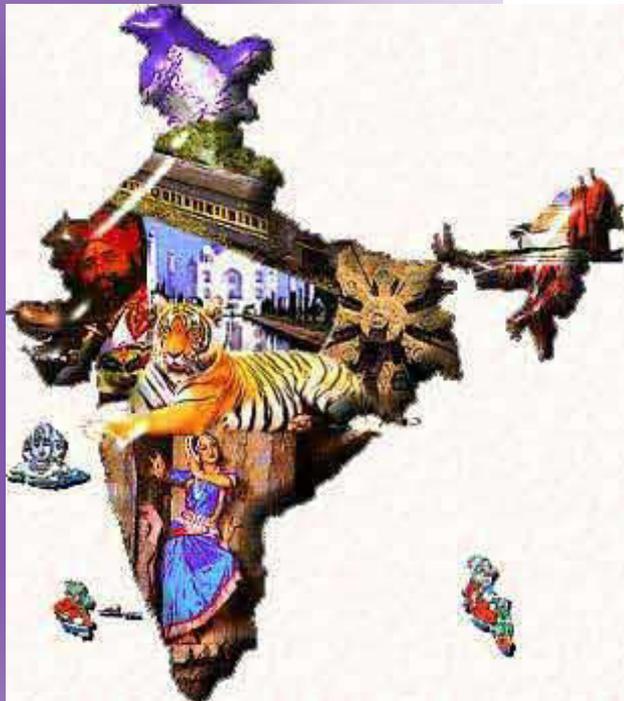


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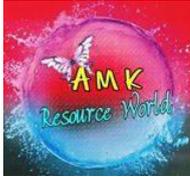
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Tribunals in India

Tribunals were added in the Constitution by Constitution (Forty-second Amendment) Act, 1976 as Part XIV-A, which has only two articles viz. 323-A and 323-B. While article 323-A deals with Administrative Tribunals, article 323-B deals with tribunals for other matters. In general sense, the 'tribunals' are not courts of normal jurisdiction, but they have very specific and predefined work area. The administrative tribunals are **not original invention** of the Indian Political System. They are well established in all democratic countries of Europe as well as United States of America.

Central Administrative Tribunal

The Central Administrative Tribunal finds its origin in the Constitution of India by way of Article 323A, which laid the foundation for the Administrative Tribunals Act, 1985. This was established to adjudicate disputes relating to recruitments and conditions of service of recruited persons to various posts under the Union Government or other local governments as per under the relevant government, be it the union or the state or any local authority. Besides these recruited persons, it has within its ambit 45 other organizations which fall within its jurisdiction to try those disputes. However, it does not apply to Paramilitary forces, any Armed Forces, Secretarial Staff of both Houses of Parliament or of the State Legislatures.

A sitting or a retired Judge of the High Court presides as chairman of the tribunal. It consists of sixteen vice-chairman and forty-nine other members for conducting the proceedings. These members of the Tribunal are governed by terms and conditions of service as prescribed by the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members), Rules, 1985. These rules can be amended successively as per changes made from time to time.

The procedure is carried on in accordance with the principles of natural justice and the court procedure, namely the Civil Procedure Code, 1908, and the Indian Evidence Act,

1872, does not apply to these proceedings. Besides reducing the burden of the courts and an affordable recourse to the parties in dispute, these tribunals provide an effective and speedy remedy to the aggrieved employees. The Central Administrative Tribunal is empowered to prescribe its own rules of practice for discharging its functions, subject to the provisions of Administrative Tribunals Act, 1985, and its Rules. Under the Administrative Tribunal Act, State Administrative Tribunals have been set up in Andhra Pradesh, Orissa, Karnataka,, Maharashtra, and West Bengal on the same lines as the CAT.

Central Information Commission (CIC)

The Central Information Commission has been set up to try cases under the Right to Information Act, 2005. This Act now applies to the whole of India except for the State of Jammu & Kashmir. Prior to this Act, information could not be disclosed and was restricted under the Official Secrets Act, 1923, and other laws whereby one could not access all or any information retained by the Government. This Act has lifted the ban on the access to information by an ordinary citizen of the country. Under this Act, a citizen need not disclose the reasons for requiring any particular information that he/she is seeking from the requisite authority. Any person may inquire about any information related to him/her from any Public Information Officer (PIO) who will be mandatorily appointed under every authority or public office under the law. Supporting transparency and accessibility to all actions of the government or otherwise, now all authorities under the government have computerized their records for the purpose of publication and, otherwise, for dissemination of information to all. This is actively done by all governments and authorities at all relevant levels. This also acts for the convenience of all who require basic information in relation to their personal work, without wasting any resources and time. The Central Government, State Governments and the Competent Authorities, as defined in S. 2(e) of the Act, are vested with powers to make rules or remove any difficulty which is necessary or expedient to do so (sections 27, 28 & 30). This Commission looks into the complaints of those individuals who have given requests but are facing difficulties in receiving information or other problems from the relevant authority.

