Extra Reading Material on Tribunals and Alternate Dispute Resolution

Jatin Gupta

How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India? 2018

The Central Administration Tribunal which was established for redressal of grievances and complaints by or against central government employees nowadays is exercising its powers as an independent judicial authority." Explain 2019

Tribunals

Tribunals are quasi-judicial bodies created to relieve the burden on the regular courts and to provide speedy justice to the citizens.They perform functions similar to that of the courts but do not replace the courts. In India they are setup under the provisions of Article 323 A and 323B. According to 323A, Parliament can enact a law to set up tribunals for service related matters, recruitment disputes etc. According to Administrative Tribunals Act, 1985 Central Administrative Tribunal has been setup to entertain disputes related to officers of the Union and States can request the Union to setup similar tribunals for the officers of the states.

Under Article 323 B can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence read along with the provisions of Article 323B

Objectives behind setting up of tribunals

- To provide speedy justice as they do not follow strict procedural laws such as the Indian evidence act, CPC, or CrPC, rather follow principles of natural justice
- They improve access to justice for the citizens at an affordable price.
- The members of tribunals possess technical expertise or know-how and therefore provide quality dispute resolution.
- The courts in India are overburdened with work and can be relieved of the same by setting up such tribunals.

Judgements of courts related to Tribunals

- **In Sampath Kumar vs Union of India**, the Court held that it is constitutionally valid for parliament to create an alternative to the High Courts with jurisdiction over certain matters but they should have the same efficacy as the High Courts. Such institutions can be considered alternatives to the High Courts. The Court also stated that appointments should be made either by the Central govt. after **consultation by CJI or a high-powered committee headed by the CJI.**
- **In L Chandra Kumar vs Union of India** the court held that such tribunals will act as the **court of the first instance** in respect of areas of law for which they have been formed but the decisions of these tribunals would be subject to **scrutiny by a division bench of the High Court.** The court also stated that a majority of **members of tribunals** should have a **judicial background.**

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To ensure uniformity in their administration a **separate mechanism** should be created to manage the appointment and administration of tribunals and till the time such a mechanism exists, the **Ministry of Law and Justice** and not the parent ministry on that subject should exercise such powers.

The court stated that the provisions excluding the judicial review and giving control to a parent ministry violate the **basic structure of the Constitution** and the principles of separation of powers, independence of the judiciary, and judicial review.

Certain guidelines of the court have not been ignored by the government Including independent appointments and administration of tribunals. In **Madras Bar association vs Union of India**, the Supreme court struck down some of the provisions related to the National Tax Tribunal and recommended setting up an independent national tribunal commission for the above functions.

Issues associated with the functioning of tribunals

- A major challenge that has arisen in recent times is **the tribunalization of justice** in the country. The setting up of the tribunals has **taken matters away from the regular courts** and placed them with the tribunals, therefore reducing the importance of the courts.
- The members of the tribunals are appointed by the government which is the largest litigant, therefore, compromising the principles of natural justice.
- Despite the setting up of tribunals the caseload on the judiciary has been unresolved
- Even the tribunals are also facing a **high pendency of cases** as the present pendency is more than 3 lakhs. As of 2018, the income tax appellate tribunal had more than 91000 cases pending, As of 2021, the central government industrial tribunal cum-labour courts had 7,312 pending cases
- **Shortage of staff and delays in the appointments** of members have severely hampered their functioning.
- The governments have ignored the judgments of the court and **continue to man these tribunals** with the majority of non-judicial members.
- Not only that, often **interference has been noted from the parent ministries** in their functioning. In 2010, the Supreme Court noted that the tribunals in India have not achieved complete independence
- In 2019, the Supreme Court stated that a short tenure of members (such as three years) along with provisions of re-appointment increases the influence and control of the Executive over the judiciary

Way Ahead

- Tribunals must not only be seen to be independent but should be independent in reality Therefore, they should be provided with the requisite autonomy and made independent of the respective ministry.
- The government should take immediate steps to set up an independent National

tribunals commission to take over the administration and appointments of tribunals
- Tribunals must have benches in different parts of the country to improve accessibility for the citizens.
- A judicial impact assessment would be helpful to determine the extra resources required to handle fresh cases resulting from enactment of a new law.

