PSYCHOLOGY AND EDUCATION (2021) 58(5): 7262-7270
ISSN: 1553-6939

A Long Quest for Rationalisation of Tribunals in India

Author: Nimesh Das Guru (Email- ndguru@lloydlawcollege.edu.in)
Assistant Professor, Lloyd Law College, Greater Noida

Abstract

The tribunals were primarily introduced in Indian judicial system to reduce the mounting arrears before High Courts and to bring subject matter specialists in the adjudicatory bodies because of the growing complexities of the disputes. It was expected that these tribunals will adjudicate the disputes more efficiently and quickly, however, the performance of the tribunals has been far from satisfactory. The constituting acts of various tribunals came under controversy since their inception and has given rise to a long line of litigation. Government tried to rationalise the functioning, composition and supervision of the tribunals under Finance Act 2017. The first set of Rules were struck down by Supreme Court in Roger Mathews case and thereafter government introduced another set of Rules in 2020 which were upheld by Supreme Court with modification. The Government has passed a new Act, "The Tribunals Reforms (Rationalisation and Conditions of Service) Act, 2021", which is vouched as initiation of second phase of rationalisation of functioning of tribunals, however the author in this paper is arguing that this is another ad hoc measures taken by government and the new Act does not provide a comprehensive legislative and institutional reforms that is required for tribunals to work as an efficient forum of adjudication.

Introduction

The inordinate delay in disposal and continuously mounting workloads before the regular courts in India has been identified as one of the biggest roadblocks in providing effective access to justice to the people of India.[1]The tribunals were introduced in Indian judicial system as a solution to reduce the problem of growing backlog of matters before High Courts and also to allow involvement of subject matters experts in adjudicatory mechanism.[2]It was expected that these tribunals would adjudicate dispute quickly and in a cost-effective manner reducing the huge backlogs of cases that were choking the regular courts, more particularly High Courts. However, the results have been far from satisfactory on all accounts.

The legislative and institutional frameworks of tribunals have been under controversies since their inception in our judicial institution. Several governmental committees and decisions of Supreme Court have identified the various reasons behind the unsatisfactory performances of tribunal working in India.[3] The apex court of the country while declaring the constituting acts of several tribunals unconstitutional in a long series of

[1]Law Commission of India, '*Arrears and Backlog: Creating Additional Judicial (wo)manpower*', Report No. 245, July, 2014, page 1.
[2]Para 5, Statement of Object and Reason, The Constitution (Forty-Second Amendment) Act, 1976, also *Madras Bar Association* v. *Union of India*, 2020 SCC OnLine 962, see Para 1.
[3]Law Commission of India, '*Assessment of Statutory Frameworks of Tribunals in India'*, Report No.272, October, 2017, 3.1.

pronouncement has laid down certain guidelines and parameters which should be followed while establishing tribunals. However, despite several round of litigations before Supreme Court of India the controversy regarding the efficient functioning, composition and supervision of Tribunals is not settling down.

The last judgment in this long line of litigations was delivered in the case of Madras Bar Association v. Union of India[4](hereinafter MBA IV) in July 2021 where Supreme Court dealt with the issue of constitutional validity of the 'The Tribunal Reforms (Rationalisation and Condition of Service)Ordinance, 2021' (hereinafter Ordinance 2021). The Supreme Court declared again declared some provision of the Ordinance 2021 unconstitutional on the ground they are in violation of the principles set down in Roger Mathews Case.[5]The Ordinance 2021 was promulgated after the Supreme Court in earlier Madras Bar Association Case (hereinafter MBA III) held some provisions of the 'The Tribunal, Appellate Tribunal and other Authorities [Qualification, Experience and Other Conditions of Service of Members] Rules, 2020' (hereinafter Rule 2020) unconstitutional. The Rule 2020 was enacted after the Supreme Court in Roger Mathews case[6] declared "The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017" unconstitutional on the ground that they were in clear violation of principles of the judicial supremacy, judicial independence and strict maintenance of separation of judicial and executive power as interpreted by Supreme Court in various cases and directed government to re-formulate the rules strictly in conformity and in consonance with the principles laid down by Supreme Court in earlier cases read together with the observations made in the present case.[7]

