

ADMINISTRATIVE TRIBUNALS IN INDIA - A WELCOME DEPARTURE FROM ORTHODOXY?

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The development of welfarism has contributed to an increase in governmental functions. The executive saw in this increase, a need to perform a number of quasi-legislative and quasi-judicial functions. This gave rise to a blurring of the traditional positions of the various wings of the government under the doctrine of separation of powers.¹ The welfare state radically changed the government's role and compelled it to involve itself in a host of wide ranging socio-economic activities.²

The issues that arose from such disputes raised not only legal matters, but also matters which affect the society at large. Courts therefore became deluged with litigation arising directly and incidentally, from such increased government intervention. Inherent procedural limitations made it difficult for the courts to dispose off these cases promptly, thus leading to a huge backlog of cases at all levels of the judiciary. It was also felt in many quarters, that the members of the judiciary were neither adequately trained nor equipped, to deal with the complex socio-economic and technical matters at hand. Thus it was felt that specialised adjudicatory bodies, such as tribunals, needed to be created to resolve such disputes fairly and effectively.

Before looking in to the history of tribunalisation, it is necessary to understand the meaning of a tribunal. Lexically tribunals are "Judgment seat; a court of justice; board or committee appointed to adjudicate on claims of a particular kind".³ Though the term "tribunal" is present in the Constitution of India in Articles 136 and 227, it has not been defined. However the essence of the meaning of the word "tribunal", which can be culled out from the various Supreme Court authorities, is that they are adjudicatory bodies (except an ordinary court of law) constituted by the State and invested with judicial and quasi-judicial functions, as distinguished from administrative or executive functions.⁴

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1 Separation of powers doctrine as propounded by Montesquieu, dividing the power of the Government between the legislature, executive and the judiciary; to make law, enforce law and interpret law respectively.

2 Regulation of industrial activities, health and life insurance, health and educational services, etc.

3 C. K. Thakker, *Administrative Law*, 225 (1996).

4 *Ibid.*

Evolution of Tribunals

France

Throughout French Constitutional history, the executive and the legislature have been engaged in a power struggle to assert their dominance. Four Constitutions, which were in place before the Fifth Republic, serve as ample evidence to support this contention.⁵ In order to place a check on legislative supremacy, the Fifth Republic constituted the Constitutional Council.⁶ Even in the case of the Judiciary, the Executive has retained its supremacy through the *Conseil d'Etat*, the traditional guardian of the citizens' rights related to administrative matters. Therefore, this is a clear departure from the position in most of the Common Law countries⁷, where the doctrine of separation of powers is interpreted in a manner which resulted in mutual checks and balances between the three branches of the government.

Post revolution France witnessed a strong desire to restrict the judicial interference in other spheres of governance and to build a strong administration, independent of both the executive and the ordinary judiciary. Hence special administrative courts were set up, and public servants in their ordinary capacity were exempted from the jurisdiction of ordinary courts. These were further institutionalised by creating a separate judicial section in the *Conseil* and empowering it to pronounce final and independent decisions. This concept attained a degree of Constitutional sanction, when the court of conflict held that the doctrine of separation of powers, as applied in France, prohibits ordinary law courts from questioning the regularity of administrative acts⁸.

The French Constitution guarantees to all citizens every fundamental right and liberty and embodies the spirit of fairness, justice and rule of law. It is these

5 "At one level there is the Bonapartist tradition of autocratic rule based on a powerful administration and on the other there is the parliamentary tradition where the legislature imposes its will upon the executive; while still relying on a strong bureaucracy the Fifth Republic though essentially parliamentary adopted a strict division between the executive and the legislature". See generally, J. F. Garner and L. N. Brown, *French Administrative Law*, 7-24 (1983).

6 *Ibid.* The Council was to: 1) adjudicate on validity of presidential and parliamentary elections and referendums 2) express an opinion on the Constitutional validity of any parliamentary or administrative law, thus ensuring that both parliament and the administration keep within their domains.

7 In England, administrative tribunals were seen as a violation of the principle of the rule of law. Yet, administrative tribunals were set up to resolve disputes arising out of various welfare legislations and policies. The Frank Committee Report finally led to the enactment of the Administrative Tribunals and Inquiry Act, 1958.

8 *Ibid.* at p.28.

principles of the French Constitution that enabled the *Conseil d'Etat* to effectively control the administration so as to ensure that they function within their Constitutional domain. It has also enabled the *Conseil* to enjoy a great degree of independence. Thus the *Conseil* enjoys Constitutional sanction to invalidate any decision of the administration, including purely discretionary ones, if they vitiate the fabric of the Constitution, thus enabling the body to be recognised as the legitimate guardian of people's rights and liberties.

