either directly from their enabling legislation, or indirectly by general laws about the Tribunal process. Some Tribunals may be governed by multiple statutes or rules of procedure. For example, the Ontario Child and Family Services Review Board gets its powers from the Child and Family Services Act, 1990, the Inter-country Adoption Act, 1998 and the Education Act, 1990.

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<sup>36</sup> Administrative Tribunals in Canada, *available at*: <http://www.thecanadianencyclopedia.ca/en/article/administrative-tribunals/> (last visited on 31-07-2017).

<sup>37</sup> Canada’s Court System *DJC* 12 (2015).

2.21 Even where no right of appeal is provided or when a Statute specifically forbids it, it is a principle of the Canadian Constitution that superior Courts have jurisdiction to review any Administrative Tribunal's function i.e., judicial review, and usually they do not focus on whether the decision made by the Tribunal is a right decision or not but whether the decision is made in a correct manner and within the scope of its empowering legislation. The Courts review administrative decisions based on their reasonableness. If a Tribunal acts outside its jurisdiction or fails to act reasonably, a superior Court may set aside its decision and send the matter back for redetermination; in some cases it may substitute the Tribunal's finding with its own. However, if a decision is made properly i.e., following the procedure, considering the facts fairly and within the Tribunal's power, Courts will not overturn a Tribunal's finding of fact and will only overturn a decision if it made an error of law or acted unfairly while deciding the matter. The Federal Court of Canada, which is just below the Supreme Court of Canada in the hierarchy, hears the appeals against the decisions made by the Tribunals.

2.22 In *In re: Residential Tenancies Act Case*,<sup>38</sup> the Canadian Supreme Court held that Tribunals could not take away the core functions and judicial power vested in the judiciary. When the dispute is primarily civil in nature, the case has to be heard only by the judiciary and not by quasi-judicial Tribunals.

2.23 Administrative Tribunals perform a wide range of functions, including research and recommendation (e.g., law reform commissions), rule-making and policy development (e.g., the Canadian Radio-Television and Telecommunications Commission and provincial securities commissions), grant allocation (e.g., the Canada Council for the Arts and regional development agencies), adjudication (e.g., labour relations boards, landlord and tenant boards, immigration and refugee boards, municipal boards and human rights tribunals) and standard setting (e.g., environmental assessment boards, workers' compensation boards and health and safety commissions). In addition to such permanent agencies, there are ad hoc Administrative Tribunals, such as arbitrators and inquiry commissions, mandated to deal with a specific subject matter. Some of the Acts and the Tribunals functioning thereunder are set out herein below:

#### **Table**

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<sup>38</sup> 1981 (1) S.C.R. 714; See also, *Massey-Ferguson Indust. Ltd. v. Sask.*, 1981 (2) S.C.R. 413.

|     | <b>Name of Acts</b>   | <b>Tribunals</b>                                |
|-----|---|---|
| 1.  | The Canadian Agricultural Products Act, 1983  | Canadian Agricultural Review Tribunal           |
| 2.  | The Canadian Human Rights Act, 1977   | Canadian Human Rights Tribunal                  |
| 3.  | The Civil Resolution Tribunal Act, 2012   | Civil Resolution Tribunal                       |
| 4.  | The Protecting Canadian Condominium Act, 2015   | Ontario Canadian Condominium Authority          |
| 5.  | The Residential Tenancies Act, 2006   | Landlord and Tenant Board                       |
| 6.  | The Ontario Energy Board Act, 1998  | Ontario Energy Board                            |
| 7.  | The Ontario Labour Relations, Employment Act, 1995  | Ontario Labour Relation Board                   |
| 8.  | The Ontario Securities and the Commodity Future's Act, 1990   | Ontario Securities Commission                   |
| 9.  | The Public Service of Ontario Act, 2006   | Public Service Grievance Board                  |
| 10. | The Workplace Safety and Insurance Act, 1998  | Workplace Safety and Insurance Appeals Tribunal |
| 11. | Child and Family Services Act, 1990; Inter-country Adoption Act (1998) and The Education Act (1990) | Ontario Child and Family Services Review Board  |
| 12. | The Ontario Heritage Act, 1990  | The Conservation Review Board                   |

### **E. Tribunal System in Australia**

2.24 Tribunals form an important part of the Australian judicial system. They provide citizens with an independent and impartial review of Government decisions that affect their interests. They also reduce the burden on a congested Civil Court system. They provide relatively simple, low-cost access to a swift and fair justice service to the citizens and corporations across Australia.<sup>39</sup>

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<sup>39</sup> The Development of Tribunals in Australia, *available at*: <https://www.mcgirrtech.com/development-of-tribunals-in-australia/> (last visited on 07-08-2017).

2.25 In 1975, the Australian Government established the Administrative Appeals Tribunal as a general Administrative Tribunal to review a broad range of Government decisions which include social security, veterans entitlements, Commonwealth employees compensation, taxation, migration, freedom of information, corporations, insurance, fisheries and many other areas. Other Administrative Tribunals established by the Commonwealth include the Social Security Appeals Tribunal, the Veterans Review Board and the Migration and Refugee Review Tribunals, National Native Title Tribunal and the Superannuation Complaints Tribunal.

2.26 There is a range of Tribunals in the States which review administrative decisions of the Governments. The Victorian Civil and Administrative Tribunal has jurisdiction to determine a wide range of private disputes. The Administrative Decisions Tribunal in New South Wales has a limited jurisdiction in relation to private disputes. Tribunals such as the Consumer, Trader and Tenancy Tribunal of New South Wales are primarily concerned with resolving private disputes such as building and tenancy disputes. Commonwealth Tribunals are strictly Administrative Tribunals whereas the State Tribunals are both Administrative as well as Civil.<sup>40</sup> In several Australian States like Queensland and New South Wales, Tribunals function as the equivalent of a Small Claims Court. The Court of Appeal is a division of the Supreme Court which hears all appeals from the Supreme and District Courts as well as various Tribunals.<sup>41</sup> Some of the Acts and the Tribunals functioning thereunder are set out herein below:

**Table**

|  | <b>Name of Acts</b>                         | <b>Tribunals</b>                                  |
|--|---|---|
|  | Administrative Appeals Tribunal Act, 1975   | Administrative Appeal Tribunal                    |
|  | Equal Opportunity Act, 1984                 | Equal Opportunity Tribunal                        |
|  | Migration Act, 1958                         | Migration Review Tribunal                         |
|  | Civil and Administrative Tribunal Act, 2013 | New South Wales Civil and Administrative Tribunal |

<sup>40</sup> Tribunals in Australia: Their Roles and Responsibilities, *available at*: <http://www.aat.gov.au/about-the-aat/engagement/speeches-and-papers/the-honourable-justice-garry-downes-am-former-pre/tribunals-in-australia-their-roles-and-responsib> (last visited on 07-08-2017).

<sup>41</sup> Queensland Court's, *available at*: <http://www.courts.qld.gov.au/courts/court-of-appeal> (last visited on 07-08-2017).

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|--|--|--|
|  | Resource Management and Planning Appeal Tribunal Act, 1993 | Resource Management and Planning Appeal Tribunal   |
|  | Queensland Civil and Administrative Tribunal Act, 2009     | Queensland Civil and Administrative Tribunal       |
|  | State Administrative Tribunal Act, 2004                    | State Administrative Tribunal of Western Australia |
|  | Victorian Civil and Administrative Tribunal Act, 1998      | Victorian Civil and Administrative Tribunal        |
|  | Workers Rehabilitation and Conciliation Act, 1988          | Workers Rehabilitation and Conciliation Tribunal   |

## CHAPTER – III

### TRIBUNAL SYSTEM IN INDIA

3.1. In India, the function of dispensing justice is entrusted to regularly established Courts on the pattern of Common law system. History of tribunals in India stands reflected dating back to the year 1941,<sup>42</sup> when first Tribunal was established in the form of Income-Tax Appellate Tribunal. The Tribunals were however, set up to reduce the workload of courts, to expedite decisions and to provide a forum which would be manned by lawyers and experts in the areas falling under the jurisdiction of the Tribunal. The Constitution (Forty-Second Amendment) Act of 1976 brought about a massive change in the adjudication of disputes in the country. It provided for the insertion of Articles 323-A and 323-B in the Constitution of India, whereby the goal of establishment of Administrative Tribunals by the Parliament as well as the State Legislatures, to adjudicate the matters specified in the sub-clauses is made possible.<sup>43</sup>

3.2. There is a distinction between Article 323-A and 323-B as the former gives exclusive power to the Parliament and the latter gives power to the concerned State Legislature which is concurrent in nature by which the Parliament and the State Legislature can by law, constitute Tribunals for the respective subjects specified therein. This is evident from the explanation appended to Article 323-B of the Constitution. The provisions of both these Articles are to be given effect irrespective of any other provision of the Constitution or any other law for the time being in force.

3.3. The judicial system of India is divided into three tiers. The subordinate courts are vested with the original jurisdiction in all matters except those, which are barred either expressly or impliedly. The High courts in general have appellate and revisional jurisdiction in the respective States along with the jurisdiction to issue prerogative writs. Some of the High Courts have original jurisdiction. The High Courts also entertain appeals/writs against the judgments rendered by some of the Tribunals. The Supreme Court has been conferred with original jurisdiction under Article 131

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<sup>42</sup> Justice D.K. Jain's speech in Chandigarh Judicial Academy on the eve of Silver Jubilee of the Chandigarh Bench of the Central Administrative Tribunal on November 19, 2011.

<sup>43</sup> Sarayu Satish, "The Tribunal System in India – Increasing in Importance but Increasing in effectiveness?" *WLR* 2.

(disputes between two or more States, or between the Government of India and one or more States, or disputes arising out of the election of the President and Vice-President of India) and advisory jurisdiction under Article 143, where the President of India may seek the opinion of the Court on a particular issue of fact or law of general public importance. It can issue the prerogative writs under Article 32 of the Constitution and has appellate jurisdiction against the orders passed by the High Courts, Tribunals or the Appellate Tribunals established under various Statutes. The Court also has discretion to entertain Special Leave Petitions under Article 136 on substantial question of law or issues of general public importance.

3.4. Due to growing commercial ventures and activities by the Government in different sectors, along with the expansion of Governmental activities in the social and other similar fields, a need has arisen for availing the services of persons having knowledge in specialised fields for effective and speedier dispensation of justice as the traditional mode of administration of justice by the Courts of law was felt to be unequipped with such expertise to deal with the complex issues arising in the changing scenario.<sup>44</sup>

#### **A. Justice Rankin Committee Report - 1924**

3.5. Justice Rankin Committee was set up to “*Enquire in to the operation and effects of the substantive and adjective law, whether enacted or otherwise, followed by the Courts in India in the disposal of Civil suits, appeals, application for revision and other civil litigation...*”<sup>45</sup> The Committee submitted its Report suggesting various reforms to deal with the pendency of cases, as delay and backlog of cases had been a problem even in pre-independence period also.

#### **B. Administrative Reforms Commission - 1966**

3.6 The Administrative Reforms Commission of India, set-up a Study Team on Administrative Tribunals to explore the possibilities of establishing administrative Tribunals in different spheres. The study team recommended in 1969, the setting up of

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<sup>44</sup> R.C. Saksena, “Adjudication by Tribunals in India” 37:2 *JILI* 223 (1995).

<sup>45</sup> Jensen, Erik Gilbert and Heller, Thomas C., *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, Stanford University Press, 2003 at p. 157.

Civil Services Tribunals to act as the final adjudicatory authority in respect of orders inflicting the major punishments of dismissal, removal and reduction in rank.

### **C. Wanchoo Committee - 1970**

3.7. The Committee recommended for the establishment of Income-Tax Settlement Commission, to serve as an alternative dispute resolution body in the administration of fiscal laws, the primary objective of which was to increase the realisation of revenue. It was felt that there should be a provision for compromise and settlement which should be fair, prompt and independent.

3.8. The Committee also recommended the setting up of a Direct Taxes Settlement Tribunal which would ensure fair and quick decisions. It was further recommended that the constitution of the settlement body be such, which will 'encourage officers with integrity and wide knowledge and experience to accept assignments on the Tribunal'. The status and emoluments of its members were recommended to be as that of members of the Central Board of Direct Taxes (CBDT).<sup>46</sup>

### **D. The High Courts' Arrears Committee Report - 1972**

3.9. In 1969, Justice J.C. Shah Committee, popularly known as The High Courts' Arrears Committee, was set up by the Union Government which pointed out that there was an urgent need to set up independent Tribunals to exclusively deal with service matters of Government employees in view of the pendency of large number of writ petitions filed by Government servants pending in the Supreme Court and various High Courts.

3.10. Law Commission in its 58<sup>th</sup> Report (1974) titled '*The Structure and Jurisdiction of the Higher Judiciary*' went into all the aspects relating to the Reform of Judicial Administration, including the question of delay in disposal of cases in the Courts. The Commission recommended that a separate high powered Tribunal or Commission should be set up to deal with the service matters and that 'Litigation' should be the last resort as there is an imperative need to reduce arrears in the higher courts.

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<sup>46</sup> *Vatika Farms Private Limited v. Union of India*, (2008) 216 CTR Del 37.

### **E. Swaran Singh Committee Report - 1976**

3.11. With the acceptance of welfare ideology, there was a mushroom growth of public services and public servants. The Courts, mainly the High Courts were inundated with service cases. Therefore, the Swaran Singh Committee recommended the establishment of administrative Tribunals as a part of adjudicative system under the Constitution.<sup>47</sup> The Committee further recommended the setting up of Tribunals in three broad areas to combat delays in the Indian legal system. It also recommended that the decisions of the Tribunals should be subject to scrutiny by the Supreme Court under Article 136 of the Constitution. The jurisdiction of all other Courts including the writ jurisdiction of the Supreme Court under Article 32 and the High Courts under Article 226 of the Constitution be barred.<sup>48</sup> The suggestions of the Committee can be summarised as under:

- i. Administrative Tribunals may be set up under the Central Law, both at the State level and at the Centre to decide cases relating to service conditions.
- ii. Provision may be made for setting up an All-India Labour Appellate Tribunal to decide appeals from Labour Courts and Industrial Tribunals.
- iii. Disputes relating to revenue, land reforms, ceiling of urban property, procurement and distribution of food grains and other essential commodities shall be decided by the Tribunals.

### **F. Background and Significance of the Administrative Tribunals Act, 1985**

3.12. The objective behind establishing the 'Tribunals' was to provide an effective and speedier forum for dispensation of justice, but in the wake of routine appeals arising from the orders of such forums, certain issues have been raised because such appeals are obstructing the constitutional character of the Supreme Court and thus, disturbing the effective working of the Supreme Court as the appeals in these cases do not always involve a question of general public importance. The Supreme Court is primarily expected to deal with matters of constitutional importance and matters

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<sup>47</sup> K.C. Joshi, "Constitutional Status of Tribunals" 41:1 *JILI* 116 (1999).

<sup>48</sup> Thiruvengadam, Arun K., *The Oxford Handbook of the Indian Constitution* 414 (Oxford University Press, United Kingdom, 1<sup>st</sup> edn., 2016).

involving substantial question of law of general public importance. Due to overburdening, the Supreme Court is unable to timely address such matters.

3.13. Though the term ‘tribunal’ has not been defined, but there are cases wherein Courts have laid down the requisites of tribunals. In *Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand*,<sup>49</sup> it was held that to determine whether an authority acting judicially was a Tribunal or not, the principal test was whether it was vested 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.

3.14. Most of these tribunals/authorities are a kind of ‘Court’ performing functions which are of ‘judicial’ as well as ‘quasi-judicial’ nature having the trappings of a Court. It has many trappings of the court to ensure justice and fair play; and it has many flexibilities devoid of technicalities of regular court to ensure speedy and affordable justice. The word ‘judicial’ was explained in *Royal Aquarium and Summer and Winter Garden Society v. Parkinson*<sup>50</sup>:

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.

3.15. The basic test of a Tribunal within the meaning of Article 136 is that it is an adjudicating authority (other than Court) vested with the judicial power of the State. In *Associated Cement Co. Ltd. v. P.N. Sharma*,<sup>51</sup> it was held that the procedure which is followed by the Courts is regularly prescribed and while exercising powers, Courts have to conform to that procedure while on the other side the procedure which the Tribunals have to follow may not always be strictly prescribed. It was held that “the basic and fundamental feature that is common to both the Courts and the tribunals is

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<sup>49</sup> AIR 1963 SC 677.

<sup>50</sup> (1892) 1 QB 431(452).

<sup>51</sup> AIR 1965 S.C. 1595.

that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State". The Tribunal has some but not all the trappings of the Court.

3.16. In *Durga Shankar Mehta v. Raghuraj Singh*,<sup>52</sup> the Supreme Court of India held that the expression 'tribunal' according to Article 136 does not mean something as 'Court' but includes within it, all adjudicating bodies, provided they are constituted by State to exercise judicial powers as distinguished from discharging of administrative or legislative functions.

3.17. In *Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi*,<sup>53</sup> the Supreme Court held that the award of a Tribunal can be challenged under Article 136 of the Constitution if the Tribunal is the creature of Statute and observes the provisions of special Act and when it is vested with the functions of the Court or necessary trappings of the Court. Whereas, in *Associated Cement Co. Ltd. v. P.N. Sharma*,<sup>54</sup> it was held that the Courts alone have no monopoly to exercise judicial power and thus, the vesting of trappings of the Court is not an essential attribute of a Tribunal.

3.18. In *Kihoto Hollohon v. Sri Zachilhu*,<sup>55</sup> referring to its earlier decision in *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjunwal*,<sup>56</sup> the Supreme Court set out a test to determine whether an authority exercising adjudicatory powers is a Tribunal or not:

*'....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 it.*

*All tribunals are not courts, though all Courts are Tribunals. The word 'Courts' is used to designate those Tribunals which are set up in an organised State for the Administration of Justice. By Administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish 'wrongs'. Whenever there is an infringement of a right or an*

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<sup>52</sup> AIR 1954 SC 520.

<sup>53</sup> AIR 1950 SC 188.

<sup>54</sup> AIR 1965 SC 1595.

<sup>55</sup> AIR 1993 SC 412

<sup>56</sup> AIR 1961 SC 1669.

*injury, the Courts are there to restore the vinculum juris, which is disturbed.'*

3.19. The difference between a Court and a Tribunal is the manner of deciding a dispute. However, the Supreme Court in *Virindar Kumar Satyawadi v. The State of Punjab*,<sup>57</sup> observed that:

*'What distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.'*

3.20. Tribunals basically deal with the cases under special laws and therefore they provide special adjudication, outside Courts. In *State of Gujarat v. Gujarat Revenue Tribunal Bar Association*,<sup>58</sup> it was observed that:

*'.....a particular Act/set of Rules will determine whether the functions of a particular Tribunal are akin to those of the courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority, i.e., a situation where, (a) a statutory authority is empowered under a statute to do any act (b) the order of such authority would adversely affect the subject and (c) although there is no lis or two contending parties, and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi-judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a 'court', but not all. In case certain powers under C.P.C. or Cr.P.C. have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a court.'*

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<sup>57</sup> AIR 1956 SC 153.

<sup>58</sup> (2012) 10 SCC 353.

3.21. The Administrative Tribunals Act, 1985 brings into existence the ‘Tribunals’ contemplated under Article 323-A(2), to deal with various matters. The Act specifically provides that it will not be applicable to:

- i. any member of the naval, military or air force or of any other armed forces of the union;
- ii. any officer or servant of the Supreme Court or of any High Court, and
- iii. any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a legislature, of that legislature. Later on in the year of 1987, even the officers and servants of the subordinate courts were also excluded from the purview of the Act.

The Act provides for the establishment of three kinds of administrative Tribunals:

- i. The Central Administrative Tribunal,
- ii. The State Administrative Tribunals and
- iii. The Joint Administrative Tribunals.