Customs, Excise & Service Tax Appellate Tribunal (CESTAT)

Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) renamed as the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), 1982, is a forum dealing with several aspects of appeals from Customs and Excise under the Customs Act, 1962, Central Excise Act, 1944, Finance Act, 1994 relating to Service Tax and Anti Dumping Duties under the Customs Tariff Act, 1975. It has been amended under the Finance Act of 2003. The procedure adopted by this tribunal is a mixture of various procedures of the Income tax

appellate tribunal and the High court and with indigenous proceedings according to the needs of the Tribunal. Its manual provides for various requirements of the proceedings. It has a President, Vice President and twenty one other members. It has three benches in Delhi, four benches in Mumbai and one each at Kolkata, Chennai and Bangalore. Each Bench has a judicial and a technical member with each bench of a single member having the jurisdiction to try cases up to the value of ten lakh rupees. The appeal from this authority is only dealt with by the Supreme Court, though it can ask for the advisory jurisdiction on the question of law from the appropriate High Court.

Debt Recovery Tribunal (DRT)

The Debt Recovery Tribunal is established under the Banks and Financial Institutions Act, 1993 (RDB Act). It has also framed certain Rules under the Act and works towards the recovery of debts due to any financial Institution. A District and Sessions Judge presides over the Tribunal and has the sole authority to pass a judicial order. He is assisted by other officers and at least two recovery officers, who need not necessarily be judicial. Judicial orders may be passed by recovery officers, though the appeal thereto lies before the presiding officer of the Tribunal. There are thirty three tribunals across the country, where certain states have one or more than one tribunals like New Delhi, Mumbai, Chennai and Kolkata (depending on the pending cases in an area and certain areas have a common tribunal for all those demarcated areas where people go across to settle disputes and recovery of debts in these tribunals). The setting up tribunals is dependent on the volume of cases in an area. The procedure of this tribunal is civil in nature like cross suits, counter claims, set offs, appointment of receivers and commissioners, pass ex-parte orders, ad-interim orders, interim orders apart from powers to 'review' and hear appeals against orders of the Recovery Officers of the Tribunal in accordance with the provisions of the Code of Civil Procedure, 1908. However, it does not have the jurisdiction to deal with matters of claims of damages, deficiency in service, breach of contract, or criminal negligence of moneylenders. After the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act (SRFAESIA), borrowers may first apply seeking remedy, which was earlier the prerogative of the lenders. It has a unique system of collecting evidence by way of affidavit, cross-examination only on the request of the opposite party, which is left to the discretion of the tribunal.

Income Tax Appellate Tribunal

Article 265, Part XII provides for the provisions that "no tax shall be levied or collected except by an authority by law". Income tax is governed by the Income Tax Act, 1961 that lays down the provisions relating to taxation. When tax of a taxpayer is assessed and is

levied the appeals go to the Income Tax Commissioner (Appeals) and after his decision, move to the Income Tax Appellate Tribunal. This Tribunal, established in 1941 was the first Tribunal established in India. Right to appeal is also available to the administrative authorities. Appeals may be decided by a single bench or special benches with three or four members of the Bench. A single bench may be formed by a single member who is a judicial person or a non-judicial person but is a senior person having requisite knowledge or is a trained expert in financial matters with at least ten years of experience. A special bench should have at least one judicial member and others may be non-judicial. They may refer for advisory jurisdiction of the High Court on a question of law but the appeal then moves to the Supreme Court. It is an independent tribunal and works independently of any authority of the government.