Meaning and Definition of ADR

- ADR refers to an alternate mechanism for the citizens to resolve their disputes in a non-adversarial manner.
- In ADR both parties worked together in a cooperative manner to reach the best resolution in the interest of everyone.
- There are various mechanisms for ADR including Arbitration, Mediation, Conciliation, etc.

Advantages of ADR Mechanism

- Disposal of disputes is much quicker and more economical
- It focuses on harmonious settlement of disputes rather than a combative approach
- It is confidential in nature and therefore prevents any adverse damage to the reputation of the parties involved
- Parties are in control of the proceedings and in some cases (mediation and conciliation) they have an opportunity to communicate with each other.
- It does not involve the payment of court fees and one may choose to not avail of the services of a lawyer.

Some of the laws such as the Legal Services Authority Act, the Civil Procedure Code, the Commercial Courts Act 2015, the Companies Act 2013, and the Arbitration and Conciliation Act 1996 provide legal backing to the ADR mechanisms in India.

Arbitration

- It is a process in which the disputes are submitted to an **independent body called the arbitrator.**
- Both parties pre-decide to approach a specific arbitrator and not the courts in case a dispute arises between them in the future.
- The arbitrator hears arguments from both parties and gives a final award, therefore one may say it is a **quasi-judicial process.**
- The **award is binding on both parties**, and cannot be challenged in the courts except in exceptional circumstances.
- The proceedings of **arbitration are not governed by archaic procedures** of procedural laws such as CPC, and the Indian Evidence Act, rather they are **guided by the principles of natural justice and the provisions** of the Arbitration and

Conciliation Act, of 1996.

- **Personal appearance of parties** is not always required.
- Provisions under **Arbitration and Conciliation Act, 1996** lay down the law for arbitration in india

Mediation

- Mediation is a process in which a neutral party **known as a mediator** helps the disputing parties resolve their disputes by giving suggestions, facilitating the free flow of ideas, and establishing a channel of communication between the parties.
- The mediator helps both parties to reach a **mutually agreeable settlement** but plays a passive role, and the solution to the dispute has to be decided by both parties themselves.
- It is usually considered by the parties in divorce and family matters.
- The concern with mediation is that it is not a binding process unless both parties agree to sign a **mediation settlement agreement**.
- In India, there is **no standalone legislation** at present to regulate mediation, rather some of the ordinary laws contain provisions related to mediation. For example, the **Consumer Protection Act, the Companies Act, the Commercial Courts Act, etc.**
- Lack of standardization and varying approaches followed by different mediators tend to have a significant impact on the outcome of the mediation process.

Steps taken by the government to promote mediation

- NALSA has allotted grants to the Mediation and Conciliation Project Committee, Supreme Court of India, to support mediation activities including training.
- Further, in order to promote and encourage mediation, awareness campaigns are conducted to make the citizenry aware of mediation as an effective mode of dispute resolution.
- The Legal Service Authorities and court annexed mediation centres are actively involved in getting the disputes settled through mediation and the Government encourages and supports the endeavors
- The Parliament has also enacted the Mediation Act, 2023, to enact a standalone law on mediation. The Bill aims to promote, encourage and facilitate mediation for resolution of disputes, commercial or otherwise and enforce mediated settlement agreements and establish the Mediation Council of India

Conciliation

- In this process, the resolution of the dispute is achieved by a compromise or a **voluntary agreement** between the disputing parties.
- The conciliator not only helps the parties reach a solution but also makes his own recommendations so that the parties to the dispute can come to a common ground.