3.22. The adjudication of disputes pertaining to service matters require specialised bodies because of the delay in Court room procedures. In *Kamal Kanti Dutta v. Union of India*,<sup>59</sup> it was observed that:

*‘There are few other litigative areas than disputes between members of various services inter se, where the principle that public policy requires that all litigation must have an end can apply with greater force. Public servants ought not to be driven or required to dissipate their time and energy in court-room battles. Thereby their attention is diverted from public to private affairs and their inter se disputes affect their sense of oneness without which no institution can function effectively. The constitution of Service Tribunals by State Governments with an apex Tribunal at the Centre, which, in the generality of cases, should be the final arbiter of controversies relating to conditions of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeals in service matter. The proceedings of such Tribunals can have the merit of informality and if they will not be tied down to strict*

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<sup>59</sup> AIR 1980 S.C. 2056.

*rules of evidence, they might be able to produce solutions which will satisfy many and displease only a few.'*

3.23 The Supreme Court had an occasion to examine section 12(2) of the Administrative Tribunals, Act, 1985 in *A.K. Behra v. Union of India*,<sup>60</sup> wherein it was held that the said provision enables the appropriate Government to designate one or more members as Vice-Chairman and entitles the members so designated to exercise such powers and perform such functions of the Chairman as may be delegated to him cannot be regarded "as destroying the principle of independence of judiciary or of administrative tribunals."

3.24 However, Justice Dalveer Bhandari, in his dissenting opinion held:

*'53. --- the Administrative Tribunals --- are an alternative institutional mechanism or authority designed to be not less effective than the High Court, consistently with the amended Constitutional scheme but at the same time not to negate judicial review jurisdiction of the Constitutional Courts.*

*54. There is no anathema in the Tribunal exercising jurisdiction of High Court and in that sense being supplemental or additional to the High Court but, at the same time, it is our bounden duty to ensure that the Tribunal must inspire the same confidence and trust in the public mind. This can only be achieved by appointing the deserving candidates with legal background and judicial approach and objectivity.'*

### **G. National Green Tribunal**

3.25 The Supreme Court, in *M.C. Mehta v. Union of India*,<sup>61</sup> said that as environment cases involve assessment of scientific data, it was desirable to set up dedicated environment courts at a regional level with a Judge and two experts, keeping in view the expertise required for such adjudication. There should be an appeal to the Supreme Court from the decision of the environment Court. The judgment highlighted the difficulties faced by judges while disposing of environmental cases. It further observed that, 'environment Court must be established for expeditious disposal of environmental cases'.

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<sup>60</sup> (2010) 6 S.C.R 347.

<sup>61</sup> 1986 (2) SCC 176.

3.26 In *Indian Council for Environmental-Legal Action v. Union of India*,<sup>62</sup> the Supreme Court directed that, ‘environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner’.

3.27 In *A.P. Pollution Control Board v. M.V. Nayudu*,<sup>63</sup> the Court referred to the need for establishing environmental Courts which would have the benefit of expert advice from environmental scientists/technically qualified persons, as part of the judicial process, after an elaborate discussion of the views of jurists of various countries.

3.28 In *A.P. Pollution Control Board v. M.V. Nayudu II*,<sup>64</sup> the Supreme Court referred to the constitution of appellate authorities under plenary as well as delegated legislation. With regard to the Appellate authorities constituted under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, the Court noted that except in one State where the appellate authority was manned by a retired High Court Judge, in other States they were manned only by the bureaucrats. These appellate authorities did not have judicial or environmental expertise on the Bench. The Court held that the Law Commission could examine the disparities in the constitution of these quasi-judicial bodies and suggest a new scheme to bring in uniformity in the structure to have effective supervision of the orders passed by administrative or public authorities, including that of the Government.

3.29 As a consequence, the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997 were enacted. But the same were found to be inadequate giving rise to demand for dealing with the environmental cases more efficiently and effectively. The Law Commission in its 186<sup>th</sup> Report suggested multi-faceted Courts with judicial and technical inputs referring to the practice of the environmental Courts in Australia and New Zealand.

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<sup>62</sup> 1996 (3) SCC 212.

<sup>63</sup> 1999 (2) SCC 718.

<sup>64</sup> 2001 (2) SCC 62.

As a result NGT was formed as a special fast-track, quasi-judicial body comprising of judges and environment experts to ensure expeditious disposal of cases.

3.30 In *Techi Tagi Tara v. Rajendra Singh Bhandari*,<sup>65</sup> while dealing with the issue related to the power of Executive to frame appropriate rules for the appointment of Chairperson and members of the State Pollution Control Boards, the Supreme Court, relying upon its earlier judgment in *State of Punjab v. Salil Sabhlok*<sup>66</sup> held that it was beyond the competence of NGT to frame rules in respect of appointment of Chairperson and Members of the SPCBs. The Court directed the States to frame appropriate guidelines or recruitment rules taking into consideration the institutional requirements of the SPCBs and also taking into consideration the law laid down by the Supreme Court.

#### **H. Choksi Committee – 1977**

3.31 A Committee was set up to examine and suggest legal and administrative measures, for the purpose of simplification and rationalisation of Direct Tax Laws. The Committee recommended the establishment of a “Central Tax Court” with an all-India jurisdiction, under a separate Statute. The recommendations of the Committee necessitated the amendment of the Constitution. The Committee suggested the desirability of constituting “Special Tax Benches” consisting of judges having special knowledge of the subject in such cases, in High Courts, to deal with the large number of pending tax cases, by having, continuous sitting throughout the year.

#### **I. Raghavan Committee Report - 2002**

3.32 The “High Level Committee on Competition Policy,” submitted its Report and recommended to enact a new law and the setting up of the Competition Commission of India, which would effectively deal with specified anti-competitive practices in its ‘adjudicatory effort’ and would have powers to mete out deterrent punishment to the violators. It was recommended that the investigative, prosecutorial and adjudicative

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<sup>65</sup> Civil Appeal No. 1359 of 2017, decided on 22 September, 2017.

<sup>66</sup> (2013) 5 SCC 1

functions should be separated to respect the need of judicial independence.<sup>67</sup> In pursuance thereof, the Competition Act, 2002 was enacted.

## **J. The Finance Act, 2017**

3.33 The Finance Act, 2017 has merged eight tribunals on the ground of functional similarity and has given the power to the Government to appoint and remove the members. The tribunals merged are listed in a tabular form, which is annexed as **Annexure-I**.

3.34 In exercise of the powers conferred by section 184 of the Finance Act, 2017, the Central Government has framed 'The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017.' These rules are applicable to the Chairman, Vice-Chairman, Chairperson, Vice-Chairperson, President, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority as specified in column (2) of the Eighth Schedule of the Finance Act, 2017. Nineteen Tribunals/Appellate Tribunals/ Authorities constituted under their respective Acts are mentioned in column (3) of the Eighth Schedule. The constitutional validity of the Finance Act and the rules is challenged by way of Writ Petition which is pending before the Supreme Court.<sup>68</sup>

3.35 The Tribunals have been established in almost all the countries for the reason that they are cheaper (cost-effective), accessible, free from technicalities, expeditious and proceed more rapidly and efficiently as manned by experts, while

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<sup>67</sup> Anusha Ramesh, "Tribunalisation of India's Competitive Regime" 9 *NUJSLR* 272-273 (2016).

<sup>68</sup> In *Jairam Ramesh v. Union of India*, Writ Petition (Civil) No. 558 of 2017, it is alleged that The Tribunal, Appellate Tribunal and other Authorities (Qualifications, experience and other conditions of service of members) Rules, 2017 be declared ultra vires the NGT Act, 2010, as the same suffers from vice of excessive delegation. Notice has been issued to the Ministries of finance, law and justice, environment, parliamentary affairs, the Cabinet Secretariat and the National Green Tribunal (NGT); See also *Central Administrative Tribunal (Principal Bench) Bar Association through its President v. Union of India*, Writ Petition (Civil) No. 640 of 2017; *All India Lawyers Union v. Union of India*, Writ Petition (Civil) No. 778 of 2017; and *Social Action for Forest and Environment v. Union of India*, Writ Petition (Civil) No. 561 of 2017.

the Courts are too remote, too legalistic and too expensive. The concept of Tribunalisation was developed to overcome the crisis of delay and backlogs in the administration of justice. However, the data officially available, in respect of working of some of the Tribunals do not depict a satisfactory picture. Though the disposal rate of the Tribunals in comparison to the filing of cases per year had been remarkable i.e., at the rate of 94%, the pendency remains high. Some of the figures of pending cases before the Tribunals are as under:

|    | <b>Tribunal</b>                                 | <b>As On</b> | <b>Number of Pending Cases</b> |
|----|---|--------------|--------------------------------|
| 1. | Central Administrative Tribunal                 | July, 2017   | 44,333                         |
| 2. | Railway Claims Tribunal                         | 30-09-2016   | 45,604                         |
| 3. | Debt Recovery Tribunal                          | 03-07-2016   | 78,118                         |
| 4. | Customs, Excise and Service Tax Appeal Tribunal | End of 2016  | 90,592                         |
| 5. | Income Tax Appellate Tribunal                   | End of 2016  | 91,538                         |

**CHAPTER – IV**  
**REVISITING RECOMMENDATIONS OF THE PREVIOUS LAW**  
**COMMISSIONS**

4.1 The Right to Fair and Speedy Trial is very much a part of right to life and personal liberty, a fundamental right guaranteed under Article 21 of the Constitution of India and therefore, any kind of delay in the expeditious disposal of cases infringes the same. The Law Commission of India has expressed its concern over the delay in justice delivery system in its Fourteenth Report (1958) and made recommendations for reforming the administration of Justice delivery system which have been implemented from time to time to revamp the judicial system with a view to reduce delay and enlarge access to justice.<sup>69</sup>

**A. 14<sup>th</sup> Report of Law Commission of India, 1958**

4.2 The delay in disposal of cases is as old as the law itself. The inordinate delay increases the cost of litigation and results in the miscarriage of justice. But at the same time, the speedy justice does not mean a hasty or summary dispensation of justice. It should be ensured that there is determination of facts in controversy and thereafter there is application of the legal principles to those determined facts.

4.3 A major issue before the Law Commission was whether to recommend the creation of tribunals for specific subject/areas. The Commission examined the Comparative experiences in England, France and the United States before concluding that the ‘creation of a general administrative body like the *Counseil d’Etat* in France is not feasible’ in India.<sup>70</sup>

4.4 The Commission recommended the establishment, at the Centre and in the States, of an appellate Tribunal or Tribunals presided over by a legally qualified Chairman along with experienced civil servants as members to which memorials and appeals from Government servants could be referred in respect of disciplinary action

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<sup>69</sup> N. N. Mathur, Changes Required in Working and Procedural Laws for Speedy Processing, 32 *IBR* 337-344 (2005).

<sup>70</sup> Supra note 49 at p. 415.

taken against them. The establishment of such a Tribunal was expected to serve a double purpose of speedy and cost-effective justice. Besides this, the existence of a speaking order passed by a Tribunal was to assist the Courts to reject frivolous petitions summarily. The Commission did not agree to any curtailment of the existing jurisdiction of the Supreme Court and the High Courts empowering them to exercise the power of judicial review.

### **B. 58<sup>th</sup> Report of Law Commission of India, 1974**

4.5 The Commission in its 58th Report on '*Structure and Jurisdiction of the Higher Judiciary*' observed:

*'In regard to service matters, it is urged that a separate high powered tribunal or Commission should be set up to deal with service matters and this Commission should be presided over by a judge of the status of the Supreme Court Judge assisted by two independent experts, and the decisions of this tribunal or commission should be final, subject to the right of the public servant to approach the Supreme Court under Article 136 on the ground that his fundamental rights are violated. The terms and conditions of the service of members of this tribunal or commission should be similar to those of the judges of the Supreme Court.*

*..But, if the supervisory jurisdiction of the High Court and the Supreme Court remains intact, and the decision of the service Court is subject to review by these higher Courts, we do not see how the creation of Service Courts will reduce the growing volume of arrears in these Courts.*

*...In our opinion, the existing legal and constitutional position affords sufficient protection. We do not, therefore, recommend the creation of a separate Service Tribunal.'*

4.6 The Commission recommended alternative dispute resolution mechanism to provide an amicable settlement to the parties at a speedier and cheaper rate.

### **C. 79<sup>th</sup> Report of Law Commission of India, 1979**

4.7 The Commission in its 79<sup>th</sup> Report on '*Delay and Arrears in High Courts and Other Appellate Courts*' expressed its concern over the arrears in High Courts. Recognising the necessity for speedy justice, it was observed:

*'1.5 Speedy justice is of the essence of an organised society and it is in the interest of both the State and the citizen that disputes which go to the law courts for adjudication are decided as early as possible. Justice delayed, is, in most cases, justice denied. At the same time, it is obvious that in order to speed up the decision of cases, the basic norms that are necessary for ensuring justice should not be dispensed with. This is the great problem facing any person or group of persons entrusted with the task of devising measures to secure elimination of delay and speedy clearance of arrears in courts.*

*1.5A Delay in the disposal of cases apart from causing hardship to the parties has a human aspect and has the effect of embroiling succeeding generations in litigation started by the ancestors...*

*1.14 In 1974, when the Law Commission reviewed the structure and jurisdiction of the higher judiciary, it focussed its special attention on the imperative need to reduce arrears in the higher courts and dealt with a number of questions, including writ petitions, taxation, industrial disputes and matters relating to conditions of service of the judges. The Report also deals at length with appeals to the Supreme Court, both civil and criminal including appeals with special leave.'*

#### **D. 115<sup>th</sup> Report of Law Commission of India, 1986**

4.8 The Commission examined the vertical hierarchy of Tribunals and Courts involved in tax litigation and recommended for the setting-up of a Central Tax Court to eliminate the jurisdiction of High Courts in Tax matters. The feasibility of setting up of a central Tax court for Direct and Indirect Taxes, was expressed in the following words:

*'1.5 Administration of justice primarily aims at providing mechanism for resolution of disputes arising in the society. Different form have been set-up to different types of disputes e.g. civil courts, criminal courts, labour courts, tax tribunals etc. Specific forum especially devised to deal with specific disputes caters to the needs of persons who seek resolution of these specified types of disputes.*

...

2.36 *On the setting up of the Central Tax Court, all present references pending in any High Court shall stand transferred to the Central Tax Court.*

...  
2.39 *Setting up of a Central Tax Court will make a deep dent on the arrears in the High Court and other pending proceedings will get accelerated treatment.'*

## **E. 124<sup>th</sup> Report of Law Commission of India, 1988**

4.9 The Commission in its Report titled '*The High Court Arrears – A Fresh Look*' made various recommendations observing:

*'It is here a germ for the first time of creating specialist Tribunals as alternatives to the High Court with a view to curtailing the jurisdiction of the High Court to control the inflow of work which may indirectly help in tackling the problem of arrears and backlog of cases.*

*... The Law Commission is of the firm view that, wherever possible, proliferating appellate and wide original jurisdiction should be controlled or curtailed without impairing the quality of justice.*

*.....To sum up, the approach of the commission is to reduce number of appeals, to set up specialist courts/tribunals, simultaneously eliminating the jurisdiction of the High Court which, when translated into action by implementing the reports submitted by the present Law Commission, would, on a very superficial assessment, reduce the inflow of work into the High Court by nearly 45% of its present inflow.'*

4.10 In support of its recommendations for establishing the specialised Courts/Tribunals, the Commission made reference to the position prevalent in Australia observing:

*'Tribunals outside the established courts have been created - Administrative Appeal Tribunals, Arbitration Tribunals, Workers' Compensation Tribunals, Pension Tribunals, Planning Appeal Tribunal, Equal Opportunity Tribunals, etc. This activity of creating Tribunals is founded on a belief that the established Courts are too remote, too legalistic, too expensive and, above all too slow.'*

## F. 162<sup>nd</sup> Report of Law Commission of India, 1998

4.11 The Commission in its Report titled '*Review of Functioning of Central Administrative Tribunal; Customs, Excise and Gold (Control) Appellate Tribunal; and Income Tax Appellate Tribunal*' made an alternative recommendation for the constitution of National Appellate Administrative Tribunal observing:

*'The Supreme Court has laid down in L. Chandra Kumar's case (Supra) that an aggrieved party can have recourse to the jurisdiction of the respective High Court under Article 226/227 of the Constitution of India, against the decision of the Central Administrative Tribunal. The repercussions of this development of law have already been felt. The Karnataka Government has sought to abolish the Karnataka State Administrative Tribunal. In the news items in the recent past, it has appeared that even the Central Government is proposing to abolish CAT. The remedy of judicial review by the High Court provided against the decision of the Administrative Tribunal and a possible further appeal to the Supreme Court under Article 136 is not only time-consuming but also expensive. Besides this, the various High Courts may interpret differently any statutory provision concerning the service conditions governing the employees. Thus, the lack of uniformity in the High Court decisions and consequently in CAT benches will create confusion in the mind of the litigant. It will further make the public lose faith in seeking justice through the judiciary, and thus undermine the democratic norms.*

*.....An appeal, on substantial questions of law and fact may lie to the proposed Appellate forum, against the decision of the Central Administrative Tribunal.*

*....The proposed forum may have branches all over the country to reduce the cost of litigation to the litigant.*

*....The decision of the proposed Appellate court will be binding on all benches of CAT. The proposed forum will be of status higher than a High Court but below the Supreme Court.*

*... It is the need of the hour that for expeditious disposal of cases, all cases which raise one or more common questions of law and on the basis of which, the cases can be disposed of by a common judgment, should be grouped together and heard together. Thus in the 79th Report of the Law Commission of India on delay and arrears in High Courts and other appellate courts, this recommendation has been echoed....'*

4.12 Regarding the position of the Administrative Tribunal after L. Chandra Kumar, the Commission observed:

*'It is no longer an alternative mechanism to the High Court, but a tribunal whose decisions are subject to scrutiny by the High Court, albeit by a Division Bench.*

*....The Supreme Court has also held that though these tribunals are subject to the writ jurisdiction of the High Courts, they are yet competent to decide questions relating to the constitutional validity of the statutory provisions and rules except, of course, the provisions of the Administrative Tribunals Act 1985 under which they have been constituted. The Supreme Court has also rejected that there ought to be no technical/administrative members in these tribunals. They said that these non-judicial members provide an input which may not be available with the judicial members. In the light of the above dicta of the Supreme Court, not much room is left for the Law Commission of India to suggest any substantial measures or recommendations with respect to the functioning of these tribunals.'*

#### **G. 186<sup>th</sup> Report of the Law Commission of India, 2003**

4.13 On '*Proposal to Constitute Environment Courts*' the Commission recommended that Environment Courts must be established to reduce the pressure and burden on the High Courts and the Supreme Court. It was however, recommended that these Courts will also have appellate powers against orders passed by the concerned authorities under the Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986 with an enabling provision that the Central Government may notify these Courts as appellate Courts under other environment related Acts as well. The Commission also expressed an opinion that such a law can be made under Article 253 of the Constitution of India read with Entry 13A of List I of Schedule VII to give effect to decisions taken in Stockholm Conference of 1972 and Rio Conference of 1992.