Despite the judgment declaring some provisions of the Ordinance 2021 unconstitutional, the central government has laid down this same Ordinance with same provision before the Parliament and it has been passed by both houses of the parliamentas The Tribunal Reforms (Rationalisation and Condition of Service) Act 2021 (Act 2021) and[8]andhas received the assent of the President.[9] The Act 2021 is vouched as the initiation of second phase of process of streamlining of tribunals where the government is of the opinion that tribunals in 'several sectors have not necessarily led to faster justice delivery' and they are also economically burdensome, therefore government has proposed to abolish some of the tribunals and transfer their workload to regular

[4]2021 SCC OnLine SC 463.
[5]*Infra* at 6.
[6] (2020) 6 SCC 1.

[7]*Id* 1 at para 1.
[8]Network, L. N. (2021, August 16). *Parliament passes tribunals reforms bill with same provisions struck down by Supreme Court*. Live Law, available at https://www.livelaw.in/top-stories/parliament-passes-tribunals-reforms-bill-with-same-provisions-struck-down-by-supreme-court-179179. (Last accessed on September 1, 2021).
[9]Govt. of India, Ministry of Law and Justice, CG-DL-E-13082021-228989, August 13, 2021), available at https://prsindia.org/files/bills_acts/acts_parliament/2021/The%20Tribunals%20Reforms%20Act,%2021.pdf (Last accessed October 1, 2021).

courts.[10] The new act has been promptly challenged before the Supreme Court and the decision thereon is pending.[11] Therefore, it is clear the long series of litigation in the matter has not ended.

Author in this short note wants to propose that the Act 2021 is another ad hoc measure and it does not comprehensively address the shortcomings of the existing legislative and institutional framework under which the tribunals are operating in India. This note is divided in three parts. In the first part authors would present the backdrop under which the tribunals were introduced in the Indian judicial system, the second part deals with the controversies that emerged with respect to existing legislative and institutional framework of tribunals and the third part would present the critical comments on the Act 2021.

Part I

Enlargement of Jurisdiction of High Court u/a 226

One of the first promises that post-colonial constitutional republic of India made to its citizens was to secure 'justice; social, economic and political'[12] to all of them. Constitution gave this vision a concrete shape by incorporating a chapter on fundamental rights in its part III and making them legally enforceable through instrumentality of courts. It was strongly believed by the members of the Constituent Assembly that these rights should be judicially enforceable.[13]Article 32, a fundamental right in itself, allowed direct access to Supreme Court to seek enforcement of rights.[14]

However it was also understood by members of the Constituent Assembly that Supreme Court in New Delhi may not be so easily accessible to everyone, therefore, High Court situated in state capitals were also empowered to grant same relief under article 226 of the Constitution.[15] The power and scope of High Court under article 226 was kept even wider in comparison to the power of Supreme Court u/a 32 because Supreme Court had power only in cases of violation of fundamental rights but High Court had power even in cases of violation of other statutory rights as well.[16]

The extension of this power to High Court was considered to be a great step towards providing quick and effective remedies against violation of rights.[17] The 14th Report of the first Post-Independence Law Commission dealing with issue of

[10] Statement of Objects and Reasons, Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021.

[11]Network, L. N. (2021, September 6), 'You Can't Enact A Law Contrary To A Judgment' : Supreme Court Issues Notice On Jairam Ramesh's Plea Challenging Tribunals Reforms Act, *available at*https://www.livelaw.in/top-stories/supreme-court-noticejairam-rameshs-plea-challenging-tribunals-reforms-act-180981 ((Last accessed on September 15, 2021)

[12] Preamble, The Constitution of India.

[13]Constituent Assembly Debates, 2nd May 1947, Discussion on Clause 22--Right to Constitutional Remedies, Speech by Vallabhbhai J. Patel, available at Debate : Loksabha (loksabhaph.nic.in)(Last Visited May 15, 2021).