France has a convention of not regarding the Constitution as being supreme and recognising instead the supremacy of statutory laws, even if they violate Constitutional provisions. Such Governmental Acts are not struck down because any administrative Act contrary to the Constitution is considered as a revision of the Constitution, if it is performed according to the wishes of the Assembly, which represents the popular and sovereign will of the people.⁹ It is this innovative convention, which can be said to have largely contributed to the growth of administrative adjudication in France.

Though the principle of parliamentary supremacy has been retained in the Constitution, the role of Parliament has been qualitatively redefined, resulting in a situation where the executive is on a higher pedestal than the legislature.¹⁰ The development of tribunals in France has to be viewed in this context and in the light of specific Constitutional provisions and practices prevailing there.

India

It has now to be determined whether such a process of tribunalisation is permissible in India, after taking due note of the Constitutional scheme prevailing here; and if not, what alternatives and modifications are to be made, so as to put in place such dispute resolution bodies which are, practically speaking, urgently required.

In India, administrative adjudication increased after independence and several welfare legislations were enacted, which vested the power of deciding various issues in the hands of the administration. These quasi-judicial powers acquired by the administration, led to a huge number of cases with respect to the manner in which these administrative bodies arrived at their decisions. The Courts held that these bodies must maintain procedural safeguards while arriving at their decisions and observe principles of natural justice-their opinions were substantiated by the 14th Law Commission Report.¹¹

9 *Ibid.* at p.30.

10 *Ibid.* To successfully defeat the Government, Parliament has to provide for an alternate government to be put in place on such defeat.

11 R. Nayak, *Administrative justice In India*, 38 (1989).

However, the problem of delays in the disposal of cases and the backlog of litigation in the courts continued to plague the credibility and effectiveness of the judiciary. To find a solution to this problem, the Government set up the Administrative Reforms Commission in 1967. It was to examine the problem, suggest solutions and also to recommend suitable areas in which tribunals could be set up.¹² The Commission recommended the establishment of independent tribunals in the following areas:

- a) service matters and disputes of employees under the state
- b) orders of assessment on adjudication under Customs, Central Excise, Sales Tax and orders under the Motor Vehicles Act.

The Shah Commission Report in 1969 supported the above recommendations, particularly with respect to service disputes.

Thus this system of administration of justice began to establish itself as a part of the adjudicatory processes and the organisation of administrative justice in the country. At the same time, the judiciary continued to exercise its constitutionally mandated control over these bodies so as to ensure they did not violate any Constitutional norm. However, the administration saw this as an unnecessary intrusion of the judiciary into their activities of nation building and development.

It is in this context, that the issue of political interests that led to the rapid proliferation of tribunals must be mentioned. Political parties and their leaders resented judicial interference in the decisions they took through the administration and were keen to prune the exercise of judicial power. Ample evidence of this can be obtained, if one were to examine the actions of leaders during the emergency, such as removing disputes regarding elections to the office of President, Prime Minister and Speaker of the Lok Sabha beyond judicial scrutiny. Thus there were clear signals that the executive did not want the judiciary to interfere with their developmental plans and other such decisions. Hence in 1976, the issue was discussed at the Conference of Chief Secretaries and from amongst all these discussions and the reports of the various bodies stated above, Parliament enacted the 42nd Constitution (Amendment) Act, 1976, inserting Articles 323A and 323B, which provided for the establishment of administrative and other tribunals to deal with the matters specifically provided for.

Before this Amendment, tribunals were under the control of the concerned High Court¹³ and their orders were appealable to the High Court. The matters

12 The reasons for the growth of administrative tribunals are as follows: 1) Inadequacy of the traditional judiciary to effectively decide administration-related matters especially when it came to technicalities. 2) The traditional judiciary was seen to be slow, costly and excessively procedural.

13 In accordance with Art.227 of the Constitution of India.

which went up to the tribunals were also amenable to the writ jurisdiction of the High Court and Supreme Court under Articles 226 and 32 of the Constitution of India respectively. However, with the insertion of Articles 323A and B, the writ jurisdiction of the High Court under Article 226 and the fundamental right to move the Supreme Court for the enforcement of fundamental rights under Article 32 were removed. The only appeal which lay from the orders of these tribunals, was through a Special Leave Petition to the Supreme Court, under Article 136 of the Constitution of India. The Amendment empowered Parliament and the State Legislatures to enact a law bringing such tribunals into existence and consequently, Parliament enacted The Central Administrative Tribunals Act under Article 323A. This enactment marked the beginning of a long-standing constitutional controversy revolving around Article 323A, especially with regard to the exclusion of the judicial powers of the High Courts and the Supreme Court. A discussion on the concept of judicial review as envisaged in the Indian Constitution is necessary to appreciate the true dimensions of this controversy.