- It is less formal than arbitration and the parties are free to accept or reject the **recommendation made by the conciliator**, but if they accept the recommendations, the agreement is binding on both parties and can be challenged in **court only in exceptional circumstances.**
- Provisions under **Arbitration and Conciliation Act, 1996** lay down the law for conciliation in india

Limitations of the ADR

- It may not always result in the resolution of disputes, therefore leading to a waste of **time and resources.**
- **At times ADR** can be more expensive than approaching the courts. For example, the arbitrators charge a hefty fee for providing their services.
- The decisions agreed to by both parties in the **ADR process cannot** be challenged in the courts except in certain specific circumstances.
- **In the ADR process**, there is a possibility of delivering injustice as well, as the process is highly informal in nature. **For example,** the conciliator is not a legally qualified person in all the circumstances, similarly, an arbitrator may also act in a biased manner in order to seek more business from a particular party in the future as well.
- The precedence set by the **ADR mechanism** cannot be used in the future making it a highly inefficient process.
- Lack of Awareness among the general public about the benefits of such amicable conflict resolutions.

Gram Nyayalayas

- These are mobile courts set up to provide inexpensive justice to the people in rural areas. They have been set up under the **Gram Nayalayas Act, 2008, which was brought into force on the 2nd of October 2009.**
- This act defines the establishment of, the jurisdiction and the procedure to be followed by the Gram Nyayalayas.
- They are supposed to be headed by a judicial officer called the **Nyaya Adhikari.** He/She is appointed by the state government in consultation with the concerned High Court.
- It may also have a social activist and a lawyer as members.
- Gram Nyayalayas are to be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level or for a group of contiguous Gram Panchayats. The seat of the Gram Nyayalayas shall be located at the headquarters of the intermediate Panchayat. The Nyayadhikari shall periodically visit villages and may hear the parties and dispose of the cases at the place other than its headquarters
- Disputes are to be settled as far as possible by bringing about conciliation between the parties and for this purpose, the Gram Nyayalayas will make use of the

conciliators to be appointed for this purpose
- The Gram Nyayalaya shall not be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice subject to any rule made by the High Courts.
- They are competent to **entertain both civil and criminal cases** of petty nature.
- The decisions of the Gram Nyayalaya have the force of the decree of the court and can be challenged in the **District or the Sessions Court.**

Limitations of Gram Nyayalayas

- The target was to set up **5000 plus Gram Nyayalayas,** but only a few hundred have been set up till now.
- They suffer on the account of lack of financial assistance from the **Centre to the States.**
- Most of the states are already facing a shortage of judicial officers, as a result of which, not enough personnel can be deployed in the **Gram Nyayalayas**.

Lok Adalats

It is an Indian innovation, introduced to resolve disputes on the basis of Gandhian principles in a conciliatory manner. They have the powers to settle the cases pending in the courts or at a pre-litigation stage. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.

Composition and functioning

- They are competent to entertain only compoundable cases
- They are supposed to consist of a judicial officer and other members which may include a **social worker and a lawyer.**
- In case, the parties approach the **Lok Adalat for the resolution** of the dispute, they forgo their right to approach the regular courts.
- Lok Adalats have the same powers as civil courts, but the proceedings are governed as per the **principles of natural justice**.
- There is no court fee payable when a matter is filed in a Lok Adalat. If a matter pending in the court of law is referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court on the complaints/petition is also refunded back to the parties.
- The persons deciding the cases in the Lok Adalats are called the Members of the Lok Adalats, they have the **role of statutory conciliators** only and do not have any judicial role; therefore they can only persuade the parties to come to a conclusion for settling the dispute outside the court in the Lok Adalat and shall not pressurize or coerce any of the parties to compromise or settle cases or matters either directly or indirectly.

Lok Adalats are set up on a periodic basis at the national, state, and district levels, to dispose of a large number of petty cases in a matter of a few hours.

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Permanent Lok Adalat

- The other type of Lok Adalat is the Permanent Lok Adalat, organized under Section 22-B of The Legal Services Authorities Act, 1987.
- Legal Services Authority Act was amended in 2002 to allow the setting up of permanent Lok Adalats in the country
- Permanent Lok Adalats have been set up as permanent bodies with a Chairman and two members for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services like transport, postal, telegraph etc.
- Here, even if the parties fail to reach to a settlement, the Permanent Lok Adalat gets jurisdiction to decide the dispute, provided, the dispute does not relate to any offence. Further, the Award of the Permanent Lok Adalat is final and binding on all the parties.