4.14 It was further recommended that it will be a Court of original jurisdiction on all environmental issues and also an appellate authority under all the three Acts, viz., Water Act, Air Act and Environment (Protection) Act, 1986 and will reduce the burden of High Courts/Supreme Court. There will lay a statutory appeal directly to the

Supreme Court against the judgment of the proposed Environment Court. On the question of appeal, it was recommended that:

*'It is now proposed, as stated earlier, that there will be an Environment Court in each State (or group of States) and will have appellate jurisdiction. It will have appellate jurisdiction which is now being exercised by officers of the Government under the special Acts. Pending appeals under the Water (P&CP) Act, 1974, Air (P&CP) Act, 1981 and under the Rules framed under the Environment (Protection) Act, 1986 must be transferred to the proposed Environment Court in each State and all future appeals must be filed in the said Court.'*

#### **H. 215<sup>th</sup> Report of Law Commission of India, 2008**

4.15 In Report titled '*L. Chandra Kumar be revisited by Larger Bench of Supreme Court*' it was observed by the Commission that Administrative Tribunals are a valuable and indeed an essential part of adjudicatory system of a democratic State. The Tribunals have come to stay. Special Tribunals are likely to grow rather than diminish. The impression that the Tribunal constituted under the Act of 1985 is dependent upon the Government is misconceived. The functioning of the Tribunal is not at all controlled by the Government, in any manner whatsoever. In this regard, it was observed:

*'7.8 The High Court is at the apex of the State Judicial apparatus. Unless the base level, where litigation is initiated and vertically moves upward to the High Court by way of appeal or revision, is restructured and this proliferating appellate jurisdiction is either controlled or curtailed, the inflow of work in the High Court would neither be regulated nor diminished. The Law Commission expressed the view that, wherever possible, proliferating appellate and wide original jurisdiction should be controlled or curtailed without impairing the quality of justice. The approach of the Commission is to reduce number of appeals, to set up specialist courts/tribunals, simultaneously eliminating the jurisdiction of the High Court.*

*8.1 ..... However, to allay the apprehension that the Tribunal may be controlled in certain matters by the Government, the Chairman of the Tribunal can be given powers akin to that of Chief Justice of a High Court. In that connection, a provision in the Act of 1985, similar to the one as Article 229 of the Constitution, with regard to laying down conditions of service of employees of the Tribunal can be vested with the Chairman.*

*More independence in financial matters, as enjoyed by the Chief Justice of a High Court can be vested with the Chairman of the Tribunal. Nodal Ministry for the Tribunal can be Ministry of Law and Justice, instead of Ministry of Personnel, Public Grievances and Pensions.*

*8.2 ..... if there may be an impression that there has to be at least one appeal provided against the orders passed by the Tribunal before the matter may reach the Supreme Court, intra-tribunal appeal, similar to the one provided in every High Court either by way of letters patent appeal or a writ appeal, can be provided under the Act of 1985 itself.'*

4.16 The Commission took note of the fact that the Administrative Tribunals were conceived and constituted as an effective and real substitute for the High Courts as regards service matters. Moreover, the power of judicial review of the High Courts cannot be called as inviolable as that of the Supreme Court. The very objective behind the establishment of Administrative Tribunals is defeated if all the cases adjudicated by them have to go before the concerned High Courts.

4.17 The aforesaid observation that, 'judicial power of the High Court is not as inviolable as that of Supreme Court' has been recorded without furnishing any basis or explanation and runs counter to the law laid down by the seven-Judge Bench in *L. Chandra Kumar (Supra)*. In fact, after the pronouncement of the Supreme Court on this respect, there was no occasion for the Commission to make such an observation, particularly when no such opinion has ever been expressed by any court or authority including the legislature.

#### **I. 232<sup>nd</sup> Report of Law Commission of India, 2009**

4.18 In Report titled as '*Retirement Age of Chairpersons and Members of Tribunals – Need for Uniformity*', the Commission recommended that the age of retirement of Chairpersons should be uniformly fixed at 70 years for all the Tribunals. Likewise, the age of retirement of Members of all the Tribunals should be fixed uniformly at 65 years. It was observed:

*'1.2 It needs no mention that enhanced age of retirement is prescribed in the higher echelons of the administrative and*

*judicial services because the professional experience gained by those working in them needs to be fully tapped for the good of the society. It may be pointed out that the Government incurs a lot of expenditure on orientation-training of its employees, especially, at the senior level, and, therefore, their enriched professional experience in running the affairs of the government could be utilized for the good of the common man. ...*

*1.8 For selection and appointment in Tribunals, a set procedure is prescribed where the time spent in inviting applications up to the selection and then clearance from the Government at various levels, is six months to a year...'*

4.19 Regarding the retirement age of the Supreme Court and High Court judges, the following observations were made:

*'1.9 .....There has already been a lot of debate as to whether the retirement age of the Supreme Court and High Court Judges should be the same for the precise reason that the functions and duties carried out by them are of the same nature and, therefore, if the age of retirement of a Supreme Court Judge is 65 years, the same should be so with regard to High Court Judges. If the Judges or Chief Justices of the High Courts, who retire at the age of 62 years, wish to take up assignment in Tribunals, which is, as mentioned above, taken by them after their retirement, their work-period in Tribunals may be 2-3 years. Obviously, when Judges of the Supreme Court are appointed in any Tribunal, their retirement age must at the least be 70 years, their date of retirement as a Supreme Court Judge being 65 years...'*

4.20 The Commission then recommended that there should be no difference in the retirement age of the Chairpersons, who come from the judicial stream i.e. High Courts or the Supreme Court, and it should be uniformly fixed at 70 years. Moreover, no distinction be made in the retirement age of the Members, whether coming from judicial stream or administrative stream.

**CHAPTER – V**  
**UNIFORMITY IN APPOINTMENT, QUALIFICATIONS,**  
**TENURE AND CONDITIONS OF SERVICE**

5.1. Tribunals have been established with the object of discharging quasi-judicial duties by acting judicially which differentiates them from other administrative bodies. A Tribunal is neither a Court nor an executive body, but they have an obligation to act judicially.<sup>71</sup> Tribunals are endowed with the judicial functions as distinguished from purely administrative or executive functions. Thus, for the efficient and effective working of these Tribunals, persons who have served in the higher judiciary should be appointed in accordance with the principles laid down by the Constitutional Courts.<sup>72</sup>

5.2. As a quasi-judicial body, the Tribunal performs the judicial functions for deciding the matters in a judicious manner. It is not bound by law to observe all the technicalities, complexities, refinements, discriminations, and restrictions that are applicable to the courts of record in conducting trials, but at the same time, a Tribunal is required to look at all matters from the standpoint of substance as well as form and be certain that the hearing is conducted and the matter is disposed of with fairness, honesty, and impartiality.<sup>73</sup>

**A. Uniformity in the Appointment System**

5.3. An independent judiciary is a *sine-qua-non* for the survival of healthy democracy. It is only when the judiciary is free from any pressure, either from the executive or legislature, the rule of law will prevail. Independent judiciary germinates from the doctrine of ‘separation of powers’ which is the very essence of a healthy democracy and forms an inseparable part of basic structure of the Constitution.<sup>74</sup> Independence of judiciary constitutes the foundation on which rests the edifice of democratic polity. The judiciary is insulated from other wings of the Government so

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<sup>71</sup> Supra Note 2 at 279.

<sup>72</sup> *Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi*, AIR 1950 SC 188.

<sup>73</sup> Mc. Mohan, Omar T., “A Fair Trial before quasi-judicial Tribunals as required by due process” 29 *MLR* 105 (1946).

<sup>74</sup> *Registrar (Admn.) High Court of Orissa v. Kanta Satapathy*, AIR 1999 SC 3265; and *State of Bihar v. Bal Mukand Sah* (2000) 4 SCC 640.

that “judges may act free from any pressure from any one as to how to decide any particular matter”.<sup>75</sup> Independent, impartial and fearless judiciary is our Constitutional creed.<sup>76</sup> Independence of judiciary means “freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values.” Thus, there must be a security in tenure, freedom from ordinary monetary worries, freedom from influences and pressures within (from others in the Judiciary) and without (the Executive).<sup>77</sup> It has different dimensions, which includes freedom from other power centres, economic and political, and freedom from prejudices acquired and nourished by the class to which the judges belong. It is for the independence of judiciary that it was sought to be kept apart and separate from the executive. Once the judiciary is manned by people of unimpeachable integrity, who can discharge their responsibility without fear or favour, the objective of independent judiciary will stand achieved.<sup>78</sup>

5.4. In *S.P. Sampath Kumar v. Union of India*,<sup>79</sup> the court held that the Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the framework of the Tribunals intended to be set up, to attain them must retain the basic judicial character so as to inspire public confidence.

5.5. As the Tribunals are vested with the judicial powers which had been hitherto vested in or exercised by Courts, the Tribunals should possess the same independence, security and capacity which are possessed by the judges. However, if the Tribunals are intended to serve an area which requires specialised knowledge or expertise, the appointment of Technical members in addition to judicial members must always be welcomed, as they can provide an input which may not be available with the judicial members. When any jurisdiction is shifted from Courts to Tribunals on the ground of pendency and delayed Court proceedings and the jurisdiction so transferred does not

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<sup>75</sup> *S.P. Gupta v. Union of India* AIR 1982 SC 149.

<sup>76</sup> *Union of India v. Pratibha Banerjee*, AIR 1996 SC 603; See also, *Union of India v. Sankal Chand Himatial Sheth*, AIR 1077 SC 2328; and *High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil*, AIR 1997 SC 2631.

<sup>77</sup> *Union of India v. R. Gandhi, President Madras Bar Association*, (2010) 11 SC 1899; See also, *Valente v. Queen*, (1985) 2 SCR 673 (Canada).

<sup>78</sup> *Supreme Court Advocates on Record Association v. Union of India*, AIR 2016 SC 117.

<sup>79</sup> AIR 1987 SC 386.

involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only the judicial members. But when the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, the presence of Technical members would be useful and necessary. The indiscriminate appointment of technical members in all the Tribunals will have weakening and adverse effect on its working.<sup>80</sup>

5.6. The Court in the case of *L Chandra Kumar (Supra)* observed that the numerous Tribunals with lack of uniformity in the matter of qualifications, appointments, tenure and service conditions is causing the major concern in effective working of the present Tribunal system, and therefore, it is desirable that all the Tribunals should be kept under a single nodal agency that will monitor the working of the Tribunals and will ensure the uniformity in the appointment system.

5.7. Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in its 17<sup>th</sup> Report on Administrative Tribunals (Amendment) Bill, 2006, referred to the decision given in *L. Chandra Kumar (Supra)*, and observed:

*‘until a wholly independent agency for the administration of all such Tribunals can be set-up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law.....’*

Therefore, it is appropriate that in order to ensure uniformity in all the affairs of the Tribunals, the Central Government may consider bestowing the function of monitoring the working of the Tribunal to a single nodal agency, preferably under the Ministry of Law and Justice.

## **B. Qualifications and Appointment**

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<sup>80</sup> *Madras Bar Association v. Union of India*, AIR 2015 SC 1571.

5.8. Section 6 of the Administrative Tribunals Act, 1985 prescribes the qualifications. As per this section, a person shall not be qualified as Chairman unless he is or has been, a Judge of a High Court. The Chairman and every other Member of the Central Administrative Tribunal are appointed after consultation with the Chief Justice of India by the President. The Chairman and every other Member of the Administrative Tribunals for a State or of Joint Administrative Tribunal are appointed by the President after consultation with the Governor of the concerned State. Whereas, according to the Administrative Tribunals (Amendment) Bill, 2012, the qualifying criteria has been laid down as:

*‘To make Judges of the Supreme Court eligible for appointment as Chairman, in the Central Administrative Tribunal, the State Administrative Tribunal and any Joint Administrative Tribunal and to bring uniformity in appointment of the Chairman and other Members of these Tribunals, following amendments are proposed to be made in the Act, namely: (a) to amend sub-section (1) of section 6 of the Act so as to provide that a person shall not be qualified for the appointment as Chairman unless he is, or has been, a judge of the Supreme Court or the Chief Justice of the High Court; (b) to substitute sub-sections (3) to (5) of section 6 of the Act with new sub-sections so as to provide for consultation by the President with the Chief Justice of India and the Governor of the respective States, in the case of State Administrative Tribunal and Joint Administrative Tribunals in addition to consultation by the President with the Chief Justice of India in the case of appointment of Chairman and every other Member of the Central Administrative Tribunal...’*

5.9 One of the Constitutional requirement as outlined by the Supreme Court in numerous decisions is that persons qualified in law, having judicial training and adequate experience should be appointed to these Tribunals was to dispense effective justice. Since the Tribunals are entrusted with the duty of adjudicating the cases involving legal questions and nuances of law, adherence to principles of natural justice will enhance the public confidence in their working. The Judicial Member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. The objective of having uniformity in the appointment system can be achieved if the appointments are made to the respective posts as indicated below:

- i. A person is or has been a Supreme Court Judge or Chief Justice of the High Court as Chairman.

- ii. A person who has been a judge of the High Court as Vice Chairman.
- iii. A person who has been a High Court judge or an Advocate who is eligible to be appointed as a Judge of High Court as Judicial Member.

5.10 If the jurisdiction of a High Court was transferred to a Tribunal, the members of the newly constituted Tribunal should possess the qualifications akin to the judges of the High Court. Similarly, in case if the jurisdiction and the functions transferred were exercised or performed by District Judges, the Members appointed to the Tribunal should possess equivalent qualifications and commensurate the stature of District Judges. The Supreme Court- a five judge bench in the case of *Madras Bar Association v. Union of India*,<sup>81</sup> considered various important questions. The two important questions considered by the court were:

1. Whether the transfer of adjudicatory functions vested in the superior court (i.e, high court) to an alternative court/tribunal (NTT in the instant case) violates recognized constitutional conventions?
2. Whether while transferring jurisdiction to a newly created court/tribunal, it is essential to maintain the standards and the stature of the court replaced?

5.11 The first question was answered in negative and the second one in affirmative. The court held that the enactment of a legislation to vest adjudicatory functions earlier vested in a superior court with an alternative court/tribunal does not *per se* violate any constitutional provision. But then, the court emphatically stated that, “[T]he ‘basic structure’ of the Constitution will stand violated if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure that the newly created court/tribunal conforms with the salient characteristics and standards of the court sought to be substituted.” The court made it clear that whenever legislation is enacted to transfer adjudicatory functions it shall be ensured:

1. All conventions/customs/practices of the court sought to be replaced have to be incorporated in the court/tribunal created.

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<sup>81</sup> (2014) 10 SCC 1.

2. The Members of a court/tribunal to which adjudicatory functions are transferred must be manned by judges/members whose stature and qualifications are commensurate to the court from which the adjudicatory functions have been transferred.

5.12 The court referring to its earlier decision in sub-para VII of para 15 observed as under:

*‘....tribunals vested with judicial power should possess the same independence, security and capacity, as the courts **which the tribunals are mandated to substitute**. The Members of the tribunals discharging judicial functions could only be drawn from sources possessed of expertise in law, and competent to discharge judicial functions. Technical Members can be appointed to tribunals where technical expertise is essential for disposal of matters, and not otherwise. ....where the adjudicatory process transferred to tribunals, did not involve any specialized skill, knowledge or expertise, a provision for appointment of Technical Members (in addition to, or in substitution of Judicial Members) would constitute a clear case of delusion and encroachment upon the independence of the judiciary, and the “rule of law”. The stature of the members, who would constitute the tribunal, would depend on the jurisdiction which was being transferred to the tribunal.’*  
[Emphasis added]

5.13 The Court further observed that, *‘Technical Members can be appointed to tribunals where technical expertise is essential for disposal of matters, and not otherwise.’*

5.14 For the post of **Technical Member/Expert Member**, the Commission is of the view that an appointment to this post should comprise of person of proven ability, integrity and standing having special knowledge and professional experience or expertise of not less than fifteen years in the particular field, i.e., the field to which the Tribunal relates. Technical Member / Expert Member should be appointed only where the Tribunals are intended to serve an area which requires specialised knowledge or expertise or professional experience and the exercise of jurisdiction involves consideration of, and decisions into, technical or special aspects.

5.15 Administrative Members, if required, should be such persons who have held the post of the Secretary to the Government of India or any other equivalent post under the Central or State Government, carrying the scale of pay of a Secretary to the Government of India, for two years or an Additional Secretary to the Government of India or any other equivalent post under the Central or State Government, carrying the scale of pay of an Additional Secretary to the Government of India, having an experience of such post for three years.

5.16 The Commission is of the view that a Selection Board / Committee, headed by the Chief Justice of India or a sitting Judge of the Supreme Court, as his nominee and comprising two nominees of the Central Government not below the rank of Secretary to the Government of India, shall be constituted for appointment of Chairman, Vice-Chairman and Judicial members of the Tribunal. For selection of Administrative Member, Accountant Member, Technical Member, Expert Member or Revenue Member, there shall be Selection Committee headed by the nominee of the Central Government, to be appointed in consultation with the Chief Justice of India.

5.17 On scrutiny of the various legislations that provide framework for constitution of various Tribunals, it may be stated that most of them deprive the High Court of such jurisdiction and bestows it upon the Tribunal in specific areas. However, the provisions relating to qualifications of persons to be appointed as chairpersons/members to these tribunals, manner of appointment, duration of appointment, etc., do not conform to the standards laid down in *Madras Bar Association (supra)* and various other decisions. Furthermore, no provisions for protecting/safeguarding their independence are found in these enactments. On the contrary, some of the provisions, like vesting of administrative control, contained in these legislations make the tribunal subservient to the executive, whose dispute they are deciding.

5.18 As a rule of prudence, the Committee constituted for the selection of chairperson/ members of the tribunal shall not be headed by the Secretary to the Government of

India, for the reason the Central Government is a party to every litigation before such tribunal.

### **C. Reappointment**

5.19 Question of reappointment is one of the important aspects having a direct bearing on the independence and fairness in the working of the institution. It goes without saying that any provision for reappointment would itself have the effect of undermining the independence of the chairperson/member. One may be inclined to decide matters in a manner that would ensure their reappointment. Keeping this in view, matters relating to appointment and extension of tenure must be shielded from intervention of the executive.

### **D. Vacancy**

5.20 In order to avoid any prolonged vacancy in any of the posts, the process of appointment should start well in advance in order to ensure that the vacancy is filled up without any avoidable delay, as the general experience is that the working of the Tribunals is affected because of the non-filling up of the vacancies in time. Therefore, the process of selection should be initiated as early as possible, preferably within six months prior to the occurrence of a vacancy.

### **E. Tenure and Service Conditions**

5.21 At present, there is no uniformity in the retirement age of the members of a Tribunal which shows that there is an imperative need to fix the uniform age of retirement of such members. The Commission in its 232<sup>nd</sup> Report on '*Retirement Age of Chairpersons and Members of Tribunals – Need for Uniformity*', while taking note of the fact that there is no uniformity in the age of retirement, observed:

*'If the Judges or Chief Justices of the High Courts, who retire at the age of 62 years, wish to take up assignment in Tribunals... after their retirement, their work-period in Tribunals may be 2-3 years. Obviously, when Judges of the Supreme Court are appointed in any Tribunal, their retirement age must at the least*

*be 70 years, their date of retirement as a Supreme Court Judge being 65 years.*

*...there should also be no difference in the retirement ages for Chairpersons and Members, who come from the judicial stream i.e. High Courts or the Supreme Court, and it should uniformly be 70 years. A distinction may be made insofar as Members are concerned from another perspective. Members in Tribunals have two streams - judicial and administrative. The retirement age from the government, of those who join the administrative stream is 60 years and the term of 5 years as a Member of Tribunal may be sufficient in their case. However, no distinction can be made in the retirement age of the Members whether coming from judicial stream or administrative stream. Irrespective of the stream, the retirement age needs to be uniformly fixed.'*

5.22 The Commission is of the opinion that uniformity in the service conditions of the Chairman and other Members of the Tribunals is one of the most significant requirements to ensure smooth working of the system. The Chairman should hold office for a period of three years or till he attains the age of seventy years, whichever is earlier. Whereas, Vice-Chairman and members should hold the office for a period of three years or till they attain the age of sixty seven years whichever is earlier. It will be appropriate to have uniformity in the service conditions of the Chairman, Vice-Chairman and other members of the Tribunal to ensure smooth working of the system.

5.23 It would be appropriate to have the terms and conditions of service, other allowances and benefits of the Chairman be such as are admissible to a Central Government Officer holding posts carrying the pay of Rs.2,50,000/-, as revised from time to time. The terms and conditions of service, other allowances and benefits of a Member of a Tribunal shall be such as are admissible to a Central Government officer holding posts carrying the pay of Rs.2,25,000/-, as revised from time to time. The terms and conditions of service, other allowances and benefits of Presiding Officer / Member of a Tribunal (to which the jurisdiction and functions exercised or performed by the District Judges are transferred) shall be such as are admissible to a Central Government officer drawing the corresponding pay of a District Judge.