[14] Article 32, The Constitution of India.

[15]Constituent Assembly Debates, July 21, 1947, Discussion on Part II--The Provincial Judiciary, Speech by Sir AlladiKrishnaswami Ayyar, available at Debate : Loksabha, (Last Visited May 15, 2021).

[16]*Andi Mukta Sadguru Shree Muktajee Pandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors.* v. *V.R. Rudani and Ors.* (1989) IILLJ 324 SC.

[17]Law Commission of India, Reforms of the judicial administration, Volume 2, Report No.134, September 26, 1958, page 657

"Reforms in Judicial System" observed that availability of writ jurisdiction under article 226 as a cheap and effective remedy had made citizen conscious of the fact that the "State exists primarily for his good and that, under its laws, he has the rights of which he can obtain quick enforcement by these highest court in the State at a very reasonable cost".[18] The Commission further found affirmation of their observation of the "effective nature and essential utility of article 226" for the enforcement of rights viz a viz State in the facts that in last five years of its commencement, different High Courts have struck down large numbers of statutes and orders passed by government as unconstitutional. Therefore, the Commission recommended the preservation of this "wide and effective jurisdiction and help to make the remedy function with expedition so that it may truly serve its purpose".[19]

Growth of Pendency and Backlog in High Courts

However, the increased awareness among people about their rights, and opening up of writ jurisdictions under article 226 significantly increased the caseloads in the High Courts. Several committees recommended creation of alternative adjudicatory bodies to reduce the burdens of regular courts. Wanchoo Committee – 1970 recommended for the creation of Tax Tribunals to deal with the growing pendency of income tax matters. Both, The High Courts' Arrears Committee Report – 1972 and Swaran Singh Committee Report – 1976 suggested creation of special tribunals to deal with service-related matters which constituted bulk of the pending matters before High Courts.[20]

Following up on these advise Parliament of India passed 42nd Constitutional amendment and inserted article 323 A and B in the Constitution.[21] Article 323 A empowered Parliaments to create administrative tribunals to adjudicate or conduct trials for service matters.[22] 323 B further empowered appropriate legislature to create tribunals for adjudication on other specific subject matters.[23] The main purpose behind the creation of these subject matter specific tribunals was to provide for a parallel adjudicatory mechanism so that they may reduce the burdens of "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 development and progress".[24]

Introduction of Tribunals in Indian Judicial System

Post 42nd Constitutional Amendment, the first tribunal to be established was 'Administrative Tribunal' to look after the service-related matters because it was observed that such matters constituted the bulks of the pending petitions before different High Courts.[25] Thereafter, several other subject matter specific tribunals came into existence and at present there are 19 tribunals working in India.[26]

Part II

Working of the Tribunals

[18] *Id*at 658.
[19] *Ibid.*
[20] Supra note 3, Chapter 1, Introduction.
[21] *Id*, 1.16.
[22] Article 323 A, The Constitution of India.
[23] Article 343 B, The Constitution of India.
[24] Statement of Object and Reason, The Constitution (Forty- Second Amendment) Act 1976.
[25] *Supra* note 3.
[26] *Supra* note 4.

Exclusion of the Jurisdiction of the High Court

It was expected that these Tribunals would adjudicate dispute quickly and in a cost-effective manner reducing the huge backlogs of cases that were choking the regular courts, more particularly High Courts.[27] That is why both article 323 A & B provided that the legislative authorities creating these tribunals may exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136 to entertain any disputes with respect to which subject matter specific tribunals were created.[28]Exercising this power, almost all statues creating tribunals specifically barred the jurisdiction of High Courts to entertain any kind of grievances against the decision of these tribunals and the only fora of appeal available against the decision of tribunals was Supreme Court under article 136 of the Constitution.[29]