Intellectual Property Appellate Board (IPAB)

The Intellectual Property Appellate Board (IPAB), 2003 constituted by the Ministry of Commerce and Industry has the jurisdiction to hear appeals against the decisions of the registrar under the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999, and its Rules framed in 2002 and brought into force in 2003, the provisions of the Patent Amendment Act, 2002 and the Patents Amendment Act, 2005, Trade Marks Act, 1999 and the corresponding Trade Mark Rules, 2002 all under the Intellectual Property laws. The Board comprises of a chairman, vice chairman, two technical members (trade marks and patents) and a registrar. The Board and its headquarters are located in Chennai but also has sittings at Chennai, Mumbai, Delhi, Kolkata and Ahmedabad. It has original jurisdiction to entertain applications for rectifications of the register of trade marks under sections 47, 57 and 125 of the above Act, appeals from an order or decision of the Registrar under rule 162 of The Trade Marks Rules, 2002, matters under the Geographical Indications of Goods (Registration and Protection) Act, 1999.

National Consumer Dispute Redressal Commission (NCDRC)

The National Consumer Dispute Redressal Commission (NCDRC) is established under the Consumer Protection Act, 1986 which provides for establishment of Consumer Dispute Redressal Commissions to be established at the District, State and at the National level. The Act also calls for establishment of Consumer Protection Councils at all three levels for providing awareness to the consumers. The National Commission is presided over by a sitting or a retired Judge of the Supreme Court, the State Commission by a judge of the High Court and the District Commission by a District Judge. Currently there are 639 District Forums, 35 State Commissions and a central commission at the centre. It is a quasi-judicial

body which provides inexpensive, speedy and summary redressal of consumer disputes relating to defects in 'goods' and deficiency in 'services' and complaints of the consumers regarding the same. The goods and their deficiencies relate to manufacturing and their sale to the consumers. Enumerating the examples of services are transport, telephone, electricity, housing, banking, insurance, medical treatment etc. The proceedings are civil in nature and the commissions hold summary trial with no court fees and only a nominal fee. They provide the remedy for the consumer's grievances in a speedy manner. The jurisdiction of the District Forum is up to a value of twenty lakh rupees, State Commission up to one crore Rupees and National Commission of value of above one crore relating to defects in goods and deficiency in services. An aggrieved consumer may start his case at the District Forum according to its valuation and may go into an appeal to the State Commission and then to the National Commission. The National Commission is has the jurisdiction to direct that a uniform procedure is to be followed with the prior service of copies to both the parties and also looks over the functioning of the State Commission and the District Commissions. In certain cases if required Legal aid in the form of a lawyer is also provided to a person seeking redressal. For a better understanding of consumer laws and remedies available under the law, please click on e chapter 20 & 21.

Securities Appellate Tribunal

The Securities Appellate Tribunal is governed by the Securities and Exchange Board of India Act, 1992. This has been further amended in 1998. This Tribunal has the jurisdiction to try appeals from the orders passed under Securities or the Exchange Board of India. SEBI performs all the three functions of the executive, legislature and judiciary. Though it takes all actions relating to securities and stocks, appeals of its decision maybe taken to the Appellate tribunal, which comprises of a three member tribunal, and an appeal from this Tribunal lies directly to the Supreme Court.

Telecom Dispute Settlement & Appellate Tribunal (TDSAT)

The Telecom Dispute Settlement & Appellate Tribunal (TDSAT) was established in 2000 to decide and adjudicate disputes and appeals relating to "Telecom Regulatory Authority of India Act, 1997". It deals with disputes and appeals between service providers and consumers of the telecom sector. The tribunal comprises of a Chairperson who is a judge, two members and law clerks in tune with the Supreme Court of India.

National Green Tribunal, 2010.

The National Green Tribunal (NGT), 2010 was established keeping in mind The Rio Conference of 1992 and based on the international environment principles of 'polluter pays principle' and 'Sustainable Development'. This was established to deal with environment related disputes, a speedy disposal of these cases and giving relief and compensation for damages to persons and property and for matters connected or incidental thereto. It comprises of a chairman, who could be a sitting or a retired judge of the Supreme Court, and various other members and experts provided under the provisions of the tribunal. It would mainly deal with civil cases and is not bound to follow the procedural law under Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. It proposed to have five places of sitting with Delhi as its headquarters and others being Bhopal, Pune, Kolkata and Chennai.