Judicial Review

Judicial review is defined as the process by which a judicial body determines the constitutional validity of an activity or function of the legislature or the executive.¹⁴ The process derives its legitimacy from the fact that in those countries where judicial review is accepted, the Constitution is considered as supreme and power and authority is bound by Constitutional dictates and the rule of law, so much so that it is the duty of the judiciary to regulate state action and prevent it from exceeding the permissible limits.¹⁵

In India, there is no express provision, which provides for judicial review. However, judicial review has found a place in the *basic structure* doctrine, propounded by the Supreme Court, in *Kesavananda Bharati v. State of Kerala*¹⁶, which held that the Constitution contained some basic values or features, which form or constitute the basic Constitutional framework and are unalterable. Later, in *Minerva Mills v. Union of India*¹⁷, it was expressly declared by the Supreme

14 Mathew and Agarwal, *Judicial Review and Administrative Tribunals*, 25 Indian Bar Review 112 (1998).

15 The American case of *Marbury v. Madison*, (1803) 1 Cranch 137 (US), is considered the first judicial authority on the power of judicial review. It was in this case that Marshall, C.J., said that the Constitution is paramount law and it is unchangeable by any ordinary means or ordinary law. No legislature or executive can function contrary to those provisions of the Constitution which are fundamental.

16 AIR 1973 SC 1461.

17 AIR 1980 SC 1789.

Court, that judicial review was part of *basic structure*. In this case it was laid down that it is necessary for each branch of government to confine itself to the constitutionally sanctioned limits. To decide whether there is any such transgression, the Constitution has to be interpreted and considering the expertise and constitutional position of the judges, the Judiciary is the constitutionally mandated body to do so. The power of judicial review was held to emanate from Articles 32 and 226.

Judicial Interpretation from 1987-1996

As mentioned earlier, the Administrative Tribunals Act was passed in 1985, under Article 323A; section 28 of this Act provided for the exclusion of jurisdiction of all courts, except that of the Supreme Court under Article 136.¹⁸ This fuelled a sudden spurt in the number of cases that challenged the validity of the said legislation, as well as that of the 42nd Amendment which introduced Articles 323A and 323B into the Constitution. Some of the prominent cases in this regard are discussed below.

*S. P. Sampath Kumar v. Union of India*¹⁹ was the first and perhaps the most important case in this period, that attracted judicial scrutiny in this area. The Constitution Bench in *Sampath Kumar* was called upon to decide on the main issue - whether Section 28 of the Act was unconstitutional, as it excludes judicial review, which was contended as part of the basic structure of the Constitution.²⁰ The Supreme Court accepted without doubt that judicial review is part of the basic structure. However, the Court went on to observe that the creation of alternate institutional mechanisms, which were as effective as the High Courts, would not be violative of the basic structure. The administrative Tribunals under the Act were recognised as effective substitutes to the High Courts. This proved to be a shot in the arm of the proponents of tribunalisation. However, the Apex Court came down heavily on the procedure for appointing the Chairman of the Tribunal. Section 6(1)(c) of the Act allowed a person who held the post of a Secretary to the Government of India or an equivalent post to become the Chairman. Since these Tribunals were to be substitutes of High Courts, it was impermissible for bureaucrats to hold such a post. Hence this provision was held to be unconstitutional. The Chairman should be a retiring or retired Chief Justice of a High Court. Other members have to be appointed by a committee consisting of a sitting Judge of the Supreme Court. It was also suggested that the Chief Justice of India be consulted

18 *Supra.*, n. 15 at p.115.

19 AIR 1987 SC 386.

20 During the pendency of the case, the Government gave an assurance to the Court that the Act would be amended so that the jurisdiction of the Supreme Court under Article 32 was not excluded. The Act was consequently amended after the decision.

while making these appointments. Parliament accepted these recommendations and now they find a place in the Act by way of the Administrative Tribunals (Amendment) Act of 1986.