However, the exclusion of the jurisdiction of High Courts immediately came into controversies and several writ petitions were filed even before the first tribunal post 42nd amendment, namely Administrative Tribunal, came into existence.[30] The main ground on which the exclusion of jurisdiction of High Court was challenged was that it was considered to be violative of article 226 and 227 of the Constitution. Article 226 gives power to the High Courts to issue writ against the decision of any authorities and article 227 gave power of 'superintendence over all courts and tribunals' functioning within its territorial jurisdiction.[31]

The issue was first adjudicated in Sampath Kumar case[32] where the Court held that Parliament has the power to create alternative mechanism for adjudication. The Parliament may by law also endow these courts to exercise the power of judicial review in exclusion of High Court provided "the substitutional agencies are equally effective and competent to take over the responsibilities envisaged by High Court"('emphasis supplied') under the constitutional scheme.

This decision was reviewed in L. Chandra Kumar case[33] where the Court modified the decision in Samapth Kumar case and held that alternative institutions can exercise the power of judicial review but they cannot be a substitute of the High Courts.[34] The Court further held that the power of the High Court to hear writ petitions against any authorities under article 226 and its power to supervise courts and tribunals situated within its territorial jurisdiction under article 227 are parts of basic structure of the Constitution which couldn't be diluted by way of constitutional amendment, much less they could be diluted by exercise of ordinary legislative powers.[35]

The Court further observed in the same case that one of the biggest concerns with the tribunals have been that they have not been able to instil the same confidence that a High Court has on the mind of the

[27]Supra note 3, Chapter VIII, Bypassing the Jurisdiction of High Courts.
[28]Article 323 A (2)(d), Article 323 B (3)(d), The Constitution of India.
[29]*Supra* note 25.
[30]*Infra*note31 at para 8.
[31]Article 226& 227, The Constitution of India.
[32]*S. P. Sampath Kumar &ors.* v. *Union of India*, AIR1987SC386.
[33]*L. Chandra Kumar*v. *UOI*, (1997)3 SCC 261.
[34]*Id* at Para 94.
[35]*Id* at para 100.

litigating public.[36] The Court observed that legislative authorities have the power to create alternative mechanism of adjudication to supplant the High Court but alternative institutions must "inspire confidence and public esteem that it is a highly competent and expert mechanism with judicial approach and objectivity", its members have "legal training and experience, and judicial acumen, equipment' comparable to that of High Courts whose jurisdiction it is going to exercise".[37] If acts constituting the tribunals will not inspire the same confidence with respect to its composition then the constituting act itself may be struck down. The Court also noticed the lack of uniform mechanism for administrative supervision of various tribunals and suggested that all tribunals should be brought under the supervision of 'single nodal ministry' preferably Ministry of Law and Justice.[38]

Judicial Pronouncements post L. Chandra Kumarcase

Post L. Chandra Kumar case the constituting acts of various tribunals were challenged before different High Courts and Supreme Court for violating the principles laid down in the L. Chandra Kumar case. The Supreme Court struck down the constitution of many of these tribunals on the ground that they were not constituted following the principles laid down in L. Chandra Kumara case. In the long series of litigations Supreme Court of India developed certain principles on the basis of which these tribunals have to be constituted.

In Union of India v. R. Gandhi,[39] though the Court upheld the constitutionality of National Company LawTribunal ('NCLT' or 'Tribunal') and National Company Law Appellate Tribunal ('NCLAT'), it reiterated the importance of maintaining the principles of judicial independence and separation of executive and judicial power and accordingly directed the government to reformulate certain provisions regarding composition of search cum selection committee (for appointment of members of Tribunals), qualification for appointments and service conditions of members to maintain judicial supremacy in the composition of these tribunals. Further, in Union of India v. Madras Bar Association[40] case again certain provisions of Companies Act 2013 regarding search cum selection committee (for appointment of members of tribunals), qualification of the members of NCLT and NCLAT were declared invalid.

