G.S. PAPER II – CONSTITUTION & POLITY

QUASI – JUDICIAL BODIES IN INDIA

Quasi – Judicial Bodies in India

1. Meaning

A **quasi judicial body** is an organization or individual on which powers resembling to that of court of law of judge have been conferred in order to adjudicate and decided upon a situation and impose penalty upon the guilty or regulate the conduct of individual or entity. A quasi-judicial agency has also been defined as "an organ of government, other than a court or legislature, which affects the rights of private parties through either adjudication or rule-making.

Essentially, a quasi-judicial agency is one which exercises a discretion that is essentially judicial in character but is not a tribunal within the judicial branch of government and is not a court exercising judicial power in the constitutional sense.

2. Emergence of Quasi-Judicial Bodies

- As the welfare state has grown up in the size and functions, the more and litigations are pending in the judiciary making it over-burdened. It requires to have **alternative justice system.**
- Ordinary judiciary is has become **very costly.**
- With the scientific and economic development the laws have become more **complex,** which demand more technical knowledge of the specific sectors.
- The conventional judiciary is suffering with **procedural rigidity,** which delays the justice.

3. Categories of Tribunals in India

There are **four categories** of tribunals in India:

1. Administrative bodies exercising quasi-judicial functions, whether as part and parcel **of the Department** or otherwise.
2. Administrative adjudicatory bodies which are outside the control of the Department involved in the dispute and hence decide disputes like a judge free from judicial bias Example: **The Income Tax Appellate Tribunal** is under the Ministry of Law and not under Ministry of Finance.

3. **Tribunals under Article 136** in which the authority exercises inherent judicial powers of the State. Because the functions of the body are considered important over the control, composition and procedure, even Departmental bodies also can be classified as Tribunals
4. Tribunals constituted under Article **323A and 323B** and having constitutional origin and enjoy the powers and status of a High Court

4. Advantages of Tribunals

1. Low Cost
2. Accessibility
3. Simplicity
4. Expert knowledge and qualified staff
5. Reasoned judgments
6. Reduce the workload of the judiciary and government departments
7. Responsibility for sensitive decisions
8. Flexibility, since there is little use made of precedent.

5. Disadvantages of Tribunals

1. There is an **unfair imbalance** between represented and unrepresented parties. It is unfair to people who are not represented and cannot get legal aid to come up against a rich corporation. Since richer parties are allowed to employ skilled representation they are consequently more likely to win.

2. The **no-costs rule and lack of legal aid penalize** poor litigants, although they do keep costs down.

3. The lack of fees encourages poor applicants, although it may also result in **ill-founded claims.**

4. Tribunals can become **complex** over time - as did the courts - rules of procedure grow up caused by the use of representatives who as a result make representation desirable in future.

5. They may lack some of the **perceived independence of the judiciary**

6. It can still be difficult for the people who go to tribunals to represent themselves because of the inherent difficulty in presenting a case in any environment.

7. It undermines the celebrated **principle of separation of powers** and natural justice.

6. Criticism of quasi - judicial bodies

Ordinary judiciary is still overburden. It is because that the party who lost the case in the tribunal, more often than not, approach the higher judiciary. It not cheap as more technical issues always pave the way for lawyer. Many members of these bodies are ex-bureaucrates with out any training of the law. Its independence is compromised.

7. Suggestions to improve tribunals

- It should be manned by **plural members** rather than single individual
- They should be appointed by **judicious process.**
- Members should be from both the **technical background and legal one**.

8. Specific recommendations by SC to improve Administrative Tribunals

- The chairman should be appointed by President from sitting or retired judge of a High Court in consultation with CJI or committee headed by CJI.
- Vice-chairman should be a judge of district court or an advocate who is eligible to become a judge of HC.
- Removal should be more stringent.

9. Evolutionary aspects of Administrative Tribunals

The Constitution (**Forty-second Amendment**) Act, 1976 inserted new Part XIVA on 'Tribunals' in the Constitution. Article 323A empowers Parliament to provide, by law, for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The law may provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States. The law may take out adjudication of disputes relating to service matters from the hands of the civil courts and the High Courts. Pursuant to the provisions of article 323A, Parliament enacted the Administrative Tribunals Act, 1985 (Act) to establish an Administrative Tribunal for the Union, viz., the Central Administrative Tribunal and a separate Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States. The establishment of Administrative Tribunals became necessary since a large number of cases relating to service matters were pending before various courts. It was expected that the setting up of the

Administrative Tribunals would not only reduce the burden of courts, but would also provide speedy relief to the aggrieved public servants.

In S. P. Sampath Kumar case, the Supreme Court directed the carrying out of certain measures with a view to ensuring the functioning of the Administrative Tribunals along constitutionally sound principles. The changes were brought about in the Act by an amending Act. Jurisdiction of the Supreme Court under article 32 was restored. Constitutional validity of the Act was finally upheld in *S. P. Sampath Kuma case* subject to certain amendments relating to the form and content of the Administrative Tribunals. The suggested amendments were carried out by another amending Act. Thus became the Administrative Tribunals an effective and real substitute for the High Courts. In 1997, a seven-Judge Bench of the Supreme Court in *L. Chandra Kumar* held that clause 2 (d) of article 323A and clause 3(d) of article 323B, to the extent they empower Parliament to 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 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 Court held that 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. All decisions of the Administrative Tribunals are subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. As a result, orders of the Administrative Tribunals are being routinely appealed against in High Courts, whereas this was not the position prior to the *L. Chandra Kumar*'s case. On 18th March 2006, the Administrative Tribunals (Amendment) Bill, 2006 was introduced in Rajya Sabha to amend the Act by incorporating therein, *inter alia*,provisions empowering the Central Government to abolish Administrative Tribunals, and for appeal to High Court to bring the Act in line with *L. Chandra Kumar*. The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 17th Report on the said Bill did not subscribe to the same and as for the provision for appeal to High Court expressed the view that the original conception of the Administrative Tribunals be restored and appeal to High Court is unnecessary, and that if a statutory appeal is to be provided it should lie to the Supreme Court only.

