

ARMED FORCES TRIBUNALS — A REVIEW*By*

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With the advent and commencement of the Armed Forces Tribunal Act, 2007, Act No.55 of 2007 (hereinafter called as AFT Act), the massive transfer of cases belonging to Armed Forces personnel to far distant places was affected at once. By virtue and consequent upon such transfers about 9000 cases were got transferred from 32 High Courts to just 9 Armed Forces Tribunals *viz.*, New Delhi, Lucknow, Jaipur, Chandigarh, Kolkata, Gauhati, Mumbai, Chennai, Kochi. Mumbai bench of the Armed Forces Tribunal is yet to commence.

The main objects underlying the AFT Act are i) speedy disposal of cases and ii) less expensive litigation. Practically the expenses part would not be based on mere court fee and advocate fee. It would include traveling expenses boarding and lodging at places far from their places of abode. Besides the serving personnel may have to spend their leave for this purpose. For example, the AFT at Chandigarh has jurisdiction over Jammu and Kashmir, Himachal Pradesh, Punjab and Haryana. Kolkata AFT has jurisdiction over West Bengal, Bihar and Orissa, AFT at Chennai has jurisdiction over Andhra Pradesh and Tamilnadu states. Thus, the serving as well as the dependents have to travel long distances for launching their case and for getting along with their litigation all along. Therefore it is practically more expensive on account of travel, boarding and lodging elsewhere. The rate of disposal may be due to aspect is ma

Unlike in case of Central Administrative Tribunals and State Administrative Tribunals, the litigant public, as of now, have to approach the Supreme Court instead of filing petition

under Article 226 for judicial review over the judgment as may be passed by the AFTs. In the world, our AFTs are the first of their kind to have jurisdiction over service matters of almost all sorts apart from Court Martial matters. In other countries like UK, US, Canada *etc.*, the AFTs are exclusively meant for adjudicating the court martial matters and literally nothing else. Therefore, the litigants before all other AFTs situate elsewhere have to spend for traveling, boarding and lodging while launching their cases away from their states.

All service matters except those expressly kept outside the purview of the AFTs under Section 3(o), other service matters could be filed before the AFTs only. Non-service matters continue to hold the same status. Though the serving armed forces personnel are not spread everywhere, the retired personnel and their dependents are spread all across the country in all the states. As the 9 AFTs are established in just 9 states, the litigants from all other states have to travel beyond their states. Due to such difficulty, the litigant may prefer to compromise with injustice rather than preferring the litigation. This position could be corrected by increasing the AFTs and its circuit benches wherever the Hon'ble High Courts have their sitting.

In case of litigants at Andaman Nicobar are to file cases before Aft at Kolkata instead of at High Court bench at Andaman Nicobar. It is all about the present situation. Like in case of the Administrative Tribunals Act, 1985, judicial intervention would improve the quality of the set up. It is the first of its kind in the world and therefore the time

alone will decide its success when success is understood in terms of time, cost and distance with special reference to Right to

Constitutional Remedy as enshrined under Constitution of India which is not suspended in case of defence personnel.

ALL IS WELL WHEN DOCTRINES RULE THE LAW AND NOT OTHERWISE – AN OVERVIEW

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Ours is a 60 years old Constitution. It is amended on as many as 94 occasions. As each of the amendment stands to be by way of majority sitting in the parliament ought to be perceived as legal and constitutional. Practically and scientifically the social scenario has been constantly changing in India, period by period, due to each such change in the constitutional law and consequently other laws. Considering the social changes the law is taken for change and such changes shall have bearing on the social picture again. Like this the influence of society on law and law on society is a continuous process. Here comes the survey as to the status of doctrines whether they continue to be sanctions or otherwise. Every change in the law, especially the constitution of India, do have essential change in the functioning of the instrumentalities.

At times such changes throw overweight on some instrumentalities. Though it is hardly arguable, the instrumentalities compete with each other and most often they try to assert their status over each other. In this process the doctrines are sacrificed. In the interpretation process the fate of doctrines is required to be examined as the doctrines are the fundamentals of law with which alone the welfare state could be built as otherwise the outcome would be unscientific and chaotic. One of the most significant doctrines of such

prominence is Doctrine of 'Checks and Balances'. Without seeking the doctrines to lose their essence in law, the laws are required to be framed doctrinally centric and flavoured. Sacrificing the doctrines is serious flaw and idiocy as Doctrine free law is directionless for a state truly wanting to be a welfare state. Long term injustice and short term justice would surface due to such laws.

The survival of the doctrines in the texts of law alone can secure the nation both pride and welfare. Otherwise, the converse is a cold war with tendency to topple each instrumentality by the other. Therefore, the doctrine of 'checks and balances' must be taken as the basis for postulation of laws rather than sacrificing or cutting short the doctrine itself for postulating the law whatsoever wished by an instrumentality just for asserting its power and strength for extraneous reasons rather than in the name of welfare state. It means, together with doctrines, the law becomes virtue and in any other case it is evil.

As propounded, it is the Constitution which is supreme and no instrumentality made under it is supreme. While it stands thus and continues to stand thus, the impact of the doctrine is fast changing in its cause and effect on each of the instrumentality besides the society. The moment law is amended,