Statutory Reforms in Tribunal through Finance Act 2017

Government of India following up on the several directions given by the Supreme Court in different cases added Part XIV in the Finance Act of 2017 to rationalise the functioning of tribunals, in conformity with the principles laid down by Supreme Court in its various decisions. Section 184 of the Act gave power to the Central Government to formulate rules "to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President,

[36] *Id at para 88.*
[37] *Id.*
[38] *Id* at para 97.
[39] 2010 (11) SCC 1.
[40] 2014 (10) SCC 1.

Presiding Officer or Member of the Tribunal, Appellate Tribunals". Central Government accordingly enacted 'The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017'. The constitutional validity of this enactment was challenged in the Roger Mathew case.[41]

Roger Mathew case struck down the 2017 Rules on the ground that they were in clear violation of principles of the judicial supremacy, judicial independence and strict maintenance of separation of judicial and executive power as interpreted by Supreme Court in various cases with respect to functioning, composition and supervision of the Tribunals and directed government to "re-formulate the rules strictly in conformity and in accordance with the principles delineated by Supreme Court in R.K. Jain, L. Chandra Kumar, Madras BarAssociation and Gujarat Urja Vikas Ltd. cases conjointly read with the observations made in this case".[42]

Following up on the directions pronounced in Roger Mathew case the government amended the previous 2017 Rule and passed 'The Tribunal, Appellate Tribunal and other Authorities [Qualification, Experience and Other Conditions of Service of Members] Rules, 2020'. The Constitutional validity of Rule 2020 was again challenged in the case of Madras Bar Association v. Union of India[43](MBA III) where the Court where the Courtupheld the validity of Rules 2020 generally but has directed government to bring further modification in several provisions of the Rules. Additionally, the Court reiterated its direction to constitute a National Tribunal Commission which will act as independent body to supervise the appointment and functioning of Tribunals, as well as to conduct disciplinary proceedings against members of tribunals and to take care of administrative and infrastructural needs of the tribunals. In response to the judgment of MBA III the Union Government has first introduced the Ordinance 2021. The constitutional validity of some of the provisions of Ordinance 29021 was challenged by Madras Bar Association (MBA IV) where the decision was given by the Court in July 2021. The Supreme Court struck down the provisions that fixed the minimum age limit for appointment as tribunal members as 50 years.[44] The Court also struck down provision "prescribing that the Search cum Selection Committee will recommend two names for each post struck down being contrary to the direction in previous judgments that the committee should only recommend one name for each post".[45] However, despite this decision the same ordinance with same provisions have been passed by the parliament and has also received assent of the president.

Part III

The Tribunals Reforms (Rationalisation and Conditions of Service) Act, 2021

The constitutionality of the Act 2021 is already under challenge before Supreme

[41]*Rojer Mathew* v. *South Indian Bank Ltd. and Ors.* (2020)6SCC 1.
[42]*Id* para 228.
[43]*Supra* note 4.

[44]Manu Sebastian, Tribunals Reforms Ordinance: Supreme Court Strikes Down Provisions Fixing Term of Members As 4 Years(2021, July14), available at https://www.livelaw.in/top-stories/tribunals-reforms-ordinance-supreme-court-strikes-down-4-year-term-fixed-177425(Last accessed on September 15, 2021)
[45]*Id.*

Court and the Court has made an observation that the parliament cannot enact a "cannot enact a law which is contrary to a judgment".[46]

The rationalisation and reform process of the tribunals have tried addressing the concerns raised in the structural and administrative aspect of the Tribunals. The three main area of focus had been amalgamation of different tribunals by merging them together on the basis of subject matters that they deal with, laying down rules for the appointment, removal and working conditions of the members of the tribunals, creating an umbrella institution to supervise and to provide for administrative and managerial support for the smooth functioning of the Tribunals. Various Tribunal Reforms Acts passed by the central government has attempted to addressthe first two concerns. Researcher is this thesis will critically analyse if the mechanism set up by the Act would actually be able to address those concerns. The issue of Judicial supremacy in the selection cum search committee (for appointment of members of tribunals) has been taken care of in the line of directions given in decisions of Supreme Court in this Bill.