In the above backdrop, the Law Commission took up the study on the subject *suo motu.* The Administrative Tribunals were conceived as and constitute 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 the Administrative Tribunals is defeated if all the

cases adjudicated by them have to go before the concerned High Courts. If one appeal is considered to be a must, an intra-tribunal appeal would be the best option, and then the matter can be taken to the Supreme Court by way of special leave petition under article 136. The Law Commission is of the view that *L. Chandra Kumar*'s case needs to be revisited by a Larger Bench of the Supreme Court or necessary and appropriate amendments may be effected in the Act in accordance with law and we have recommended accordingly.

10. Lok Adalat

ADR (Alternate Dispute Resolution) system has been an integral part of our historical past. India has a long tradition and history of such methods being practiced in the society at grass roots level. In ancient times the disputes were used to be referred to "panchayat" which were established at village level.

(i) Evolution

The advent of Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39-A of the Constitution of India. It contains various provisions for settlement of disputes through Lok Adalat. It is an Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for **securing justice are not denied to any citizen by reason of economic or other disabilities**, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

(ii) Jurisdiction

A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

The Lok Adalat can compromise and settle even criminal cases, which are compoundable under the relevant laws.

(iii) Powers

The Lok Adalat shall have the powers of a civil court under the **Code of Civil Procedure, 1908,** while trying a suit, in respect of the following matters:

- Power to summon and enforce the attendance of any witness and to examine him/her on oath.
- Power to enforce the discovery and production of any document.
- Power to receive evidence on affidavits,
- Power for requisitioning of any public record or document or copy thereof or from any court.
- Such other matters as may be prescribed.
- Every Lok Adalat shall have the power to specify its own procedure for the determination of any dispute coming before it.
- All proceedings before a Lok Adalat shall be deemed to be judicial proceedings under IPC
- Every Lok Adalat shall be deemed to be a Civil Court for the purpose under Cr.P.C.

11. National Green Tribunal (NGT)

The National Green Tribunal has been established in 2010 under the **National Green Tribunal Act 2010** for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.

The Tribunal's dedicated jurisdiction in environmental matters shall provide **speedy environmental justice** and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other four place of sitting of the Tribunal.

During the Rio De Janeiro summit of United Nations Conference on Environment and Development in June 1992, India vowed the participating states to provide judicial and administrative remedies for the victims of the pollutants and other environmental damage. There lies many reasons behind the setting up of this tribunal. After India's move with Carbon credits, such tribunal may play a vital role in ensuring the control of emissions and maintaining the desired levels. This is the first body of its kind that is required by its parent statute to apply the

"polluter pays" principle and the principle of sustainable development. This court can rightly be called **'special'** because India is the third country following **Australia and New Zealand** to have such a system

12. CONSUMER PROTECTION AND NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

The Consumer Protection Act, 1986 (in short, 'the Act'), is a benevolent social legislation that lays down the rights of the consumers and provides their for promotion and protection of the rights of the consumers. The first and the only Act of its kind in India, it has enabled ordinary consumers to secure less expensive and often speedy redressal of their grievances. By spelling out the rights and remedies of the consumers in a market so far dominated by organized manufacturers and traders of goods and providers of various types of services, the Act makes the dictum, ***caveat emptor*** **('buyer beware')** a thing of the past. The Act mandates establishment of Consumer Protection Councils at the Centre as well as in each State and District, with a view to promoting consumer awareness.

To provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies have been set up in each District and State and at the National level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively.

Each District Forum is headed by a person who is or has been or is eligible to be appointed as a District Judge and each State Commission is headed by a person who is or has been a Judge of High Court.

The provisions of this Act cover **'goods' as well as 'services'.** The goods are those which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are in the nature of transport, telephone, electricity, housing, banking, insurance, medical treatment, etc.

A written complaint, can be filed before the **District Consumer Forum** for pecuniary value of upto Rupees twenty lakh, State Commission for value upto Rupees one crore and the National Commission for value above Rupees one crore, in respect of defects in goods and or deficiency in service. The service can be of any description and the illustrations given above are only indicative. However, no complaint can be filed for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.

The remedy under the Consumer Protection Act is an alternative in addition to that already available to the aggrieved persons/consumers by way of civil suit. In the complaint/appeal/petition submitted under the Act, a consumer is not required to pay any court fees but only a nominal fee.

Consumer Fora proceedings are summary in nature. The endeavor is made to grant relief to the aggrieved consumer as quickly as in the quickest possible, keeping in mind the provisions of the Act which lay down time schedule for disposal of cases.

If a consumer is not satisfied by the decision of a District Forum, he can appeal to the State Commission. Against the order of the **State Commission** a consumer can come to the National Commission.

In order to help achieve the objects of the Consumer Protection Act, the National Commission has also been conferred with the powers of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pendency of cases.

The National Commission is empowered to issue instructions regarding:

(1) Adoption of uniform procedure in the hearing of the matters,

(2) Prior service of copies of documents produced by one party to the opposite parties,

(3) Speedy grant of copies of documents, and

(4) generally over-seeing the functioning of the State Commissions and the District Forums to ensure that the objects and purposes of the Act are best served, **without interfering with their quasi-judicial freedom.**