5.24 In view of the provisions of section 6(2)(b) of the Central Administrative Tribunal Act, 1985, an advocate, who is qualified to be a Judge of a High Court, can be appointed as a judicial member. His tenure would be five years and can be

reappointed for another term, i.e., for a further period of five years and no more. In case he is appointed at the age of 40 years, he would cease to be a judicial member at the age of 45 years and if the term is renewed, at the age of 50. Thereafter, it would be difficult for such member to rebuild his practice after working maximum for 10 years in the Tribunal. It discourages a person having good practice to join such Tribunal. It is desirable that, initially, an advocate be appointed for a period of two years as an *ad hoc* member and later be confirmed after assessing his performance and suitability, and he may be allowed to continue till he reaches the age of superannuation. In the alternative, the initial appointment should be for a reasonably long tenure and may also be subject to renewal, in suitable cases.

5.25 The procedure for removal of the Chairman and Members provided in statutes under which the Tribunal has been established are given in **Annexure II**. It is settled legal proposition that in view of the provisions of section 16 of the General Clause Act, 1897, the expression, ‘appointment’ includes termination of or removal from service also<sup>82</sup>.

5.26 In Income Tax Appellate Tribunal, under the provisions of the Income Tax Act, 1961 an advocate is appointed as a member and he continues to hold the office till he reaches the age of superannuation. The relevant provisions stand amended by the Act of 2017 whereby section 252-A is inserted. Under this provision all the terms of appointments and service conditions are to be laid down by the Central Government as provided under Section 184 of the Finance Act, 2017. The Central Government has notified the ‘Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members), Rules 2017’. By the aforesaid arrangement not only the status of the Tribunal is downgraded but also the eligibility criteria for the post of the Chairman as well as the Administrative members are reduced. The validity thereof has been challenged in the case of *Central Administrative Tribunal (Principal Bench) Bar Association through its President v.*

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<sup>82</sup> See: *Pradyat Kumar Bose v. The Hon'ble The Chief Justice of Calcutta High Court*, AIR 1956 SC 285; *Chief Justice of Andhra Pradesh and Ors. v. L.V.A. Dixitulu and Ors.* AIR 1979 SC 193; *The Manager, Government Branch Press and Anr. v. D.B. Belliappa*, AIR 1979 SC 429; and *State of Tamil Nadu and Ors. v. M.N. Sundararajan* AIR 1980 SC 2084

*Union of India*,<sup>83</sup> and the Supreme Court has issued show cause notice to the Union of India and other respondents vide order dated 21 August 2017. In the matter of salary and allowances,<sup>84</sup> Pension, Gratuity and Provident Fund<sup>85</sup> with other benefits like house rent allowance, transport allowance and other terms and conditions shall be uniform as far as practical and possible for all the members of the Tribunals.

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<sup>83</sup> W.P. No. 640 of 2017.

<sup>84</sup> The Finance Act, 2017, s. 11, Salary and allowances.

<sup>85</sup> *Id.*, s. 12, Pension, Gratuity and Provident Fund.

## CHAPTER – VI

### POWER OF JUDICIAL REVIEW UNDER THE CONSTITUTION

6.1. Power of judicial review has consistently been held to be a basic feature of the Constitution. Basic features forming core structure of the Constitution cannot be affected otherwise, even the Constitutional amendments would be liable to be struck down. The Constitution confers on the judiciary the power of judicial review which is exclusive in nature. Under the constitution, it is the responsibility of judiciary, to interpret the Constitution and the laws made thereunder. Therefore, defining the contours of constitution of the Tribunals and the judicial control over them is necessary before undertaking any exercise of enacting a law.

6.2. The term ‘quasi-judicial’ is commonly used to describe certain kinds of powers exercised by ministers or government departments but subject to a degree of judicial control on the manner of their exercise by way of judicial review. It is applied to powers which can be exercised only when certain facts have been found to exist, and it indicates that these facts must be found in conformity with a code of rules called ‘natural justice’. According to Sir Ivor Jennings, “the term ‘quasi-judicial’ appears to regard it as one of a number of pseudo-analytical expressions derived from false premises as to the separation of powers.”<sup>86</sup>

6.3. In *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*,<sup>87</sup> the Supreme Court held that, in order to establish that a constitutional provision is an essential feature it must be shown that the same is fundamental and binds the amending powers of the Parliament. The judicial review is a part of the basic structure of the Constitution and its curtailment in any manner would amount to violation of the basic structure of the Constitution.

6.4. In *Indira Nehru Gandhi vs. Raj Narayan*,<sup>88</sup> the Supreme Court struck down clause (4) of Article 329-A which was inserted by Constitution (Thirty-ninth

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<sup>86</sup> Wade, H.W.R., “Quasi-Judicial and its Background” 2 *CLJ* 216 (1949).

<sup>87</sup> AIR 1973SC 1461.

<sup>88</sup> AIR 1975 SC 1590.

Amendment) Act, 1975 to validate the election with retrospective effect on the ground that “it violated the free and fair elections which was an essential postulate of democracy forming part of basic structure of the Constitution.”

6.5. In *Minerva Mills Ltd. v. Union of India*,<sup>89</sup> it was held that amendment of a single Article may have the potential to destroy the basic structure of the Constitution depending upon the nature and the context of the abrogation of that Article, if the purpose sought to be achieved by such Article constitutes the quintessential of the basic structure of the Constitution. The Court reiterated the importance of power of judicial review by observing:

*‘...judicial review is a vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. If by a Constitutional amendment, the power of judicial review is taken away and it is provided that the validity of any law made by the Legislature shall not be liable to be called in question on any ground, even if it is outside the legislative competence of the legislature or is violative of any fundamental rights, it would be nothing short of subversion of the Constitution, for it would make a mockery of the distribution of legislative powers between the Union and the States and render the fundamental rights meaningless and futile.’*

6.6. In *I.R. Coelho v. State of Tamil Nadu*,<sup>90</sup> the petitioner had challenged the various Central and State laws put in the Ninth Schedule. The nine-Judge Bench held that “validity of any law shall be open to challenge on the ground that it destroys or damages the basic structure of Constitution”. The Court further held:

*‘equality, rule of law, judicial review and separation of powers, form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the*

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<sup>89</sup> AIR 1980 SC 1789; See also *Kuldip Nayar v. Union of India* AIR 2006 SC 3127; and *M. Nagaraj Waman Rao v. Union of India*, (1981) 2 SCC 362.

<sup>90</sup> AIR 2007 SC 861.

*duty to decide whether the limits have been transgressed has been placed on the judiciary.’*

6.7 In *Madras Bar Association Case (Supra)* the five-Judge Bench held:

*‘...The “basic structure” of the Constitution will stand violated if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure that the newly created court/tribunal conforms with the salient characteristics and standards of the court sought to be substituted.’*

6.8 In *Supreme Court Advocates on Record Association v. Union of India*,<sup>91</sup> the Court held that, “clause (d) of Article 124-A(1) which provides for the inclusion of two “eminent persons” as Members of the National Judicial Appointments Commission Act, 2014 was *ultra vires* the Constitution, for a variety of reasons. The same has also been held as violative of the “basic structure” of the Constitution.

6.9 The principle of separation of powers as enshrined in Article 50 of the Constitution has to be seen in the light of control over such Tribunals by the judiciary and the power of adjudication by the High Court or Supreme Court in the exercise of their writ jurisdiction and the power of superintendence over Tribunals by the High Court under Article 227 of the Constitution of India. For instance, for a specific State subject under List II can be an adjudicatory Tribunal created by the State. Thus, the Parliament cannot create a Tribunal for a subject matter which is exclusively within List II. And for adjudicating a dispute arising from the said subject matter, it is only the State Legislature who can create a Tribunal.

6.10 In *S. P. Sampath Kumar Case (Supra)*, the Constitutional validity of the Administrative Tribunals Act, 1985 was challenged on the ground of exclusion of power of judicial review, of the Supreme Court under Article 32 and the High Courts under Articles 226 and 227 of the Constitution. Section 6 of the Act, which enumerated the qualifications of a Chairman, Vice Chairman, judicial members and administrative

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<sup>91</sup> AIR 2016 SC 117.

members, on the basis of the composition and mode of appointment was also challenged. The Court held that section 6(c) was liable to be struck down on the ground that the officers of Secretary level cannot be the members of the Tribunal performing judicial functions. However, the Court held that section 28 which excluded the jurisdiction of the High Courts under Articles 226/227 was not unconstitutional. It was also ruled that this section does not totally bar the judicial review.

6.11 The Court further held that the Administrative Tribunals under the 1985 Act are substitutes to the High Courts and deal with all service matters involving Articles 14, 15 and 16, and advised to change the qualifications of Chairman of the Tribunal. As a result, the Act was amended in 1987. The Administrative Tribunals (Amendment) Act, 1987 section 6(1)(c) of the said Act was quashed and section 6(7) providing for appointment of Chairman, Vice-Chairman and members of the Tribunal in consultation with the Chief Justice of India was substituted.

6.12 The Supreme Court again examined the scope of judicial review in *Tata Cellular v. Union of India*,<sup>92</sup> wherein a tender awarded by a public authority for carrying out certain work was under challenge. The Court held that:

*‘Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justifiable but need to remedy any unfairness. Such an unfairness is set right by judicial review.’*

6.13 In *Sampath Kumar case (Supra)*, it was also observed that, if the Administrative Tribunal is to be an equally effective and efficacious substitution for the High Court, there must be a permanent or a Circuit Bench of the Administrative Tribunal at every place where there is a seat of the High Court. In *J.B. Chopra v. Union of India*,<sup>93</sup> the Court relying on the same decision held that the Central Administrative Tribunal constituted under the Act has the authority and the jurisdiction to strike down a rule

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<sup>92</sup> (1994) 6 SCC 651.

<sup>93</sup> AIR 1987 SC 357.

framed by the President of India under the proviso to Article 309 of the Constitution being violative of Articles 14 and 16(1) of the Constitution. The Court observed:

*'the Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Articles 14 and 16(1) of the Constitution.'*

6.14 In *M.B. Majumdar v. Union of India*,<sup>94</sup> the Court relied upon the decision in *Sampath Kumar (Supra)*, wherein it was held that the Tribunals under the Act had been equated with the High Courts only to the extent that the former were to act as substitutes for the latter in adjudicating service matters; therefore, parity cannot be sought for all other purposes and held that equation of the Tribunal with the High Court was only for the purpose of adjudication of disputes relating to service matters and not in respect of their service conditions.

6.15 In *R. K. Jain v. Union of India*,<sup>95</sup> the Supreme Court expressed its anguish over the ineffectiveness of administrative tribunals in exercising high power of judicial review and emphasised on the need to take remedial steps to make them capable of dispensing effective, inexpensive and satisfactory justice. The court also considered whether the Tribunals could be an effective substitute of the High Courts with reference to the powers of the High Courts under Article 226 and 227, referred and relied upon its earlier decisions in the cases of *M. B. Majumder (Supra)* and *J.B. Chopra (Supra)* and held that the Tribunals are not the effective substitutes of the High Courts.

6.16 In the event, the Tribunals assume wrong jurisdiction or proceed on erroneous assumptions of law or facts or, where an action can be assailed on malice in law and/or fact, it would not be appropriate to read an ouster of judicial review by the High Court or the Supreme Court. Such an interpretation would not only amount to encroaching upon the power of superintendence by the higher judiciary conferred by the

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<sup>94</sup> AIR 1990 SC 2263.

<sup>95</sup> AIR 1993 SC1769.

Constitution, but also tempering with the basic structure of the Constitution of India. The higher Courts have been conferred the power of judicial review of legislative action, judicial decision and administrative action.

6.17 In *L. Chandra Kumar Case (Supra)* the constitutional validity of Articles 323-A(2)(d), 323-B(3)(d) and the Administrative Tribunals Act, 1985 was challenged. One of the most important aspect which fell for consideration was whether the Tribunals constituted under Part XIV- A of the Constitution of India can be effective substitutes of the High Courts vis-à-vis the power of judicial review. The issues before the Court were:

*(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by Sub-clause (d) of Clause (2) of Article 323A or by Sub-clause (d) of Clause (3) of Article 323B of the Constitution, totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in Clause (1) of Article 323A or with regard to all or any of the matters specified in Clause (2) of Article 323B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?*

*(2) Whether the Tribunals, constituted either under Article 323A or under Article 323B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?*

*(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?*

It was held:

*‘...the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the*

*constitutional validity of legislations can never be ousted or excluded.*

*....the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.'*

It is important to note that the court held the power of judicial review of the High Courts and the Supreme Court cannot be ousted or excluded *ordinarily*. The use of the word 'ordinarily' gives an impression that in exceptional cases or special circumstances, ousting or excluding the jurisdiction of these courts may be justified. Reading the judgment holistically, it becomes clear that the independence of the alternative courts/tribunals to which such jurisdiction is transferred is protected in the same manner and to the same extent to which the independence of the superior courts is protected under the constitution.

6.18 The Court further held that Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Administrative Tribunals Act, 1985 excluded the power of judicial review exercised by the High Courts in service matters under Articles 226 and 227; but it did not exclude the judicial review entirely in as much as the jurisdiction of the Supreme Court under Article 136 of the Constitution was kept intact. The Court held that section 28 of the Administrative Tribunals Act, 1985 and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the extent they exclude the jurisdiction of the High-Courts (under Articles 226 and 227) and the Supreme Court (under Article 32) would be *ultra vires* of the Constitution.

6.19 It was also held that there was no Constitutional prohibition against Administrative Tribunals in performing a supplemental as opposed to a substitutional role; i.e., in exercising their powers, such Tribunals cannot act as substitutes for High Courts and the Supreme Court. The decisions of these Tribunals created under Articles 323-A and 323-B of the Constitution of India will be subject to scrutiny before a

Division Bench of the High Court within whose jurisdiction, the concerned Tribunal is located.

6.20 Administrative Tribunals under Article 323-A could examine all the disputes pertaining to service conditions, including the constitutional validity of any Statute or rules except that of the Act under which that Tribunal is established. For challenging the constitutional validity of such an Act, one will have to approach the concerned High Court. Against an Administrative Tribunal's decision, a writ would lie to a High Court having jurisdiction over it and against such decision an appeal would lie to the Supreme Court under Article 136.

6.21 In *The State of Maharashtra v. Labour Law Practitioners*,<sup>96</sup> the Court applied the tests laid down in *Bharat Bank's Case (Supra)* wherein it had been held that the Industrial Tribunal is a Civil Court exercising civil jurisdiction. The test laid down in the matter was based on an English case of *Cooper v. Wilson*,<sup>97</sup> which prescribed the following parameters:

- i. the presentation of their case by the parties;
- ii. ascertainment of facts by means of evidence adduced by the parties often with the assistance of argument;
- iii. if the dispute relates to a question of law, submission of legal arguments by the parties; and
- iv. by decision which disposes of the whole matter by findings on fact and application of law to facts so found.

6.22 The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides for setting up of a Tribunal and an appellate Tribunal. The Constitutional validity of this Act was challenged in *Union of India v. Delhi Bar Association*,<sup>98</sup> wherein the Supreme Court held:

*'It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same*

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<sup>96</sup> AIR 1998 SC 1233.

<sup>97</sup> [1937] 2 K.B. 309.

<sup>98</sup> AIR 2002 SC 1479.

*can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution.'*

6.23 In *Union of India v. R Gandhi*,<sup>99</sup> the Constitutional validity of Chapters 1B and 1C of the Companies Act, 1956 under which National Company Law Tribunal ('NCLT') and National Company Law Appellate Tribunal ('NCLAT') are constituted. The Court upheld the Constitutional validity observing:

*'A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.'*

6.24 In *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*,<sup>100</sup> a Constitutional bench of five judges considered the question of judicial review in relation to the exercise of Parliamentary provisions. The Court summarised the principles relating to the same and laid down amongst other things:

*'An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.'*

6.25 In the case of *Mohammed Ansari v. Union of India*,<sup>101</sup> the order of the High Court holding that the Tribunal has no jurisdiction in case of non-grant of non-functional financial upgradation to the appellant was under scrutiny. The Tribunal had held that it had the jurisdiction. The Supreme Court considered whether after coming into force of Armed Forces Tribunal Act, 2007, the Armed Forces Tribunals (AFT) could deal with the controversy or the High Court would still have jurisdiction under Article 226 of the Constitution. It was held that the AFT shall have the jurisdiction to hear appeals only against courts martial verdicts, qua GREF personnel. But, if the

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<sup>99</sup> (2010) 11 SCC 1.

<sup>100</sup> (2007) 3 SCC 184.

<sup>101</sup> (2017) 3 SCC 740.

punishment is imposed on GREF personnel in departmental proceedings held under the CCS (CCA) Rules, 1965, the same cannot be agitated before the AFT.

6.26 Under Article 136(2) r/w Article 227(4) of the Constitution, the AFT is kept outside the purview of judicial review by the higher judiciary by virtue of sections 30 and 31 of Armed Forces Tribunal Act, 2007. In *Union of India v. Major General Shri Kant Sharma*,<sup>102</sup> the Court while interpreting sections 30 and 31 held that the High Courts have no power to intervene in proceedings arising under the AFT Act, 2007. However, in the case of *Union of India, v. Thomas Vaidyan M*,<sup>103</sup> the Supreme Court doubted the correctness of the aforesaid judgment and observed:

*'The observations of this Court are being read as debarring the High Courts from exercising jurisdiction under Article 226 of the Constitution of India, contrary to law laid down by this Court in the case of L Chandra Kumar v. Union of India (1997) 3 SCC 261. Prima facie, we are of the view that the decision of this Court in Union of India & Ors. v. Major General Shri Kant Sharma & Anr. (Supra) may call for a revisit. It would be appropriate that this aspect considered by a Three-Judge Bench. Since this question arises in a number of cases, the matter involves some urgency.'*

6.27 In view of the provisions of section 3(o) of the Act, 2007, the AFT has jurisdiction to entertain service matters in respect of persons subject to the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957. However, it does not have jurisdiction in respect of the following matters:

- (i) Orders issued under section 18 of the Army Act, 1950 (46 of 1950) sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and
- (ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);
- (iii) leave of any kind;
- (iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months.

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<sup>102</sup> (2015) 6 SCC 773.

<sup>103</sup> Civil Appeal No. 5327/2015, order dated 16.11.2015.

6.28 Thus, it is clear that the judicial review among many other important aspect of the basic structure of the Constitution is indispensable and while creating any other mode of adjudication of disputes, the judicial review cannot be compromised with.

## **CHAPTER - VII**

### **APPEALS TO HIGH COURTS AND THE SUPREME COURT**

7.1 The establishment of Tribunals is oriented towards the promotion of social goals which aims at dispensing collective justice to a large segment of the general public with the expertise in Administrative Law/principles. It is therefore imperative that a provision for judicial review of decisions of the Tribunal is there to determine whether the Tribunal met the minimum standards of rationality.<sup>104</sup> The Law Commission of India in its 162<sup>nd</sup> Report identified the need for a fair balance between the interests of State and the interests of individuals. It was observed that Courts can interfere with the jurisdiction of a Tribunal to the extent permitted by 'science of administrative law' because the paramount concern of Administrative Law is to protect the citizen from abuse of official power.

7.2 It is a settled legal proposition that the higher judiciary alone has the function of determining authoritatively the meaning of statutory enactment and to lay down the frontiers of jurisprudence of any body or Tribunal constituted under the Act. A Tribunal has to function under the Statute, whereas the higher judiciary is a Constitutional authority, which is entrusted not only with the task of interpreting the laws and the Constitution, but also to exercise supervisory control over the Tribunals. This position is contemplated under the Constitution and also pronounced by the Court in order to preserve the independence of judiciary while discharging sovereign functions of dispensing justice. By creating Tribunals, this position cannot be diluted by a law made by the Parliament or State Legislatures.