However, there were many other issues as pointed out above which has not been addressed in this new Act 2021. Rather than initiating the reforms in the tribunals as suggested in above mentioned decisions of the Supreme Court, this new Bill has taken an altogether new route towards abolitions of the tribunals in several sectors.

This Act 2021 is vouched as the initiation of second phase of process of streamlining of tribunals where the government is of the opinion that tribunals in 'several sectors have not necessarily led to faster justice delivery' and they are also economically burdensome, therefore in government has proposed to abolish some of the tribunals and transfer their workload to regular courts.[47]

It is to be noted that none of committees in their reports or Supreme Court in their decisions have ever observed that tribunals should be abolished and their jurisdiction should be transferred to regular courts. On the contrary the Supreme Court in several of their decisions have stressed on the need of tribunals for speedy justice in the context of growing complexities of litigations.[48] The suggestion was towards amalgamation of different tribunals which are dealing with similar areas of law into one, to ensure effective utilisation of resources and to facilitate access to justice. This Act 2021 instead proposes to abolish existing tribunals transferring their power to civil courts, commercial courts and High Court. This move totally misses one of most vital point behind introduction of tribunals in judicial system, that is the requirement of subject matters expert in adjudication.

Another important suggestion of the Supreme Court was to bring amendment in the relevant provisions of the law to remove direct appeals to the Supreme Court from orders of tribunals to instead provide appeals to Division Benches of High Courts.[49] The recommendation was to reform the existing mechanism of

[46] *Supra* Note 11.

[47] Statement of Objects and Reasons, Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021.

[48] *Supra* note 5.

[49] *Id*.

appeal under which the only forum of appeal available against the decision of tribunal was Supreme Court under article 136 of the Constitution of India. The direct appeal system was criticised on many grounds viz; denial of access to justice and also very limited grounds on which appeal could be entertained by Supreme Court under article 136.[50] It was suggested that the provision of direct appeals to the Supreme Court should be removed and appeal against the orders of tribunals should be allowed before Division Benches of High Courts.[51]The 272nd Report of the Law Commission also strongly recommended this step.[52]

The Act 2021, in a way, has removed the provision of direct appeals to Supreme Court in cases of some tribunals and provide for appeal to High Court, but in the process, it has abolished the intermediary appellate Boards. It means that now the appeal against the decision of original platform will go directly to the High Court. This step may decrease the workload of Supreme Court but then High courts are also not less burdened. In several decision the Court has held that first appeal against the decision of any adjudicatory bodies should be allowed as a matter of right. Therefore, the existing intermediate appellate boards could have been the platform of first appeal against the decision of original adjudicatory bodies. Now almost all matters would reach to High Court in a routine manner increasing the workload of already heavily burdened High Courts.

On other fronts also the new Tribunal Act 2021 falls short of the expectations. A much-discussed drawbacks of the existing tribunal system was its haphazard growth and their dependence for their smooth running and other administrative functions on the sponsoring departments.[53] This was held to be against the spirit of separation of power because sponsoring departments in most of the cases were one of the litigating parties before it. It was suggested that there is a need to streamline different tribunals under one uniform umbrella organisation namely 'National Tribunal Commission" which should become a permanent body for the purpose of maintaining and supervising different tribunals. The new Bill nowhere discusses about creation of National Tribunal Commission.

Conclusion

The reasons behind the unsatisfactory performance of tribunals as discussed above are inappropriate infrastructures, lack of uniform supervisory institutions, bureaucratic interference in their function. Though, the Act 2021has addressed the long-time concern of reducing the dominance of executive side of the government in the selection process of the members of the tribunals but there are many other issues in the functioning, composition and supervision of existing tribunals. What is required is a comprehensive legislation addressing all these concerns and till it is done tribunals will not be able to supplement the regular judicial bodies as it is expected out of them.

[50] *Id.*
[51] *Id.*
[52] Supra note 18 at page 98.
[53] *Id.*