Labor Courts, Industrial Tribunals and National Tribunals under the Industrial Disputes Act, 1947

The Labor Courts, Industrial Tribunals and National Tribunals are governed by the Industrial Disputes Act, 1947, which Act contains provisions under which these may be set up by the Central government, a National Tribunal dealing with interstate or national disputes or the State Governments or Union Territories of India. They also have the jurisdiction to refer a dispute to an appropriate Labor Court or an Industrial Tribunal established for this purpose. The Courts or tribunals deal with all matters relating to industrial disputes such as discharge and dismissal of workmen, application and interpretation of Standing Orders, propriety of orders passed under Standing Orders, legality of strikes of lock outs, collective disputes such as wages, hours of work, leave, retrenchment, closure etc. The Labor Court shall be presided over by a judge having held judicial office for seven years or having been a presiding officer of a labor court in any State for five years. He could be a District Judge, Additional District Judge or a High Court Judge. The presiding officer of an Industrial Tribunal should be a judge of the High Court or a District Judge or an Additional District Judge for three years. At present there are 22 CGIT established in different places in the country. The central government may look into the various disputes and then sent these disputes to an appropriate Court or tribunal under whose jurisdiction the case falls. These Courts or tribunals may allow the disputed matters under any alternate dispute redressal (ADR) processes if it is appropriate to do so.

Motor Accidents Claims Tribunals

The Motor Claims Tribunals deal with matters and disputes relating to motor accidents claims given by the Motor Vehicle Act, 1988. The Act provides for compulsory third party insurance and a procedure that is to be adopted by the tribunal to adjudicate the claims under the disputes. This law provides for giving relief to the families of victims who are killed in hit and run cases on a no fault liability basis, provided it fulfills all other conditions. It also provides for relief for claims related to loss of life or property or injury in these cases. The presiding officers are judicial officers from the State judicial services. The cases may be taken up by the victims or their representatives or their lawyers in these tribunals for their claims.

Administrative Tribunals Act 1985

Using the powers conferred by the Article 323A of the Constitution, Parliament passed a law to establish the Administrative tribunals in India. The **Administrative Tribunals Act 1985** provides for adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of public servants.

- ... The act has made provisions for the **Central Administrative Tribunal** for the Centre and a **State Administrative Tribunal** for a particular State.
- ... In addition, the Act also provides for the establishment of **Joint Administrative Tribunals** to hear cases from more than one State.
- ... The Act was amended shortly thereafter to constitute a Common administrative Tribunal between the Centre and the State.
- ... The Administrative Tribunals were thus, established in November, 1985 at Delhi, Mumbai, Calcutta and Allahabad.
- ... Today, there are 17 Benches of the Tribunal located throughout the country wherever the seat of a High Court is located, with 33 Division Benches.
- ... In addition, circuit sittings are held at Nagpur, Goa, Aurangabad, Jammu, Shimla, Indore, Gwalior, Bilaspur, Ranchi, Pondicherry, Gangtok, Port Blair, Shillong, Agartala, Kohima, Imphal, Itanagar, Aizwal and Nainital.

Central Administrative Tribunal. Important Notes

Its function is to adjudicate the disputes 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 state or other local authorities within the territory of India or under the control of Government of India. In addition to Central Government employees, the Government of India has notified 45 other organizations to bring them within the jurisdiction of the Central Administrative Tribunal. The provisions of the Administrative Tribunals Act, 1985 do not apply to the following:

- Members of paramilitary forces
- Armed forces of the Union
- Officers or employees of the Supreme Court
- Persons appointed to the Secretariat Staff of either House of Parliament or the Secretariat staff of State/Union Territory Legislatures.
- The CAT is headed by a chairman who must be either a sitting or a retired Judge of a High Court.
- Other than Chairman, there are 16 Vice-Chairmen and 49 Members.
- The principle bench is located at New Delhi

Please note that Central Administrative Tribunal enjoys the status and powers of a High Court. However, Government employees not satisfied with CAT orders on their service matters can appeal in High Courts, followed by appeal in Supreme Court. We note here that the law commission had recommended that the appeals should go straight to the Supreme Court; however, this remains just a proposal as of now. In disposing of its cases, the Tribunal observes the canons, principles and norms of 'natural justice'.

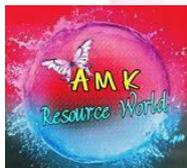
Tribunals by State Legislatures

Article 323 B empowers the parliament or state legislatures to set up tribunals for matters other than those mentioned above. The matters to be covered by such tribunals are as follows:

- ... Levy, assessment, collection and enforcement of any tax
- ... Foreign exchange, import and export across customs frontiers;

- ... Industrial and labour disputes;
- ... Matters connected with Land reforms covered by Article 31A
- ... Ceiling on urban property;
- ... Elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters which include
- ... Delimitation of constituencies
- ... Matters which can be only questions via election petition. This means that some election matters where courts have been barred cannot be questions in tribunals also.
- ... Production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods

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