7.3 The judicial hierarchy of Indian Legal System is distinct as compared to that under the American and the Canadian Constitution. The American Constitution confers all powers on the State except the specified subjects which are exclusively meant for the Federal Government. However, under the Canadian Constitution, only specified subjects and powers are given to the constituent states and all residuary powers are left with the Federal Government

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<sup>104</sup> Leelakrishan, P., "Reviewing Decisions of Administrative Tribunal: Paternalistic approach of the Indian Supreme Court and need for Institutional Reforms" 54:1 *JILI* 25 (2012).

7.4 In common law countries, the administrative adjudication operates under the judicial supervision unlike the French System which has established *Council d'Etat*. In India and various other common law countries, the judicial review of decisions is allowed on a few legal grounds like denial of principles of natural justice, failure to observe prescribed procedure, want or abuse of jurisdiction, error of law, *ultra vires* decision etc.<sup>105</sup> Indian Administrative Law has adopted the second control mechanism i.e., judicial review of administrative agencies. In the United Kingdom, the Tribunal system is divided into two tiers with 'first tier Tribunal' and the appellate 'upper Tribunal'. Appeal from the upper tribunal is heard by the court of appeal and further appeal goes to the Supreme Court of United Kingdom. The purpose of this system is to guarantee the independence of judiciary, that is why the Tribunals are considered as 'machinery of adjudication' rather than the 'machinery of administration.'<sup>106</sup>

7.5 Franks' Report strongly emphasised the review of Tribunal decisions by the Courts on the point of law by the certiorari proceedings or by appeal. The judicial review has to be limited i.e., only on the points of law and not of facts except when there is a complete absence of evidence.<sup>107</sup> The Report also recommended that except in cases where the Tribunal of first instance is exceptionally strong, there must be a general right of appeal on fact, law and merits to an appellate Tribunal. In addition, there should be a right of appeal to the Courts on a point of law.<sup>108</sup>

7.6 In common law,<sup>109</sup> every Tribunal with a limited jurisdiction is subject to control by the High Court on various grounds like when Tribunal exceeds its jurisdiction, acts contrary to the principles of natural justice, fails to perform statutory duty, fails to exercise its jurisdiction or commits an error of law.<sup>110</sup> In the Supreme

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<sup>105</sup> Supra note 5 at p. 525.

<sup>106</sup> Supra note 82 at 21; See also The Constitutional Reform Act, 2005 (UK), s. 3.

<sup>107</sup> Judicial Review available at:

<http://14.139.60.114:8080/jspui/bitstream/123456789/663/8/Judicial%20Review.pdf> (last visited on 15-08-2017).

<sup>108</sup> Gupta, Balram K., "Administrative Tribunals and Judicial Review: A Comment on Forty-second Amendment" *JSPUI* 419, Franks Report has been implemented by the Tribunals and Inquiries Act, 1958 (now Act of 1971).

<sup>109</sup> Tribunals and Inquiries Act, 1958 (now Act of 1971).

<sup>110</sup> Supra note 85 at 420.

Courts of other jurisdictions, the cases decided by them are few and are of Constitutional and national importance. In those jurisdictions, the subordinate Courts decide the cases finally to avoid overloading of the Supreme Courts. The Supreme Courts of other jurisdictions such as the United States, the United Kingdom, Canada, Australia and South Africa sit either *en banc*, i.e., of its full strength, or in large benches of five or more judges considering the importance of the case.<sup>111</sup>

7.7 The Supreme Court, as the Apex Court in the country, was meant to deal with important issues like Constitutional questions, questions of law of general importance or where grave injustice had been done. If the Supreme Court goes on entertaining all and sundry kinds of cases, it will be flooded and there will be huge backlog obstructing it to deal with the cases, for which it was really meant. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute.<sup>112</sup>

7.8 In *S.G. Chemical and Dyes Trading Employees Union v. S.G. Chemicals and Dyes Trading Ltd.*,<sup>113</sup> it was observed:

*'Today, when the dockets of this Court are over-crowded, may almost choked, with the flood, or rather the avalanche, of work pouring into the Court, threatening to sweep away the present system of administration of justice itself, the Court should be extremely vigilant in exercising its discretion under Article 136..*

7.9 Justice K.K. Mathew, referred to the opinion of Justice Frankfurter, in his article,<sup>114</sup> observing:

*'The function of the Supreme Court, according to Justice Frankfurter, was to expound and stabilize principles of law, to pass upon constitutional and other important*

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<sup>111</sup> Andhrayujina, T.R., "Restoring the Supreme Court's exclusivity" available at: <http://www.thehindu.com/opinion/lead/Restoring-the-Supreme-Court%E2%80%99s-exclusivity/article11557294.ece>. (last visited 10-08-2017).

<sup>112</sup> *Mathai @ Joby v. George*, (2010) 4 SCC 358.

<sup>113</sup> (1986) 2 SCC 624.

<sup>114</sup> An eminent Judge of the Court, (1982) 3 SCC (Jour) 1.

*questions of law for the public benefit and to preserve uniformity of decision among the intermediate courts of appeal.'*

7.10 Mr. K.K. Venugopal, in one of his lectures, pointed out:<sup>115</sup>

*' ....an alarming state of affairs has developed in this Court because this Court has gradually converted itself into a mere Court of Appeal which has sought to correct every error which it finds in the judgments of the High Courts of the country as well as the vast number of tribunals. This Court has strayed from its original character as a Constitutional Court and the Apex Court of the country. If the Apex Court seeks to deal with all kinds of cases, it necessarily has to accumulate vast arrears over a period of time which it will be impossible to clear in any foreseeable future. This is a self-inflicted injury, which is the cause of the malaise which has gradually eroded the confidence of the litigants in the Apex Court of the country, mainly because of its failure to hear and dispose of cases within a reasonable period of time. It is a great tragedy to find that cases which have been listed for hearing years back are yet to be heard.'*

7.11 A question cannot be said to be of public importance unless it is important throughout the State and not a single geographical area.<sup>116</sup> The matters of public importance may mean matters relating to Governmental action or inactions which arouse something in the nature of a nationwide crisis of confidence.<sup>117</sup> It may include indiscriminate dumping of municipal waste, noise and solid waste pollution, protection of wildlife etc. The conduct of an individual may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance.<sup>118</sup> When it is alleged that a Minister has acquired vast wealth for himself, his relations and friends, by abuse of his official position, there can be no question that the matter is of public importance. It is of public importance that public men failing in their duty should be called upon to face

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<sup>115</sup> R.K. Jain Memorial Lecture delivered on 30.01.2010.

<sup>116</sup> Cantero, Raoul G., "Certifying Questions to the Florida Supreme Court: What's So Important?" *FBJ* 40 (2002).

<sup>117</sup> Segal, Zeev, "The Power to Probe into Matters of Vital Public Importance", 58 *TLR* 941 (1984).

<sup>118</sup> *Ram Krishan Dalmia v. Shri Justice S.R. Tendolkar*, AIR 1958 SC 538.

the consequences. It is certainly a matter of importance to the public that lapses on the part of Ministers should be exposed. The cleanliness of public life in which the people should be vitally interested, must be a matter of public importance. The people are entitled to know whether they have entrusted their affairs to an unworthy man. Allegations may very well raise questions of great public importance.<sup>119</sup>

7.12 The Supreme Court, through its appellate jurisdiction supervises the functioning of administrative bodies, and can impose discipline over these bodies for the progress of Administrative Law and promotion of the Rule of Law in India.<sup>120</sup> The purpose of conferring supervisory jurisdiction and power of judicial review on the Constitutional Courts is to keep the Tribunals within their legal binds/authority.<sup>121</sup> In fact, the powers of the High Courts under Article 227 are revisional in nature, while jurisdiction under Article 226 is considered as an exercise of original jurisdiction<sup>122</sup>.

7.13 When a Statute gives a right of appeal from Tribunal to a Court of law, it is ordinarily confined to on a point of law but questions of law must be distinguished from questions of fact.<sup>123</sup> On every question involving legal interpretation which arises only after the establishment of primary facts, an appeal on a point of law should be available.<sup>124</sup> An Appeal is a continuity of suit proceedings, and a right to enter into a superior Court. It is re-hearing of a case while judicially examining the case and reviewing/revising the decision of the subordinate court.<sup>125</sup> The Supreme Court does not usually entertain appeals against an order of a Tribunal unless appellant has exhausted the alternative remedies provided by the relevant law.<sup>126</sup>

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<sup>119</sup> *State of Jammu and Kashmir v. Bakshi Ghulam Mohammad*, AIR 1967 SC 122.

<sup>120</sup> *Supra* note 13 at 1989.

<sup>121</sup> *Nagendra Nath Bora v. Commissioner of Hills Division*, AIR 1958 SC 398; and *State of Punjab v. Navjot Sandhu*, (2003) 6 SCC 641.

<sup>122</sup> *Surya Deo Rai v. Ram Chander Rai*, AIR 2003 SC 3044.

<sup>123</sup> *Supra* note 4 at 794.

<sup>124</sup> *Id.* at 795.

<sup>125</sup> *Nagendra Nath Dey v. Suresh Chandra Dey*, AIR 1932 P.C. 165; *State of Kerala v. K.M. Charia Abdulla*, AIR 1965 SC 1585; *Lakshmiratan Engineering Works v. Asst. Commissioner*, AIR 1968 SC 488; *Shankar Ramachandra Abhyankar v. Krishnaji Dattatraya Bapat*, AIR 1970 SC 1; *Amarjit Kaur v. Pritam Singh*, AIR 1974 SC 2068 (5); *Hasmat Rai v. Raghunath Prasad*, AIR 1981 SC 1711; *Ramankutty Guptan v. Avara*, AIR 1994 SC 1699; and *Tirupati Balaji Developers (P) Ltd. v. State of Bihar*, (2004) 5 SCC 1.

<sup>126</sup> Jain, M.P., *Indian Constitutional Law* Lexis Nexis Butterworths Wadhwa Nagpur, 2010 at p. 264.

7.14 A right of appeal is considered to be a universal requirement for the effective enjoyment of right to life and liberty as one of the core principle of jurisprudence. This is in foundation of the set-up of Courts in hierarchical order. As men are fallible, so are the judges and mistake if any is committed while passing a judgment the same is required to be rectified. Based on that, the litigant party must have a right to go in an Appeal. This issue was dealt with elaborately by a five-Judge Bench of the Supreme Court in *Sita Ram v. State of U. P.*,<sup>127</sup> wherein it was observed:

*'A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the conception that men are fallible, that Judges are men and that making assurance doubly sure, --- a full-scale re-examination of the facts and the law is made an integral part or fundamental fairness or procedure.*

.....

*Where, the subject-matter is less momentous, where two courts have already assessed the evidence and given reasoned decisions, pragmatism and humanism legitimate, in appropriate cases, the passing of judgment at the third tier without giving reasons where the conclusion is one of affirmance. Natural justice cannot be fixed on a rigid frame and fundamental fairness is not unresponsive to circumstances.'*

7.15 The Supreme Court, *In Re: Sanjiv Dutta, Deputy Secretary, Ministry of Information and Broadcasting*,<sup>128</sup> held:

*'None is free from errors, and the judiciary does not claim infallibility. It is truly said that a judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors. Abuses, attribution of motives, vituperative terrorism and*

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<sup>127</sup> AIR 1979 SC 745.

<sup>128</sup> (1995) 3 SCC 619; See also *State of West Bengal v. Shivananda Pathak*, AIR 1998 SC 2050.

*defiance are no methods to correct the errors of the courts.'*

7.16 It was in this view that in *Hotel Balaji v. State of Andhra Pradesh*,<sup>129</sup> the Supreme Court held:

*'.....To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.'*

7.17 In *Nagendra Nath Dey v. Suresh Chandra Dey*,<sup>130</sup> a five-judge bench of the Privy Council held that, 'an appeal is an application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court.' Similarly, a five-judge bench of the Madras High Court in *Chappan v. Moidin Kutti*,<sup>131</sup> held, *inter alia*, that appeal is 'the removal of a cause or a suit from an inferior to a superior Judge or Court for re-examination or review.' According to Wharton's Law Lexicon such removal of a cause or suit is for the purpose of testing the soundness of the decision of the inferior Court. In consonance with this particular meaning of appeal, 'appellate jurisdiction' means 'the power of a superior Court to review the decision of an inferior Court.'<sup>132</sup>

7.18 A Tribunal created under a Statute is not empowered to examine the Constitutional validity of a law under which it is created because this function is entrusted to the High Courts and the Supreme Court. In the event of conflict between the State(s) and the Parliament with regard to the power to enact a law on a subject which otherwise falls within the domain of the State Legislature, the High Courts and the Supreme Court alone can go into the question of validity of such law.

7.19 In *State of Tamil Nadu v. State of Karnataka*,<sup>133</sup> the Supreme Court held that it holds the jurisdiction to decide the parameters of the jurisdiction of the Tribunal which depends upon an interpretation of the Constitution or the Statute as the power of the Courts to sit in judgment over the merits of the decisions of the Tribunals is excluded.

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<sup>129</sup> AIR 1993 SC 1048.

<sup>130</sup> AIR 1932 P.C. 165.

<sup>131</sup> (1899) 22 ILR Mad. 68.

<sup>132</sup> Commentaries on the Constitution of the United States, s. 1761.

<sup>133</sup> (1991) Supp 1 SCC 240.

7.20 In *Waryam Singh v. Amarnath*,<sup>134</sup> it was held that the power of superintendence of High Court under Article 227 of the constitution is not only confined to the administrative superintendence but it also includes within its ambit the power of judicial review. The High Court can call for the records from the Tribunal and can quash the complaint to prevent the abuse of the process of law to ensure that the administration of justice remains clean and pure.<sup>135</sup> In *Shalini Shyam Shetty v. Rajendra Shankar Patil*,<sup>136</sup> the Supreme Court explained the scope of jurisdiction of the High Court under Article 227 of the Constitution observing that the High Court can interfere only to keep the Tribunals and Courts sub-ordinate to it, 'within the bounds of their authority'. In order to ensure that law is followed by such Tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them. The main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute.

7.21 A writ of *certiorari* does not lie against decision of the Tribunal as it involves consideration of merits of the case regarding the existence and non-existence of the jurisdiction of the Tribunal, legality or illegality of decision and manifest error of law or an error on the face of record in exercise of its jurisdictional power.<sup>137</sup>

7.22 Where a statutory right to file an appeal has been provided for, the High Court is not to entertain a petition under Article 227 of the Constitution. In cases where an appeal has not been provided, the remedy available to the aggrieved person is to file a revision before the High Court under section 115 of the Code of Civil Procedure, 1908 but where filing a revision before the High Court has been expressly barred, a petition under Article 227 of the Constitution would lie.<sup>138</sup>

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<sup>134</sup> AIR 1954 SC 215.

<sup>135</sup> *Pepsi Food Ltd. v. Special Judicial Magistrate*, AIR 1998 SC 128.

<sup>136</sup> (2010) 8 SCC 329; See also *Girish Kumar Suneja v. Central Bureau of Investigation*, 2017(5) Supreme 466.

<sup>137</sup> *Supra* note 5 at p. 537.

<sup>138</sup> *Nagendra Nath v. Commission of Hills Division*, AIR 1958 SC 398.

7.23 To facilitate quick assessment of different nature of statutory provisions dealing with appeals in the matters of Tribunals at different forums have been examined by the Commission and accordingly, **Annexure III** gives details of Tribunals from where Appeal lies to the High Court and **Annexure IV** details about the Tribunal from where Appeal lies to the Supreme Court.

7.24 In *T K Rangarajan v. Government of Tamil Nadu*,<sup>139</sup> the Supreme Court dealt with the case of police personnel of the State of Tamil Nadu who had gone on strike and the State of Tamil Nadu, after bringing a subordinate legislation, terminated their services. The State Police personnel approached the High Court challenging the order of their termination and the issue arose as to whether the said petition was maintainable when the remedy before the Administrative Tribunal was available. The Supreme Court concurred with the law laid down by the larger bench in *L. Chandrakumar's Case (Supra)*, but considering the special facts and circumstances, came to the conclusion that remedy before the Tribunal could not have been equally efficacious observing:

*'However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier because of very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.'*

7.25 The Supreme Court had also taken note of the Malimath Committee Report (1989) wherein it has been observed:

*'Functioning of Tribunals*  
8.63 *Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and*

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<sup>139</sup> AIR 2003 SC 3032.

*method of appointment of personnel thereto, the interior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals.*

*8.64 Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decision of the State Administrative Tribunals is not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition.'*

7.26 The word 'Tribunal' used in Article 136 assumes greater significance, in view of the fact that the Supreme Court may grant special leave to appeal from the decisions of Court or Tribunal in the territory of India. However, the word 'Tribunal' is used in contradistinction to 'Courts'.<sup>140</sup> By virtue of Article 136, the Supreme Court, being the final Court of appeal can control adjudicatory bodies by hearing appeals from their decisions and pronouncements. The essence of vesting this jurisdiction with the Supreme Court over matters decided by the Tribunals lies in the possibility of Tribunals being debased into arbitrary bodies.<sup>141</sup>

7.27 A Tribunal would be outside the ambit of Article 136 if it is not vested with any part of the judicial functions of the State but discharges purely administrative or executive duties.<sup>142</sup> In *Dev Singh v. Registrar, Punjab & Haryana High Court*,<sup>143</sup> it was held that the expression 'Tribunal' used in Article 136 did not mean same thing as 'Court', but included in its ambit all adjudicating bodies provided they were constituted

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<sup>140</sup> Supra note 103 at 256.

<sup>141</sup> Id. at 257.

<sup>142</sup> *Jaswant Sugar Mills Ltd. v. Lakshmidhand*, AIR 1963 SC 677.

<sup>143</sup> AIR 1987 SC 1629.

by the State and were invested with the ‘judicial’ as distinguished from purely administrative or executive functions. Article 136 is a residuary provision which enables the Supreme Court to interfere with the judgment or order of any Court or Tribunal in India in its discretion.<sup>144</sup>

7.28 Article 136 of the Constitution of India provides that the Supreme Court may in its discretion, grant the special leave to an appeal, from any judgment, decree, sentence or order in any cause or matter passed or made by any court in the territory of India. It is equitable in nature. Article 136 does not confer the right of appeal on any party, but it confers a discretionary power on the Supreme Court to interfere in suitable cases. Article 136 was legislatively intended to be exercised with adherence to the settled judicial principle well established by precedents in our jurisprudence, thus it was intended to be corrective jurisdiction that vests discretion in the Supreme Court to settle the law clearly. Article 136 begins with a *non-obstante* clause and thus has overriding effect. It confers residuary powers unfettered by any statute or other provisions of Chapter IV of Part V of the constitution.<sup>145</sup> The discretionary power under Article 136 should be exercised sparingly, the Court does not normally appreciate the evidence by itself and go into questions of credibility of witnesses;<sup>146</sup> however the power can be exercised to interfere in cases of manifest injustice or where grave miscarriage of justice has resulted from illegality or misapprehension or mistake in reading evidence or from ignoring, excluding or illegally admitting material evidence<sup>147</sup> to avoid grave injustice<sup>148</sup> and conclusions that are perverse.<sup>149</sup> In *U. Sree v. U. Srinivas*,<sup>150</sup> the Court observed “If the findings were not based on perverse reasoning or not recorded in ignorance of material evidence or in exclusion of pertaining materials, interference with the same under Article 136 of the Constitution of India would not be permissible”. The discretionary power under Article 136 is not

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<sup>144</sup> *N. Suriyakala v. A. Mohan Doss*, (2007) 9 SCC 196.

<sup>145</sup> *State of Punjab v. Rafiq Masih*, AIR 2015 SC 696; and *N.A.L. Layout Residents Association v. Bangalore Development Authority and Ors*, 2017 (6) Supreme 331.

<sup>146</sup> *Alamelu v. State*, AIR 2011 SC 715.

<sup>147</sup> *The General Manager, Telephones, Ahmedabad v. V.G. Desai*, AIR 1996 SC 2062; and *Mohd. Khalil Chisti v. State of Rajasthan*, (2013) 2 SCC 541.

