



Working of Administrative Tribunals

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- ▶ **Today the the judicial functions are not the exclusive jurisdiction of ordinary courts, the executive performs many judicial functions like imposition of fine, levy of penalty, etc.**
 - ▶ **And with govt performing welfare activities, many disputes like industrial disputes, labour disputes are arising which need to be decided by the neutral agency**
 - ▶ **As the ordinary courts are over burdened, administrative tribunals have been established.**
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Objectives of the session


- ▶ **The objectives of the session are to:**
 - ▶ **Study the need and importance of Administrative Tribunals**
 - ▶ **Examine the characteristics of Administrative Tribunals**
 - ▶ **Understand the constitutional basis for these tribunals, and**
 - ▶ **examine the constitutional validity of Articles 323 A & 323 B**
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- ▶ **The Constitution of India, in the Preamble, expressly declares that “justice” is ensured to all citizens of the country, justice not only social but economic and political as well.**
- ▶ **For justice to prevail it is necessary that:**
- ▶ **The ‘Justice Delivery System’ is not only robust but also efficient and effective;**
- ▶ **There is an expeditious disposal of cases, and according to due process of law;**
- ▶ **Adherence must be paid to the ‘rule of law’**
- ▶ **There must be adherence to the three timeless principles of natural justice**
- ▶ **Law is the means, but justice is the end. For justice to prevail, it is necessary that all laws share a common playfield of ‘Salus Populi est Suprema Lex’ that is, welfare of people is the supreme law.**


Tribunal- Concept & Meaning

- ▶ **Term 'tribunal' refers to only the adjudicatory bodies which lie outside the sphere of the ordinary judicial system.**
- ▶ **Technically in India, the judicial powers are vested in the Courts which aims to safeguard the rights of the individuals and promotes justice.**
- ▶ **However, Traditional judicial system has proved to be inadequate in resolving disputes as it is slow, complex, costly, lacks expertise and is very formal.**
- ▶ **Its is conservative, rigid and technical**
- ▶ **Therefore Tribunals are being established to provide for speedy disposal of cases, and thus reduce the pressure on the Civil Courts.**
- ▶ **These also have technical expertise which civil court lack**


Characteristics of Tribunals


- ▶ **Tribunals are not courts they merely possess trappings of court.**
 - ▶ **have statutory origin**
 - ▶ **Performs the quasi-judicial and judicial functions and is bound to act judicially in every circumstance.**
 - ▶ **Have power to try cases in special matters statutorily conferred**
 - ▶ **Not bound by strict rules of evidence and procedure. They are not bound by CPC or CrPC and evidence Act**
 - ▶ **Follow principle of natural justice.**
 - ▶ **Independent and not subject to any administrative interference**
 - ▶ **A fair, open and impartial act is the indispensable requisite of the administrative tribunals.**
 - ▶ **Writs of certiorari and prohibition are available against the decisions of administrative tribunals.**
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Constitutional Basis

- ▶ **The constitutional basis for Administrative tribunals are provided in Articles 323-A and 323-B**
 - ▶ **Articles 323-A and 323-B were added to the Constitution by the Constitution (Forty- second Amendment) Act 1976.**
 - ▶ **These Articles empower Parliament, and appropriate legislatures respectively to provide for ‘the adjudication or trial by tribunals’ of the types of matters mentioned therein.**
 - ▶ **Thus, Article 323-A provides for the establishment of tribunals for adjudicating disputes relating to service matters of government servants**
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- ▶ **Under Article 323 B, the Parliament and the state legislatures are authorised to provide for the establishment of tribunals for the adjudication of disputes relating to the following matters:**
 - **Taxation**
 - **Foreign exchange, import and export**
 - **Industrial and labour**
 - **Land reforms**
 - **Ceiling on urban property**
 - **Elections to Parliament and state legislatures**
 - **Food stuff**
 - **Rent and tenancy rights**
- ▶ **These are authorised to try certain categories of criminal offences and thus impose penal sanctions.**
- ▶ **This is an innovation in the Indian legal system for till now criminal punishments were imposed only by the courts and not by non- judicial bodies.**

- ▶ **The Constitution (Forty- second Amendment) Act, 1976 was the most controversial amendment in the constitutional history of India.**
 - ▶ **Enabled Parliament or the appropriate legislature to make laws to set up such tribunals and to exclude the jurisdiction of the High Court under Article 226 or Article 227**
 - ▶ **Thus it took away power of superintendence of High Courts over administrative tribunals which they possessed under Article 227 of the Constitution**
 - ▶ **And totally excluded power of judicial review of High Courts which was held to be a part of 'basic structure' of the Constitution.**
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- ▶ **However, it has not excluded the judicial review entirely in as much as the jurisdiction of the Supreme Court under Article 136 of the Constitution was kept intact.**
 - ▶ **By the Constitution (Forty-fourth Amendment) Act, 1978, Article 227 was amended and jurisdiction of High Courts over administrative tribunals had been restored.**
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Jurisdiction of High Courts over Tribunals