<sup>148</sup> *Sham Sunder v. Puran*, AIR 1991 SC 8.

<sup>149</sup> *Radha Mohan Singh @ Lal Saheb v. State of Uttar Pradesh*, AIR 2006 SC 951.

<sup>150</sup> (2013) 2 SCC 1585; See also, *Ajay Arjun Singh v. Sharadendu Tiwari*, AIR 2016 SC 1417; and *BCCI v. Cricket Association of Bihar*, AIR 2015 SC 3194.

normally exercised unless the demand of justice requires interference<sup>151</sup> or when the High Court has taken a view that is reasonably possible<sup>152</sup> or when the exercise is likely to be a futile exercise.<sup>153</sup> A concurrent finding of fact does not call for interference in an appeal under Article 136 in the absence of any valid ground for interference.<sup>154</sup> Further in criminal cases the Supreme Court would be justified to interfere when the High Court completely misdirected itself in reversing the order of conviction passed by the Sessions Court.<sup>155</sup> Interference is permissible in a case where question involved of interpretation of the Constitution or constitutional validity of the State or Central legislation or where there is an error outrageous as no reasonable person would countenance<sup>156</sup> or where the conclusion arrived by the court below is such as to shake the conscience.<sup>157</sup>

7.29 The Supreme Court explained the scope of Article 136 of the Constitution in *Dhakeswari Cotton Mills v. Commissioner of Income-tax, West Bengal*,<sup>158</sup> observing:

*'It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in this Court by the constitutional provision made in Article 136. The limitations, whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. ... It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power because the whole intent and purpose of this Article is that it is the duty of the Court to see that injustice is not perpetuated or perpetrated by decisions of courts and tribunals because certain laws have made the*

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<sup>151</sup> *Siemens Ltd. v. Siemens Employees Union*, AIR 2010 SC 175.

<sup>152</sup> *Manoj H. Mishra v. Union of India*, (2013) 6 SCC 313.

<sup>153</sup> *Rajaram Prasad Yadav v. State of Bihar*, (2013) 14 SCC 461; and *Bharat Petroleum Corporation Ltd. v R.C. Vaidya*, (2014) 2 SCC 657.

<sup>154</sup> *Janak Dulari Devi v. Kapildeo Rai*, AIR 2011 SC 2521.

<sup>155</sup> *Gauri Shankar Sharma v. State of Uttar Pradesh*, AIR 1990 SC 709.

<sup>156</sup> *V. Vasanthakumar v. H.C. Bhatia*, (2016) 7 SCC 687.

<sup>157</sup> *Mahesh Chander v. State of Delhi*, AIR 1991 SC 1108.

<sup>158</sup> AIR 1955 SC 65.

*decisions of these courts or tribunals final and conclusive.'*

7.30 While interpreting the provisions of the Inter-State Water Disputes Act, 1956 – an Act enacted under Article 262 of the Constitution, the Supreme Court in *State of Karnataka v. State of Tamil Nadu*,<sup>159</sup> held that neither section 11 which excludes the jurisdiction of the Supreme Court in respect of water disputes referred to the Tribunal, nor section 6 of Act, 1956 which provides that the award of the Tribunal shall be treated and executed as a decree of the Supreme Court, do not take away the jurisdiction of Supreme Court, to deal with the issues relating to the water disputes. What the Act precludes is the hearing of complaint/grievance at the initial/original stage.

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<sup>159</sup> (2017) 3 SCC 362; See also *Nabam Rabia and Bamag Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1.

## CHAPTER – VIII

### BYPASSING THE JURISDICTION OF HIGH COURTS

8.1 Access to justice is a fundamental right of the citizens as discussed and explained herein after. The questions arise as to whether bypassing the jurisdiction of the High Courts violates the right of access to justice or the principle of Federalism, which is a basic feature of the Constitution. The framers of the Constitution deemed it proper to adopt the Federal structure in the judicial hierarchy also. While the Supreme Court is the Apex Court of the Country, the High Courts are the Highest Courts in the States. In the Constitutional scheme, the High Court is not *stricto-senso* subordinate to the Supreme Court. They are assigned a broad Constitutional role with extensive Constitutional responsibilities. Their power to issue writs is wider than the Supreme Court. Besides, the power of judicial review is also vested in them.

8.2 The rudimentary authority of the High Courts to examine the constitutional validity of any Legislative Act is well acknowledged by various judicial pronouncements. An ordinary man can approach the High Court challenging any legislation be it central or State on the ground that it is arbitrary, irrational, unreasonable or violative of the fundamental rights or otherwise and therefore liable to be struck down.

8.3 With the filing of large number of cases, there is huge pendency in the subordinate Courts and in the High Courts giving rise to a general public perception that the Court proceedings are time-consuming and expensive, more so at the High Court level. Whereas, the Tribunal adjudicate disputes quickly and in a cost-effective manner, creating a favourable atmosphere for the establishment of Tribunals. This lead to the amendment of the Constitution and insertion of Articles 323-A and 323-B providing for the establishment of Tribunals by Parliament and/or State.

8.4 The Central Administrative Tribunals are established under Article 323-A(2)(d) of the Constitution. Jurisdiction of all Courts including the power of superintendence of High Court except that of the Supreme Court under Article 136 is

excluded. In *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*,<sup>160</sup> the Court held that the jurisdiction of the High Court under Article 226 of the Constitution is limited to holding the judicial or *quasi*-judicial tribunals or administrative bodies exercising the *quasi*-judicial powers within the leading strings or legality and to see that they do not exceed their statutory jurisdiction and correctly administer the law laid down by the statute under which they act. So long as the hierarchy of officers and appellate authorities created by the Statute function within their ambit the manner in which they do so can be no ground for interference.

8.5 In *S. M. Pattanaik v. Secretary to Government of India*,<sup>161</sup> it was held that all the disputes and complaints relating to service matters either with respect to recruitment or condition of service fall within the ambit of the Administrative Tribunals and the jurisdiction of High Court in respect of these matters stands excluded by virtue of Section 28 of the Act, 1985

8.6 In *J.B. Chopra v. Union of India*,<sup>162</sup> it was held that the Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all question pertaining to the constitutional validity or otherwise of such laws as offending Article 14 and 16(1) of the Constitution. In *H.N. Patro v. Ministry of Information and Broadcasting*,<sup>163</sup> it was reiterated that the provisions contained in the Administrative Tribunals Act, 1985 bars the jurisdiction of the High Court and the High Court should be careful to satisfy itself that it had jurisdiction to deal with the matter and make an order nullifying the direction of the Tribunal.

8.7 The Administrative Tribunals Act, 1985 excluded the jurisdiction of the High Courts. It abolished the appellate and supervisory jurisdiction of High Courts and provided for direct appeal to the Supreme Court. In *S.P. Sampath Kumar Case (Supra)* the Court held that ‘the Tribunal should be a real substitute of the High Court not only in form and de jure, but in content and de facto. As was pointed out in *Minerva Mills*,

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<sup>160</sup> AIR 1980 SC 1896.

<sup>161</sup> ILR 1986 KAR 3954.

<sup>162</sup> AIR 1987 SC 357.

<sup>163</sup> 1993 1 SCC (Supp) 550.

the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations.... and it must be a worthy successor of the High Court in all respects.’ The Court, while deciding *Sampath Kumar Case (Supra)*, relied upon the decision in *Minerva Mills Case (Supra)* wherein it was observed that:

*‘..it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, another alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than the High Court. Then, instead of the High Court, it would be another institutional mechanism or authority which would be exercising the power of judicial review with a view to enforcing the constitutional limitations and maintaining the rule of law.’*

8.8 The Supreme Court applied the theory of ‘effective alternative mechanism’ and held that though judicial review is a basic feature of the constitution, the vesting of the power of judicial review in an alternative institutional mechanism, after taking it away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court.

8.9 The High Courts’ power of superintendence over all Courts and Tribunals within their jurisdictions flows from Article 227 of the Constitution. The power conferred on the High Courts to issue prerogative writs for enforcement of the rights conferred by Part III and for any other purpose is wide enough not only to enforce the fundamental rights, but also the legal rights. This power of the High Courts, coupled with the power of superintendence has been defined in Article 226(4), which is not in derogation of the power conferred under Article 32(2) of the Constitution to issue similar writs and runs parallel to the said provision.

8.10 The power to issue prerogative writs is exclusive and cannot be conferred on any Tribunal unless the Constitution is amended. The Tribunal created under a Statute cannot be conferred the power of judicial review which is in the nature of sovereign function conferred on judiciary. Therefore, in order to strengthen democracy and allow it to grow so as to instill confidence and faith in the people, there has to be a judicial

mechanism as has been envisioned by the constitutional framers, to act as a check against legislative and executive excesses. This lies in the root of assigning the role of superintendence by the High Court over a Tribunal.

8.11 The Supreme Court in the case of *M.B. Majumdar v. Union of India*,<sup>164</sup> rejected the contention that the Tribunals were the equals of the High Courts in respect of their service conditions. The Court clarified that in *Sampath Kumar's case (supra)*, the Tribunals under the Act had been equated with High Courts only to the extent that the former were to act as substitutes for the latter in adjudicating service matters; the Tribunals could not, therefore, seek parity for all purposes.

8.12 The question whether the Tribunals can be said to be effective substitutes for the High Courts in discharging the power of *judicial* review again came up for consideration in *L Chandra Kumar v. Union of India (supra)*. The Court held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. It was observed:

*'The constitutional safeguards which ensure the independence of the Judges of the superior judiciary are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.'*

*If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred*

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<sup>164</sup> AIR (1990) SC 2263.

*upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323B of the Constitution. It is to be remembered that, apart from the authorisation that flows from Articles 323A and 323B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts.'*

8.13 The Commission in its 79<sup>th</sup> Report titled as *Delay and Arrears in High Courts and Other Appellate Courts* expressed its concern over the situation with regard to arrears in relation to various proceedings filed and pending in the High Courts. It was observed that the growing needs of the society demands speedy justice and it is in the interest of State and its citizens, that the disputes should be decided as early as possible. The Commission did consider the recommendations of various committees on the question of delay, and also took note of its 58<sup>th</sup> Report on '*Structure and Jurisdiction of the Higher Judiciary*' wherein it was observed that there is an imperative need to reduce arrears in the higher courts.

8.14 The Law Commission of India, in its 162<sup>nd</sup> Report recommended for providing an appeal to the High Court, necessarily to be heard by a Division Bench. In the alternative the Commission recommended for the constitution of National Appellate Administrative Tribunal headed by a former Chief Justice of High Court or a former Judge of the Supreme Court. The Commission also recommended that the other members shall be either retired judges of the Supreme Court or retired Chief Justices of the High Courts. It was further observed that the remedy provided against the decision of administrative Tribunal by way of judicial review by the High Court and under Article 136 by way of an appeal to the Supreme Court is time consuming as well as expensive.

8.15 Similarly, in its 215<sup>th</sup> Report, the Commission recommended for the reconsideration of *L Chandrakumar Case (Supra)* by a larger bench of the Supreme

Court and suggested for the suitable amendments to provide for the appellate tribunal. It was observed that the High Court being the highest Court of the State there is a need for proliferating appellate and wide original jurisdiction which should be controlled or curtailed without impairing the quality of justice. On analysis of the provisions of the Constitution of India and the observations made in the case of *L Chandra Kumar (Supra)* the Commission opined that “the appellate tribunal would in practical terms have a status higher than that of the High Court but lower than the Supreme Court.”

8.16 In *Kendriya Vidyalaya Sangathan v. Subash Sharma*,<sup>165</sup> it was held that in order to challenge the decision of tribunal, complainants cannot directly go to the Supreme Court nor they can bypass the High Court. The High Court has supervisory powers over the administrative tribunals. But the situation leads to increasing the burden of High Court on one hand and helps reducing apex court’s dockets in service matters and facilitates a remedy at close quarters without huge expenses.

8.17 The legislative intent to exclude the jurisdiction of High Courts along with all the Civil Courts from adjudicating disputes or entertaining any complaints’ in service matters is explicit from relevant provisions of the Administrative Tribunals Act, 1985 including Section 28.<sup>166</sup> As a rule of prudence, a right of appeal is a creation of Statute and it cannot be claimed as a matter of right. The right to appeal has to exist within the Constitutional framework. It cannot be created by acquiescence of the parties or by the order of the Court. It is neither a natural nor an inherent right attached to the litigant being a substantive, statutory right.<sup>167</sup> Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature as conferring jurisdiction upon a Court or Authority, is a legislative function.<sup>168</sup> The right of appeal can be circumscribed by conditions.<sup>169</sup>

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<sup>165</sup> (2002) 4 SCC 145.

<sup>166</sup> *Supra* note 5 at p. 532.

<sup>167</sup> *United Commercial Bank Ltd. v. Their Workmen*, AIR 1951 SC 230; *Kondiba Dagdu Kodam v. Savitribai Sopan Gujar*, AIR 1999 SC 2213; and *U P Power Corporation Ltd. v. Virenddra Lal*, (2013) 10 SCC 39.

<sup>168</sup> *Union of India v. Deoki Nandan Aggarwal*, AIR 1992 SC 96.

<sup>169</sup> *Vijay Prakash D. Mehta & Jawahar D Mehta v. Collector of Customs (Preventive) Bombay*, AIR 1988 SC 2010.

8.18 Bypassing the High Court or debarring it from entertaining a dispute involving the question of constitutional validity of any law would be directly hitting the basic structure. It would amount to denying a Constitutional remedy to the aggrieved party. The power of judicial review vested in the High Courts assumes greater significance when the matters involving State as one of the litigant are large in number.

8.19 The High Courts have unquestionable power of superintendence and control over the Tribunals under the Constitution. However, the overriding effect in Articles 323-A and 323-B under Part IXV-A cannot in any case denude the High Court of its power of superintendence under Article 227 of the Constitution. ‘The exclusion of jurisdiction of all the Courts except the Supreme Court’ cannot be construed to mean that, the power of judicial review vested in the High Court is also excluded.

8.20 In *L. Chandra Kumar (Supra)*, the Supreme Court declared clause 2(d) of Article 323A and clause 3(d) of Article 323B, which excluded the jurisdiction of the High Courts under Articles 226, 227 and of the Supreme Court under Article 32 of the Constitution as unconstitutional. The Court explicitly observed:

*“99... Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls.” ...*

8.21 The Commission is of the view that in order to achieve the goal for which the Tribunals have been established i.e., to reduce the burden of Courts, it is desirable that only in those cases where the Statute establishing the Tribunal does not have a provision for the establishment of an Appellate Tribunal for hearing an appeal from the decision of said Tribunal, the High Court may be allowed to be approached by way of an Appeal against the decision of a Tribunal. Every order emanating from the Tribunal or its Appellate Forum, wherever it exists, attains finality. Any such order may be challenged by the aggrieved party before the Division Bench of the High Court having territorial jurisdiction over the Tribunal or its Appellate Forum.

8.22 For the effective working of this idea, it will be necessary that the Appellate Tribunals established must act judiciously and that such Appellate Tribunals should be constituted at par with the High Courts and the members appointed in these Tribunals should possess the qualifications equivalent to that of the High Court Judges.

8.23 If appeals against the decision of Appellate Tribunals are brought before the concerned High Courts in a routine manner, then the entire purpose of establishing Tribunals will get frustrated. Therefore, the Commission is of the view that the aggrieved party against the decision of such Appellate Tribunal should be able to approach the Supreme Court on the grounds of Public or National importance and not before any other authority. The Appellate Tribunals established under various Acts where an appeal lies against an order of the Tribunal constituted under the concerned Act are set out in **Annexure-V**.

## CHAPTER - IX

### EXCLUSION OF JURISDICTION OF ALL COURTS BY AN ALTERNATIVE MECHANISM AND ACCESS TO JUSTICE

9.1 Access to justice in our Constitution is placed on a higher pedestal of fundamental rights. Access to Justice is synonymous with Access to Courts. It is inbuilt under Article 14 of the Constitution which guarantees equality before law and equal protection of laws.<sup>170</sup> With a view to increase the access to justice for an individual at grassroots level, Tribunals have emerged to adjudicate in a time bound manner.<sup>171</sup> The right to justice is an integral and inherent part of the basic structure of the Constitution. According to *Cappelletti*, “Effective access to justice can thus be seen as the most basic requirement - the most basic human right of a system purports to guarantee legal rights.”<sup>172</sup>

9.2 While interpreting the provisions of section 340(1) of the Code of Criminal Procedure, 1898, the Supreme Court, in *Tara Singh v. State of Punjab*,<sup>173</sup> and *Janardan Reddy v. State of Hyderabad*,<sup>174</sup> recognized the right of the accused to have legal aid but did not record that the trial stood vitiated for want of the same, in the facts of those cases. In *Bashira v. State of UP*,<sup>175</sup> the Supreme Court held that conviction of the accused under section 302 of the Indian Penal Code, 1860, for murder was void on the ground that the sufficient time was not granted to the *amicus curiae* to prepare the defence.

9.3 It was in view of the above judgments that section 304 was added in the Code of Criminal Procedure, 1973. The Supreme Court in subsequent cases has consistently held that non availability of counsel to the accused or counsels’ ineffectiveness in conducting a trial may in a particular case amount to denial of right

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<sup>170</sup> Justice A.K. Ganguly’s speech on Access to Justice on the eve of Golden Jubilee of ILI (1956-2006).

<sup>171</sup> Krishnan, Jayanth K., Kavadi, Shirish N. & Others, “Grappling at the Grassroots: Access to Justice in India’s Lower Tier” 27 *HHRJ* 156 (2014).

<sup>172</sup> M. Cappelletti, *Access to Justice* 672 (1976).

<sup>173</sup> AIR 1951 SC 441

<sup>174</sup> AIR 1951 SC 217

<sup>175</sup> AIR 1968 SC 1313

of access to justice. In view of the provisions of section 304 Cr. PC and Article 22(1) of the Constitution, the legal aid must be provided in a substantial and meaningful manner.<sup>176</sup> The law requires the Court to inform the accused of his right to obtain free legal aid.

9.4 By Constitution (Forty-Second Amendment) Act, 1976, Article 39-A was introduced as a part of “Directive Principles of State Policy”, and as a consequence the Legal Services Authority Act, 1987 was enacted to ensure that opportunities for securing justice are not denied to any citizen by reason of any disability on his part. The right to Access to Justice flows from Articles 21 and 22(1) of the Constitution.<sup>177</sup>

9.5 The actual meaning of Access to Justice on the ground level is succinctly described in a Report on ‘Access to Justice 2016’ the relevant part of which provides that, “Access to justice is meaningful when each citizen has a ready access to court and this will be possible only if the number of courts is increased. As a starting point it is necessary that a court of first instance is available to each citizen within a radius of 50 kilometres from his residence or within a maximum traveling time of half a day.”<sup>178</sup> Access to justice should not be understood to be, reaching out in geographical terms only. In *Bhavabhai Bhadabhai Maru v. Dhandhuka Nagar Panchayat*,<sup>179</sup> the Court held that effective access to judicial process is a dynamic realism of the Rule of Law, observing:

*“Access to justice, Civil Criminal and other, must be democratised, humanised and the doors of all be kept ajar for the citizenry, without the janitors of legal justice blocking the way and hampering the entry, initially and at higher levels, using various constraints.”*

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<sup>176</sup> *Madhav Hayawadanrao Hoskot v. State of Maharashtra*, AIR 1978 SC 1548; *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1369; *Mohd Hussain @ Julfikar Ali v. The State (Govt. of NCT) Delhi*, (2012) 9 SCC 408; and *Ashok Debbarama @ Achak Debbarama v. State of Tripura*, (2014) 4 SCC 747.

<sup>177</sup> *Rajoo @ Ramakant v. State of Madhya Pradesh*, (2012) 8 SCC 553; and *Mohd. Kasab @ Aboo Mujahid v. State of Maharashtra*, (2012) 9 SCC 1.