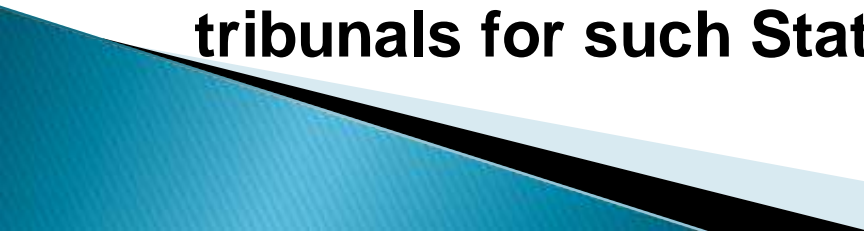
- ▶ **The constitutional validity of the Administrative Tribunals Act, 1985. was challenged in 1987 S.P. Sampath Kumar vs Union Of India & Ors 1987 SCR (3) 233 and the Supreme Court was held that a tribunal could be a substitute for the High Court**
- ▶ **The same question came up for consideration before supreme court in 1997 in L. Chandra Kumar vs Union Of India And Others.**
- ▶ **Supreme Court concluded that the constitutional safeguards which ensure the independence of the judges of the Supreme Court and the High-Courts are not available to the members of the tribunals**

- ▶ **Hence, they cannot be considered full and effective substitute for the superior judiciary in discharging the function of constitutional interpretation.**
 - ▶ **Administrative Tribunals cannot perform substitution role to the High Court, it can only be supplemental.**
 - ▶ **Therefore, Articles 323-A and 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 were held unconstitutional restoring the power of judicial review by High Court.**
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Administrative Tribunals Act, 1985

- ▶ **In exercise of the power conferred by Article 323-A of the Constitution, Parliament enacted the Administrative Tribunals Act, 1985.**
 - ▶ **The objective of the Act is to reduce the mounting arrears in the High Courts and to secure the speedy disposal of service matters**
 - ▶ **The Act provides for administrative tribunals for adjudication by of complaints with respect to recruitment and conditions of service of persons appointed to public services of Union or States or any local or other authority and for matters connected therewith or incidental thereto.**
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- ▶ **The Act shall not apply to any member of the naval, military or air forces or any other armed forces of the Union.**
 - ▶ **It also does not apply to any officer or servant of the Supreme Court or of any High Court or Courts subordinate thereto, secretarial staff of either House of Parliament or State Legislature.**
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- ▶ **The Administrative Tribunals Act, 1985 provides for three types of tribunals:**
 - ▶ **Central Administrative Tribunal (CAT), to deal with service matters pertaining to the Central Government employees, or of any Union Territory, or local or other government under the control of the Government of India, or of a corporation owned or controlled by the Central Government.**
 - ▶ **on receipt of a request in this behalf from any State Government, Central Government may, establish an administrative tribunal for such State employees.**
 - ▶ **Two or more States might ask for a joint tribunal, which is called the Joint Administrative Tribunal (JAT), which exercises powers of the administrative tribunals for such States.**
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The central Administrative Tribunal consists of

- ▶ Chairman , Vice-Chairmen & Members**
- ▶ Members – Administrative and Judicial**
- ▶ Chairman is sitting or former judge of H.C. or experience as Vice Chairman for 2 years**
- ▶ Vice Chairman-is/was/qualified to be H.C. Judge or has 2 yrs experience as Secretary to Govt or 5 yrs experience as Addl. Secretary or 3yrs experience as judicial / administrative Member of administrative tribunal**

- ▶ **Judicial member - is/has been/qualified to be a High Court judge or member of Indian Legal Service holding post in Grade-I for minimum 3 years**
 - ▶ **Administrative Member – 2yrs experience as Additional Secretary or 3 yrs experience as Joint secretary having adequate administrative experience**
 - ▶ **All-appointed by the President in consultation with concerned Governor**
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- ▶ **The Act requires that every matter should be heard by a Bench consisting of two members, one judicial and one administrative.**
 - ▶ **however, it authorises chairperson to allot certain matters to a single member Bench.**
 - ▶ **Section 28 of the Act excludes jurisdiction of all courts except the Supreme court under Article 136 of constitution**
 - ▶ **Impact of L. Chandra Kumar case has been that Writ Petition can be filed before a Division Bench of concerned HC**
 - ▶ **As Power of Judicial Review is Basic Feature of Constitution**
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- ▶ **Besides administrative tribunal for service matter there are number of tribunals and commissions established under various Acts**
 - ▶ **Industrial tribunals, labour courts, under various Industrial laws, Railway Rates Tribunal estd under Indian Railways Act, Workmen's Compensation Commission under Workmen's Compensation Act, Consumer Forums/ Commissions under Consumer Protection Act**
 - ▶ **Thus it can be concluded the Administrative Tribunals are now ingrained in our justice delivery system and seen as the means to achieve the end of justice and expeditious disposal of cases**
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Thank You