<sup>178</sup> Report on Subordinate Courts of India: A Report on access to justice 2016, available at: <http://ecourts.gov.in/sites/default/files/A%20Report%20on%20access%20to%20justice%202016.pdf> (last visited on 14-08-2017).

<sup>179</sup> (1991) 2 GLR 1339.

9.6 The Supreme Court has consistently held that access to justice is not only a fundamental right but it is as well a human right and a valuable right.<sup>180</sup> The Constitutional remedies are always available to a litigant even if no other remedy is provided under the Statute as it would violate the philosophy enshrined in legal maxim ‘*ubi jus ibi remedium*’ (wherever there is a right, there is a remedy) meaning thereby, a person cannot be rendered remedy less.<sup>181</sup>

9.7 The Access to justice has been recognised as a human right under Articles 8 and 10 of the **Universal Declaration on Human Rights**, 1948. The relevant provisions reads as under:

*‘Article 8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

*Article 10: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.’*

9.8 The **International Covenant on Civil and Political Rights, 1966** provides in Article 2(3) as under:

*‘Each State Party to the present Covenant undertakes:*

*(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

*(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal*

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<sup>180</sup> *Tamil Nadu Merchantile Shareholders Welfare Association v. S. C. Sekar*, (2009) 2 SCC 784; and *Life Insurance Corporation of India v. R Suresh*, (2008) 11 SCC 319.

<sup>181</sup> *Raemshwar Lal v. Municipal Council Tonk*, (1996) 6 SCC 100; and *Laxmi Devi v. State of Bihar*, AIR 2015 SC 2710.

*system of the State, and to develop the possibilities of judicial remedy;*

*(c) To ensure that the competent authorities shall enforce such remedies when granted.'*

9.9 In *Anita Kushwaha v. Pushap Sudan*,<sup>182</sup> the Court declared, 'Access to Justice' is implicit in Articles 14 and 21, observing:

*'Access to justice is and has been recognised as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens ... the development of fundamental principles of common law by judicial pronouncements of the Courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilized societies and systems recognise and enforce.'*

9.10 Emphasising on access to justice, the Supreme Court in *Hussainara Khatoon v. Home Secretary, State Of Bihar*,<sup>183</sup> held that free legal aid to a person suffering from economic and social disabilities is an essential prerequisite of fair, reasonable and just procedure under Article 21. In *Municipal Council Ratlam v. Vardhichand*,<sup>184</sup> the Court held:

*'Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under Section 133 Cr.P.C. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Article 38 of the Constitution. This brings Indian public law, in its processual branch, in line with the statement of Prof. Kojima: "the urgent need is to focus on the ordinary man-one might say the little man..." 'Access to Justice' by Cappelletti and B. Garth summarises the new change thus:*

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<sup>182</sup> AIR 2016 SC 3506.

<sup>183</sup> AIR 1979 SC 1369.

<sup>184</sup> (1980) 4 SCC 162.

*The recognition of this urgent need reflects a fundamental change in the concept of "procedural justice".... The new attitude to procedural justice reflects what Professor Adolf Hamburger has called "a radical change in the hierarchy of values served by civil procedure"; the paramount concern is increasingly with "social justice," i.e., with finding procedures which are conducive to the pursuit and protection of the rights of ordinary people. While the implications of this change are dramatic-for instance, insofar as the role of the adjudicator is concerned-it is worth emphasizing at the outset that the core values of the more traditional procedural justice must be retained. "Access to justice" must encompass both forms of procedural justice.'*

9.11 In *Gujarat Urja Vikas Nigam Ltd. v. ESSAR Power Ltd.*,<sup>185</sup> the Supreme Court held that “[D]irect appeals to this Court has the result of denial of access to the High Court. Such tribunals thus become substitute for High Courts without manner of appointment to such Tribunals being the same as the manner of appointment of High Court judges.”

9.12 As a general rule, the statutory remedy should be exhausted before approaching the Writ Court. However, the writ court may entertain a petition if substantial injustice has ensued or is likely to ensue or there has been a breach of fundamental principle of justice. The existence of an equally efficacious, adequate and suitable legal remedy is a point of consideration in the matter of granting writs. Under the rule of self-imposed restraint, the writ court may refuse to entertain a petition if it is satisfied that parties must be relegated to the court of appeal or revision or asked to set right mere errors of law which do not occasion injustice in a broad and general sense, unless the order is totally erroneous or raises issues of jurisdiction or of infringement of fundamental right of the petitioner.<sup>186</sup> In *State of Himachal Pradesh v. Raja Mahendra Pal*,<sup>187</sup> the Apex court held that the court is not debarred “from

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<sup>185</sup> (2016) 9 SCC 103.

<sup>186</sup> *K S Rashid & Son v. Income Tax Investigation Commission*, AIR 1954 SC 207; See also, *Sangram Singh v. Election Tribunal, Kotah*, AIR 1955 SC 425; *Union of India v. T R Varma*, AIR 1957 SC 882; *State of Uttar Pradesh v. Mohammed Nooh*, AIR 1958 SC 86; and *Thansingh Nathmal v. Superintendent of Taxes*, AIR 1964 SC 1419.

<sup>187</sup> AIR 1999 SC 1786.

*granting the appropriate relief to a citizen in peculiar and special facts notwithstanding the existence of alternative efficacious remedy. The existence of special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article.”*

9.13 In *Harbanslal Sahnia v. Indian Oil Corporation Ltd.*,<sup>188</sup> the Supreme Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion. The Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the writ seeks enforcement of any of the fundamental rights; where there is failure of principle of natural justice or where the orders or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged or the order is totally erroneous or of infringement of fundamental rights of the petitioner.<sup>189</sup>

9.14 The litigant having a grievance of civil nature has a right to institute a suit in the court of competent jurisdiction unless its cognizance is barred expressly or impliedly (section 9, Code of Civil Procedure, 1908). However, such power of ousting the jurisdiction cannot be exercised by an executive order. A Statute may have an express provision specifically excluding the jurisdiction of the Civil Court in respect of matters which otherwise are within its jurisdiction. Implied ouster would be where even without any express provision the jurisdiction of the Civil Court has been barred. However, presumption would be raised in favour of the jurisdiction of the Civil Court. A provision of law deciding the jurisdiction of the Civil Court must be strictly construed. The onus lies on the party, seeking to oust the jurisdiction, to establish the same. The Court has to consider and construe the ouster of the jurisdiction of the Civil Court having regard to the scheme of the Act as well as the object it seeks to achieve. Where a particular Act creates a right and also provides a forum for enforcement of such right and bars the jurisdiction of the Civil Court, the ouster is to be upheld. The Court cannot readily infer exclusion of jurisdiction of the Civil Court as it is an

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<sup>188</sup> AIR 2003 SC 2120; See also, *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*, AIR 1999 SC 22.

<sup>189</sup> *Champalal Binani v. Commissioner of Income Tax, West Bengal*, AIR 1970 SC 645.

exception to the general rule.<sup>190</sup> In *Rajasthan State Road Transport Corporation v. Bal Mukund Bairwa*,<sup>191</sup> it was held by the Supreme Court that even when the jurisdiction of the Civil Court is expressly barred, it cannot be readily inferred that Civil Court has no jurisdiction. Such ouster of jurisdiction must be established. Also even when the jurisdiction is expressly excluded, ‘civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or Tribunal acts without jurisdiction’. A list of the Acts in which the jurisdiction of the Civil Courts is excluded/barred is annexed as **Annexure-VI**.

9.15 When a person wants to enforce a right, he has a choice to either approach under the Act or the Civil Court. In *Premier Automobiles Ltd v. Kamlekar Shanta Ram Wadke of Bombay*,<sup>192</sup> it was observed that:

*‘.....But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the Civil Court.’*

9.16 From the aforementioned discussion it is clear that the ouster of jurisdiction cannot be presumed, and in case of ambiguity the interpretation that maintains the jurisdiction must be preferred. The Apex Court in *Dhulabhai v. State of M.P.*<sup>193</sup> enunciated certain principles for exclusion of the jurisdiction of the Court on certain grounds *inter alia*:

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<sup>190</sup> *Firm and Illuri Subbayya Chetty v. State of Andhra Pradesh*, AIR 1964 SC 322; See also, *Sri Vedagiri Lakshmi Narasimha Swami Temple v. Induru Pattabhai Rani Reddi*, AIR 1967 SC 781; *Dewaji v. Ganpatlal*, AIR 1969 SC 560; *Smt. Ganga Bai v. Vijay Kumar*, AIR 1974 SC 1126; *Prakash Narain Sharma v. Burmah Shell Coop. Housing Society Ltd*, AIR 2002 SC 3062; *Ramesh Chand Ardawatiya v. Anil Panjwani*, AIR 2003 SC 2508; *Church of North India v. Lavajibhai Ratanjibhai*, AIR 2005 SC 2544; *Abdul Gafur v. State of Uttrakhand* AIR 2009 SC 413; *Ramesh Gobindram (dead) through L.Rs. v. Sugra Humayun Mirza Wakf*, AIR 2010 SC 2897; *Bhanwar Lal v. Rajasthan Board of Muslim Wakf*, (2014) 16 SCC 51; and *Gujarat Maritime Board v. G.C. Pandya*, (2015) 12 SCC 403.

<sup>191</sup> (2009) 4 SCC 299.

<sup>192</sup> AIR 1975 S.C. 2238.

<sup>193</sup> AIR 1969 SC 78.

1. If the Statute provides adequate remedy and the remedies available in a special Tribunal are at par with the remedies normally available in a Civil Court.
2. The Civil Court may exercise its jurisdiction in case the Tribunal fails to comply with provisions of an Act or ‘fundamental principles of judicial procedure’. Even in case where the jurisdiction of the Civil Court is expressly barred by the Statute, inadequacy of remedies in the scheme of the concerned Act will be a ground to sustain the jurisdiction of the Civil Court.
3. In cases where the exclusion of jurisdiction appears to be implied, the scheme of the Act should be analysed to determine the adequacy of the remedies and also whether the Act provides that all rights and liabilities arising out of it shall be determined by the Tribunal constituted under the concerned Act.

9.17 The Commission is of the view that whenever there is exclusion of jurisdiction of Courts, an equally effective alternative mechanism must be provided at grassroots level in order to ensure access to justice to the litigants. The Tribunals must have benches in different parts of the country so that people of every geographical area may have easy access to justice. There should be National Tribunals with Regional sittings and State-wise sittings to reduce the burden of Courts and to attain the objectives for which they have been established..

## CHAPTER – X

### CONCLUSIONS AND RECOMMENDATIONS

10.1 One of the compelling reasons for establishing the Tribunals had been pendency of large number of cases and delay in disposal of cases in the Courts. As a remedy thereof, quasi-judicial institutions in the name of Administrative Tribunals were established so as to work as an independent and specialised Forum. The Tribunals would provide speedy justice in cost-effective manner. The judicial functions discharged by the Tribunals can be distinguished from purely administrative or executive functions in view of the doctrine of ‘separation of powers’ which forms part of the basic structure of the Constitution. The Administrative Tribunals Act of 1985, was enacted to give effect to the Swaran Singh Committee Report (1976) which provided that against the order of the Tribunal, a party may approach the Supreme Court under Article 136 and excluded the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. The Choksi Committee (1977) expressed the desirability of constituting Special Tax Benches in High Courts to deal with the large number of pending Tax cases.

10.2 The Law Commission of India persistently suggested that the power of judicial review of the High Courts against a judgment of the Tribunal is not only time consuming, but also expensive and there is always a possibility of various High Courts interpreting the same statutory provision differently. In 215<sup>th</sup> Report (2008), the Commission made an unwarranted remark that the power of judicial review of High Court cannot be as inviolable as that of the Supreme Court. No reason or explanation has been given in support of such observation and no foundation has been laid for making such remark. In fact, neither any Court nor the Legislature has ever expressed such opinion. Such observations are admittedly contrary to the law laid down by the seven Judge Bench in *L.Chandra Kumar* (Supra).

10.3 The Supreme Court in earlier judicial pronouncements had held that the Tribunals are substitutes of the High Courts. Therefore, the manner of appointment, eligibility, tenure and other protections and privileges of persons manning such Tribunals must be the same as that of the High Court judges. Such persons must have

the complete independence as required under the ‘principle of Independence of Judiciary’ which is a basic feature of the Constitution. It must be further noted that, since reappointment has a strong bearing on the independence of the institution, it should be kept out of the influence of the executive. Therefore to ensure independence, reappointment must be the exception and not the rule.

10.4 On the other hand, in some other cases, the Supreme Court concluded that the Tribunals can neither be alternative nor substitutes of the High Courts. A person manning the Tribunal cannot claim parity or privileges at par with the High Court judges. However, a seven judge Bench in *L Chandra Kumar (Supra)* in crystal clear words held that the Tribunals are supplemental to High Courts and not their substitutes.

10.5 The selection of the members should be done in an impartial manner. Therefore, the selection committee must not be headed by a Secretary to the Government of India who is always a party to every litigation before the Tribunal. Re-appointment of Members except in case of Members appointed from the Bar is unwarranted as it compromises with the independence of judiciary. More so, the involvement of Government agencies in selection making process should be minimal for the reason that Government is litigant in every case.

10.6 The Power of judicial review conferred on the High Courts is same as that of the Supreme Court which is a basic feature of the Constitution and tinkered with only by amending of the Constitution. The Government may put in place a mechanism which takes care of all matters regarding appointment of persons manning the Tribunals and in providing their service conditions. The jurisdiction of High Court should not generally be bypassed merely by making a provision to approach the Supreme Court against an order of a Tribunal under Article 136 for the reason that the said Article does not provide for an appeal but confers discretion on the Supreme Court to grant leave or not. The Special Leave Petitions are considered on certain fixed parameters laid down by the Supreme Court from time to time. More so, providing for approaching the Supreme Court directly and excluding the jurisdiction of High Court, tantamount to violation of the fundamental right of the citizens of access to justice.

10.7 The Commission while discussing the appointment criteria, took note of the fact that the present system does not have uniformity in the qualifications, tenure and service conditions of Chairman, Vice-Chairman and other members and it is thereby felt that a change in system is needed because lack of uniformity is causing a major concern in the effective working of present Tribunal system.

10.8 In Tribunals, the Technical Members should be appointed only and only when service/advice of an expert on technical or special aspect is required. The Tribunal should be manned by persons qualified in law, having judicial training and adequate experience with proven ability and integrity.

### **Recommendations**

10.9 The pendency of cases in some of the Tribunals is suggestive of the fact that the object of setting up Tribunals is not achieved. The figures officially available as explained in Chapter 3 do not represent a satisfactory situation. In light of the detailed discussions held in the Commission and dealt with in the foregoing Chapters, the Commission makes the following recommendations, for the consideration of the Central Government namely:

- A. In case of transfer of jurisdiction of High Court to a Tribunal, the members of the newly constituted Tribunal should possess the qualifications akin to the judges of the High Court. Similarly, in cases where the jurisdiction and the functions transferred were exercised or performed by District Judges, the Members appointed to the Tribunal should possess equivalent qualifications required for appointment as District Judges.
- B. There shall be uniformity in the appointment, tenure and service conditions for the Chairman, Vice-Chairman and Members appointed in the Tribunals. While making the appointments to the Tribunal, independence shall be maintained.

- C. There shall be constituted a Selection Board/Committee for the appointment of Chairman, Vice-Chairman and Judicial Members of the Tribunal, which shall be headed by the Chief Justice of India or a sitting judge of the Supreme Court as his nominee and two nominees of the Central Government not below the rank of Secretary to the Government of India to be nominated by the Government. For the selection of Administrative Member, Accountant Member, Technical Member, Expert Member or Revenue Member, there shall be a Selection Committee headed by the nominee of the Central Government, to be appointed in consultation with the Chief Justice of India.
- D. The Chairman of the Tribunals should generally be the former judge of the Supreme Court or the former Chief Justice of a High Court and Judicial Members should be the former judges of the High Court or persons qualified to be appointed as a Judge of the High Court.

Administrative Members, if required, should be such persons who have held the post of Secretary to the Government of India or any other equivalent post under the Central Government or a State Government, carrying the scale of pay of a Secretary to the Government of India, for at least two years; OR held a post of Additional Secretary to the Government of India, or any other equivalent post under the Central or State Government, carrying the scale of pay of an Additional Secretary to the Government of India, at least for a period of three years.

Expert Member/Technical Member/Accountant Member should be a person of ability, integrity and standing, and having special knowledge of and professional experience of not less than fifteen years, in the relevant domain. (can be increased according to the nature of the Tribunal). The appointment of Technical/Expert members in addition to the judicial members be made only where the Tribunals are intended to serve an area which requires specialised knowledge or expertise or professional experience and the exercise of jurisdiction involves consideration of, and decisions into, technical or special aspects.

- E. While making the appointments to the Tribunal, it must be ensured that the Independence in working is maintained. The terms and conditions of service, other allowances and benefits of the Chairman shall be such as are admissible to a Central Government officer holding posts carrying the pay of Rs.2,50,000/-, as revised from time to time.

The terms and conditions of service, other allowances and benefits of a Member of a Tribunal shall be such as are admissible to a Central Government officer holding posts carrying the pay of Rs.2,25,000/-, as revised from time to time.

The terms and conditions of service, other allowances and benefits of Presiding Officer/Member of a Tribunal (to which the jurisdiction and functions exercised or performed by the District Judges are transferred) shall be such as are admissible to a Central Government officer drawing the corresponding pay of a District Judge.

- F. Vacancy arising in the Tribunal should be filled up as early as possible by initiating the procedure well in time, as early as possible, preferably within six months prior to the occurrence of vacancy.
- G. The Chairman should hold office for a period of three years or till he attains the age of seventy years, whichever is earlier. Whereas Vice-Chairman and Members should hold the office for a period of three years or till they attain the age of sixty seven years whichever is earlier. It will be appropriate to have uniformity in the service conditions of the Chairman, Vice-Chairman and other Members of the Tribunals to ensure smooth working of the system.
- H. Every order emanating from the Tribunal or its Appellate Forum, wherever it exists, attains finality. Any such order may be challenged by the party aggrieved before the Division Bench of the High Court having territorial jurisdiction over the Tribunal or its Appellate Forum.
- I. The provisions of Section 3(o) of the Armed Forces Tribunal Act, 2007 excludes certain matters from the jurisdiction of the Armed Forces Tribunal

(AFT) and the parties aggrieved in those matters can approach the High Court under writ jurisdiction. The Act excludes the jurisdiction of the High Court under Article 227(4) but not under Article 226. In matters, where AFT has jurisdiction, parties must have a right to approach the High Court under Article 226 for the reason that a remedy under Article 136 is not by way of statutory appeal. The issue is pending for consideration before the larger Bench of the Supreme Court.<sup>194</sup>

- J. The Tribunals must have benches in different parts of the country so that people of every geographical area may have easy Access to Justice. Ideally, the benches of the Tribunals should be located at all places where the High Courts situate. In the event of exclusion of jurisdiction of all courts, it is essential to provide for an equally effective alternative mechanism even at grass root level. This could be ensured by providing State- level sittings looking to the quantum of work of a particular Tribunal. Once that is done, the access to justice will stand ensured.

10.10. The Law Commission of India considers it appropriate that in order to ensure uniformity in all the affairs of the Tribunals, the Central Government may consider bestowing the function of monitoring the working of the Tribunals to a single nodal agency, under the aegis of the Ministry of Law and Justice.

10.11 The concerns raised by the Supreme Court and referred to the Commission for examination, as set out in para 1.22 are addressed by detailed discussions in the relevant chapters.

- (i) The subject matter in question no. 1 has been discussed threadbare with analysis of it's various aspects in Chapter - V; and on careful consideration of all relevant material the same is taken care of by the Recommendations A to G. The Commission is of the considered view that if these recommendations are implemented the rule of law will stand strengthened.
- (ii) As regards question no. 2 and its varied facets, a discussion may be found in Chapter No. VII and is answered by Recommendation H. The Commission has no doubt that if this recommendation is made operational, the Supreme Court will be able to play it's 'constitutional role' and will have sufficient time to

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<sup>194</sup> *Union of India, v. Thomas Vaidyan M*, Civil Appeal No. 5327/2015, order dated 16.11.2015.

attend to the question of law, substantial constitutional issues of national or public importance and will be able to render decisions within reasonable time.

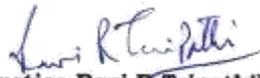
- (iii) The subject matter contained in question no. 3 is discussed in Chapter No. VIII. Recommendation I addresses it stating that if Benches of the Tribunals are located at the places where the High Courts situate, the right to access to justice will not have any adverse impact.
- (iv) To answer the question next raised, '*whether it is desirable to exclude jurisdiction of all courts without there being equally effective alternative mechanism for access to justice*', the Commission, after comprehensive discussion in Chapter No. IX, addressed the same by way of Recommendation J, saying that it is always desirable to have an equally effective alternative mechanism before tinkering with the jurisdiction of any court by way of exclusion of the same.

10.12 The Commission is given to understand that, so far as incidental or connected matters are concerned, such matters are pending consideration before the Supreme Court and, therefore, it may not be appropriate to deal with these matters at this stage.

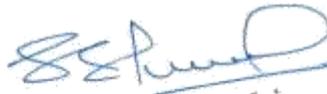
The Commission recommends accordingly.



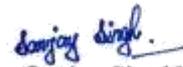
[Dr. Justice B S Chauhan]  
Chairman



[Justice Ravi R Tripathi]  
Member



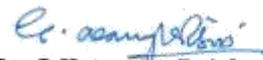
[Prof. (Dr.) S Sivakumar]  
Member



[Dr. Sanjay Singh]  
Member Secretary



[Suresh Chandra]  
Member (Ex-Officio)



[Dr. G Narayana Raju]  
Member (Ex-Officio)

**Annexure - I**

**Tribunals Merged under the Finance Act, 2017**

| <b>S.No.</b> | <b>Merger if Tribunals - with details of cases pending at the time of merger</b>                        | <b>Tribunals / Board Merged With</b>                           |
|--------------|---|--|
| 1.           | The Employees Provident Fund Appellate Tribunal (EPFAT) (M/o L&E) ;<br>Cases pending - NA               | The Industrial Tribunal  |
| 2.           | The Copyright Board (DIPP) ;<br>Cases pending – NA  | The Intellectual Property Appellate Board                      |
| 3.           | The Railway Rates Tribunal (RRT) (M/o Railway);<br>Cases pending – 21                                   | The Railway Claims Tribunal                                    |
| 4.           | The Appellate Tribunal for Foreign Exchange (ATFE) (D/o LA) ;<br>Cases pending -926                     | The Appellate Tribunal   |
| 5.           | The National Highways Tribunal (NHT) (MoRT&H) ;<br>Cases pending – 7                                    | The Airport Appellate Tribunal (AAT)                           |
| 6(A).        | The Cyber Appellate Tribunal (MeITY) ;<br>Cases pending – 102   | The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) |
| 6(B)         | The Airports Economic Regulatory Authority Appellate Tribunal (AERAAT) (M/o CA) ;<br>Cases pending – 15 | The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) |
| 7            | The Competition Appellate Tribunal (COMPAT) (M/o Corporate Affairs) ;<br>Cases pending - 62             | The National Company Appellate Tribunal (NCLAT)                |

## Annexure – II

### Removal Provisions relating to Tribunals

Rule 7 of the Tribunal, Appellate Tribunal and other Authorities Rules, 2017 provides for removal of Members of the Tribunal. Such removal provisions are not new and existed earlier in Acts/Rules in respect of several Tribunals. Some of such provisions which existed earlier are listed below:

| <b>Name of the Tribunal</b>   | <b>Text of removal provisions (cite the Rules/Section where it is mentioned)</b>  |
|---|---|
| 1. Central Administrative tribunal under the Administrative Tribunals Act, 1985             | <p>The Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.</p> <p>[Sub-section (2) of Section 9 of the Administrative Tribunals Act, 1985]</p>   |
| 2. Railway Claims Tribunal under the Railway Claims Tribunal Act, 1987                      | <p>The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.</p> <p>[Sub-section (2) of section 8 of the Railway Claims Tribunal Act, 1987]</p>  |
| 3. Securities Appellate Tribunal under the Securities and Exchange Board of India Act, 1992 | <p>The Presiding Officer or any other Member of a Securities Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court, in which the Presiding Officer or any other Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.</p> <p>[Sub-section (2) of section 15Q of the Securities and Exchange Board of India Act, 1992]</p> <p>The Central Government shall remove a member from office if he - (a) is, or at any time has been,</p> |

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|   | <p>adjudicated as insolvent; (b) is of unsound mind and stands so declared by a competent court; (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude; [(d) ...] (e) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:</p> <p>Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.</p> <p>[Section 6 of the Securities and Exchange Board of India Act, 1992]</p> |
| 4. Debt Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993           | <p>The Presiding Officer of a Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after inquiry made by a Judge of a High Court in which the Presiding Officer of a Tribunal has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.</p> <p>[Sub-section (2) of section 15 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.]</p>  |
| 5. Debt Recovery Appellate Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 | <p>The Chairperson of an Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after inquiry in the case of the Chairperson of an Appellate Tribunal, made by a Judge of the Supreme Court, in which the Chairperson of an Appellate Tribunal has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.</p> <p>[Sub-section (2) of section 15 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.]</p>             |
| 6. Airport Appellate Tribunal under the Airports Authority of India Act, 1994                                     | <p>The Chairperson of the Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson had been informed of the charges</p>  |

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|  | <p>against him and given reasonable opportunity of being heard in respect of those charges</p> <p>[Sub-section (2) of section 28J of the Airports Authority of India Act, 1994]</p>  |
| <p>7. Telecom Disputes Settlement and Appellate Tribunal under the Telecom Regulatory Authority of India Act, 1997</p> | <p>(1) The Central Government may remove from office, the Chairperson or any Member of the Appellate Tribunal, who –</p> <p>(a) has been adjudged an insolvent; or</p> <p>(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (c) has become physically or mentally incapable of acting as the Chairperson or a Member; or</p> <p>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or</p> <p>(e) has so abused his position as to render his continuance in office prejudicial to the public interest.</p> <p>(2) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an enquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the Chairperson or a Member ought on such ground or grounds to be removed.</p> <p>[Sub-section (1) and (2) of section 14G of the Telecom Regulatory Authority of India Act, 1997]</p> |
| <p>8. Appellate Board under the Trade Marks Act, 1999</p>  | <p>The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President of India on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.</p> <p>[Sub-section (2) of section 89 of the Trade Marks Act, 1999]</p>  |
| <p>9. National Company Law Appellate Tribunal under the Companies Act, 2013</p>  | <p>(1) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who—</p> <p>(a) has been adjudged an insolvent; or</p>   |

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|  | <p>(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or</p> <p>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or</p> <p>(e) has so abused his position as to render his continuance in office prejudicial to the public interest:</p> <p>Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.</p> <p>(2) Without prejudice to the provisions of subsection (1), the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.</p> <p>(3) The Central Government may, with the concurrence of the Chief Justice of India, suspend from office, the President, the Chairperson or Member in respect of whom reference has been made to the Judge of the Supreme Court under subsection (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.</p> <p>(4) The Central Government shall, after consultation with the Supreme Court, make rules to regulate the procedure for the inquiry on the ground of proved misbehaviour or incapacity referred to in subsection (2).</p> <p>[Section 417 of the Companies Act, 2013]</p> |
| <p>10. National Consumer Disputes Redressal Commission under the Consumer Protection Rules, 1987</p> | <p>(1) The Central Government may remove from office, the President or any member, who,-</p> <p>(a) has been adjudged as an insolvent; or</p> <p>(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (c) has become physically or mentally incapable of acting as the President or the member; or</p>   |

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|   | <p>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the President or a member; or</p> <p>(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or</p> <p>(f) remain absent in three consecutive sittings except for reasons beyond his control.</p> <p>(2) Notwithstanding anything contained in sub-rule (1), the President or any member shall not be removed from his office on the grounds specified in S[clauses (d), (e) and (f)] of that sub-rule except on an inquiry held by Central Government in accordance with such procedure as it may specify in this behalf and finds the President or a member to be guilty of such ground.</p> <p>[Rule 13 of the Consumer Protection Rules, 1987]</p> |
| 11. Appellate Tribunal for Electricity under the Electricity Act, 2003  | <p>The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a judge of the Supreme Court as the Central Government may appoint for this purpose in which the Chairperson or a Member of the Appellate Tribunal concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.</p> <p>[Sub-section (2) of section 117 of the Electricity Act, 2003]</p>   |
| 12. Armed Forces Tribunal under the Armed Forces Tribunal Act, 2007     | <p>The Chairperson or a Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a sitting Judge of the Supreme Court in which such Chairperson or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.</p> <p>[Sub-section (2) of section 9 of the Armed Forces Tribunal Act, 2007]</p>  |
| 13. National Green Tribunal under the National Green Tribunal Act, 2010 | <p>(1) The Central Government may, in consultation with the Chief Justice of India, remove from office of the Chairperson or Judicial Member of the Tribunal, who,— (a) has been adjudged an insolvent; or</p>  |

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|  | <p>(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (c) has become physically or mentally incapable; or</p> <p>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or</p> <p>(e) has so abused his position as to render his continuance in office prejudicial to the public interest.</p> <p>(2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.</p> <p>(3) The Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under 7 sub-section (2), until the Central Government passes an order on receipt of the report of inquiry made by the Judge of the Supreme Court on such reference.</p> <p>(4) The Central Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).</p> <p>(5) The Expert Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) and in accordance with the procedure as may be notified by the Central Government: Provided that the Expert Member shall not be removed unless he has been given an opportunity of being heard in the matter.</p> <p>[Section 10 of the National Green Tribunal Act, 2010]</p> |
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**Annexure -III**

| <b>Tribunals from where appeal lies to the High Court</b> |  |  |   |
|---|--|--|---|
|   | The Income Tax Act,<br>1961<br>(43 of 1961)                                  | Income Tax Appellate<br>Tribunal<br>Established u/s 252(1)                       | Appeal to the High Court<br>u/s 260A(1) |
|   | The Customs Act, 1962<br>(52 of 1962)<br>Amended vide Finance<br>Act 2003    | Customs, Excise and Service<br>Tax Appellate Tribunal<br>Constituted u/ s 129(1) | Appeal to the High Court<br>u/s 130(1)  |
|   | The Income Tax Act,<br>1961<br>(43 of 1961)                                  | Income tax Settlement<br>Commission<br>Constituted u/s 245B                      | Appeal to High Court u/s<br>260A        |
|   | The Prevention of Money<br>laundering Act, 2002 (15<br>of 2003)              | Appellate Tribunal<br>Established u/s 25   | Appeal to High Court u/s<br>42          |
|   | The Benami Transactions<br>(Prohibition) Amendment<br>Act, 2016 (43 of 2016) | Appellate Tribunal<br>Constituted u/s 30   | Appeal to High Court u/s<br>49(1)       |
|   | The Benami Transactions<br>(Prohibition) Amendment<br>Act, 2016 (43 of 2016) | The Appellate Tribunal<br>Established u/s 30                                     | Appeal to High Court u/s<br>49          |

**Annexure - IV**

| Tribunals from where appeal lies to the Supreme Court |  |  |   |
|---|--|--|---|
| <b>S. No.</b>   | <b>Name of Act</b>   | <b>Name of Tribunal/Authority</b>  | <b>Section under which Appeal lies with the Supreme Court</b> |
| 1   | The National Green Tribunal Act, 2010 (19 of 2010)                         | National Green Tribunal Established u/s 3  | u/s 22  |
| 2   | The Securities and Exchange Board of India Act, 1992 (15 of 1992)          | Securities Appellate Tribunal Established u/s 15K(1)   | u/s 15Z   |
| 3   | The Consumer Protection Act, 1986 (68 of 1986)                             | National Consumer Dispute Redressal Commission Established u/s 9   | u/s 23  |
| 4   | The Armed Forces Tribunal Act, 2007 (55 of 2007)                           | Armed Forces Tribunal Established u/s 4  | u/s 30  |
| 5   | The Electricity Act, 2003 (36 of 2003)                                     | Appellate Tribunal for Electricity Established u/s 110   | u/s 125   |
| 6   | The Income Tax Act, 1961 (43 of 1961)                                      | Income Tax Settlement Commission constituted u/s 245B  | u/s 261   |
| 7   | The Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008) | Airports Economic Regulatory Authority Appellate Tribunal (AERAAT) is now merged with Telecom Disputes Settlement Appellate Tribunal (TDSAT) | u/s 31  |
| 8   | The Insolvency and Bankruptcy Code, 2016 (31 of 2016)                      | National Company Law Appellate Tribunal Established u/s 410  | u/s 62(1)   |
| 9   | The Electricity Act, 2003 (36 of 2003)                                     | Central Electricity Authority Established u/s 70   | u/s 125   |

**Annexure - V**

| <b>Tribunals from where appeal lies to the Appellate Tribunals / Authorities</b> |  |   |  |
|--|--|---|--|
| <b>S. No.</b>  | <b>Name of Act</b>   | <b>Name of Tribunal/Authority</b>                               | <b>Section under which Appeal lies</b>   |
| 1  | The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) | Debts Recovery Tribunal Established u/s 3                       | Appeal u/s 20 to Debts Recovery Appellate Tribunal   |
| 2  | The Income Tax Act, 1961 (43 of 1961)  | Income tax Settlement Commission Established u/s 245B(1)        | Appeal to the Appellate Tribunal u/s 253   |
| 3  | The Companies Act, 2013 (18 of 2013)   | National Company Law Tribunal Established u/s 408               | Appeal to the National Company Law Appellate Tribunal u/s 421  |
| 4  | The Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008)           | The Airports Economic Regulatory Authority Established u/s 3    | Appeal to TDSAT u/s 17 (AERAAT since merged with TDSAT)  |
| 5  | The Telecom Regulatory Authority of India Act, 1997 (24 of 1997)                     | The Telecom Regulatory Authority of India Established u/s 3     | Appeal to Telecom Disputes Settlement and Appellate Tribunal u/s 14  |
| 6  | The Competition Act, 2002 (12 of 2003)   | Competition Commission of India Established u/s 7               | Appeal to National Company Law Appellate Tribunal (NCLAT) u/s 53A (Competition Appellate Tribunal since merged with NCLAT) |
| 7  | The Securities and Exchange Board of India Act, 1992 (15 of 1992)                    | The Securities and Exchange Board of India Established u/s 3    | Appeal to the Securities Appellate Tribunal u/s 15T  |
| 8  | The Insolvency and Bankruptcy Code, 2016 (31 of 2016)                                | Insolvency And Bankruptcy Board of India Established u/s 188(1) | Appeal to National Company Law Appellate Tribunal u/s 202  |

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|----|--|--|--|
| 9  | The Cinematograph Act, 1952 (37 of 1952)   | Board of Film Certification<br>Established u/s 3                         | Film Certification Appellate Tribunal<br>u/s 5C                                  |
| 10 | The Electricity Act, 2003 (36 of 2003)   | Central Electricity Authority<br>Established u/s 70                      | Appeal to Appellate Tribunal for Electricity u/s 110 & 111                       |
| 11 | The Prevention of Money laundering Act, 2002 (15 of 2003)                            | Adjudicating Authority<br>Established u/s 6                              | Appeal to Appellate Tribunal u/s 26  |
| 12 | The Merchant Shipping Act, 1958 (44 of 1958)   | Court of Survey<br>Established u/s 383(1 & 3)                            | No further appeal (but Reference to scientific persons by Central Govt. u/s 387) |
| 13 | The Cinematograph Act, 1952 (37 of 1952)   | The Film Certification Appellate Tribunal<br>Established u/s 5D          | No further appeal (but Revision Power with Central Govt. u/s 6)                  |
| 14 | The Coastal Aquaculture Authority Act, 2005 (24 of 2005)                             | Coastal Aquaculture Authority<br>Established u/s 4                       | No further appeal  |
| 15 | The Press Council Act 1978 (37 of 1978)  | Press Council of India<br>Established u/s 4                              | No further appeal  |
| 16 | The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) | Debts Recovery Appellate Tribunal<br>Established u/s 8(1)                | No further appeal  |
| 17 | The Administrative Tribunals Act, 1985 (13 of 1985)                                  | Central Administrative Tribunal<br>Established u/s 4(1)                  | No further appeal  |
| 18 | The Central Sales Tax Act, 1956 (74 of 1956)   | The Central Sales Tax Appellate Authority/Tribunal<br>Established u/s 19 | No further appeal  |

**Annexure - VI**

**The Acts Which Precludes the Jurisdiction of Civil Courts**

| <b><u>Sr. No.</u></b> | <b><u>Name of Act</u></b>  | <b><u>Exclusion of Jurisdiction of Civil Court</u></b> |
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| <b>1.</b>             | The Control of National Highways (Land and Traffic) Act, 2002<br>(13 of 2003)  | Section 15   |
| <b>2.</b>             | The Airport Authority of India Act, 1994<br>(55 of 1994)   | Section 28K(5)   |
| <b>3.</b>             | Telecom Regulatory Authority of India Act, 1997<br>(24 of 1997)  | Sections 15 & 27                                       |
| <b>4.</b>             | The Armed Forces Tribunal Act 2007<br>(55 of 2007)   | Section 33   |
| <b>5.</b>             | Recovery of Debts Due to Banks and Financial Institutions Act, 1993<br>(51 of 1993)                                      | Section 18   |
| <b>6.</b>             | The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002<br>(54 of 2002) | Section 34   |
| <b>7.</b>             | Income Tax Act, 1961<br>(43 of 1961)   | Section 293  |
| <b>8.</b>             | The Trade Marks Act, 1999<br>(47 of 1999)  | Section 93   |
| <b>9.</b>             | The Geographical Indications of Goods (Registration and Protection) Act, 1999<br>(48 of 1999)                            | Section 32   |
| <b>10.</b>            | The Securities and Exchange Board of India Act, 1992<br>(15 of 1992)   | Sections 15Y & 20A                                     |
| <b>11.</b>            | The Motor Vehicles Act, 1988<br>(59 of 1988)   | Sections 94 & 175                                      |

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| <b>12.</b> | The Competition Act, 2002<br>(12 of 2003)  | Section 61            |
| <b>13.</b> | Railway Claims Tribunal Act, 1987<br>(54 of 1987)  | Section 15            |
| <b>14.</b> | The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976<br>(13 of 1976) | Section 14            |
| <b>15.</b> | The Railways Act, 1989<br>(24 of 1989)   | Section 43            |
| <b>16.</b> | The Foreign Exchange Management Act, 1999<br>(42 OF 1999)  | Section 34            |
| <b>17.</b> | The Airports Economic Regulatory Authority of India Act, 2008<br>(27 of 2008)                      | Sections 28 and 44    |
| <b>18.</b> | The Information Technology Act, 2000<br>(21 of 2000)   | Section 61            |
| <b>19.</b> | Companies Act, 2013<br>(18 of 2013)  | Section 430           |
| <b>20.</b> | The Electricity Act, 2003<br>(36 of 2003)  | Section 145           |
| <b>21.</b> | The Insolvency and Bankruptcy Code, 2016<br>(31 of 2016)   | Sections 63, 180, 231 |
| <b>22.</b> | The Prevention of Money laundering Act, 2002<br>(15 of 2003)                                       | Sections 41 and 67    |
| <b>23.</b> | The Benami Transactions (Prohibition) Act, 1988<br>(45 of 1988)                                    | Section 45            |
| <b>24.</b> | The National Green Tribunal Act, 2010<br>(19 of 2010)  | Section 29            |

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| <b>25.</b> | The Real Estate (Regulation and Development) Act, 2016<br>(16 of 2016) | Exclusion of jurisdiction u/s 79 |
| <b>26.</b> | The Bonded Labour System (Abolition) Act, 1976<br>(19 of 1976)         | Section 25                       |