Following this decision, the Court in *Sambamurthy v. State of Andhra Pradesh*²¹ held that Article 371D(5) of the Constitution, which was inserted by the Constitution (32nd Amendment) Act, 1973, was unconstitutional and void. This provision had enabled the Government of Andhra Pradesh to modify or nullify any order of the Administrative tribunal of that state. It was pointed out that such a provision was violative of the basic structure, as it made the tribunal less effective than the High Court when it comes to judicial review. Here the Court seems to be strictly adhering to the directive in *Sampath Kumar's* case, that the administrative tribunals should be effective substitutes to the High Court. In the same year, in *J. B. Chopra v. Union of India*²², it was held that since the Administrative tribunals are meant to be substitutes of High Courts, their power of judicial review extended to the power to decide on the Constitutionality of service rules.

However, there was subsequently a reversal of this trend, leading to a lot of confusion. In *M. B. Majumdar v. Union of India*²³, the Supreme Court refused to extend the service conditions and other benefits enjoyed by ordinary High Court judges to the members of these Tribunals. Three years later, in *R. K. Jain v. Union of India*,²⁴ the Supreme Court opined that these Tribunals could not be effective substitutes of High Courts under Articles 226 and 227. We also find a very clear expression of the dissatisfaction of the apex court regarding the functioning and effectiveness of Administrative Tribunals, especially with regard to their power of judicial review.

However, the real turning point on this issue came about in *Sakinala Harinath v. State of Andhra Pradesh*²⁵. In this case, the Andhra Pradesh High Court dropped a bomb shell by expressing serious doubts about the wisdom of the learned Judges in *Sampath Kumar's* case. The Full Bench ruled that the decision in the above case, equating Administrative Tribunals to the High Courts with respect to their jurisdiction under Articles 226 and 227, was inconsistent with the apex court's ruling in cases like *Kesavananda Bharati v. State of Kerala*²⁶ and *Indira Gandhi v. Raj Narain*²⁷. It was pointed out that only the Constitutional courts could exercise

21 (1987) 1 SCC 386.

22 (1987) 1 SCC 422.

23 (1990) 4 SCC 501.

24 (1993) 4 SCC 119.

25 1993 (2) An. W.R.484 (FB).

26 *Supra.*, n. 17 at p.1529.

27 AIR 1975 SC 2291.

the power of judicial review. Since the logic of alternative institutional mechanism propounded in *Sampath Kumar's* case, does not fit into this scheme, it is Constitutionally impermissible. As a result, both Articles 323A(d) and section 28 of the Act were struck down as unconstitutional.

The judicial green signal given for tribunalisation in *Sampath Kumar* can be seen to be slowly fading thanks to the subsequent decisions. The confusion created by these conflicting decisions ushered in the need for taking a second look at *S. P. Sampath Kumar's* case. This opportunity arrived when a three judge bench of the Supreme Court, in *L. Chandrakumar v. Union of India*²⁸, decided to refer the matter to a larger bench. This eventually led to the famous ruling of the seven Judge Bench of the Supreme Court on *L. Chandrakumar v. Union of India*²⁹, which is now the law of the land.

L. Chandrakumar's Case

The important issues considered by the apex court were as follows:

1. Whether Art. 323A (2) (d) and Art.323B (3) (d) of the Constitution, which give the power to the Union and State Legislatures to exclude the jurisdiction of all courts, except that of the Supreme Court under Art.136, is in accordance with the power of judicial review embodied in Art.32 and 226?
2. Whether the power of High Courts to exercise the powers of superintendence over the subordinate judiciary under Articles 226 and 227 form part of Basic Structure?
3. The competence of the aforesaid tribunals to determine the Constitutionality of any law.
4. Whether the aforesaid tribunals act as effective substitutes to High Courts in terms of efficiency?

It was held that the power of judicial review over legislative and administrative action is expressly vested with the High Courts and the Supreme Court under Articles 226 and 32 respectively. The contention that the Constitutional safeguards which ensure the independence of the higher judiciary³⁰ are not available to the lower judiciary and bodies such as Tribunals was upheld, and the apex court consequently held that the lower judiciary would not be able to serve as an effective substitute to the higher judiciary in matters of Constitutional interpretation and

28 AIR 1995 SC 1151.

29 AIR 1997 SC 1125.

30 In terms of qualifications, mode of appointment, tenure, mode of removal, etc.

judicial review. Hence the power of judicial review is vested in the higher judiciary and the power of High Courts and the Supreme Court to test the Constitutional validity of legislative and administrative action cannot ordinarily be ousted. However, it was held that these tribunals and the lower judiciary could exercise the role of judicial review as a supplement to the superior judiciary. The court applied the provisions of Article 32(3) to uphold the same.

It was also held that the power of the High Courts to exercise judicial superintendence over the decisions of the lower judiciary within its jurisdiction (under Articles 226 and 227), is part of basic structure.

In its supplemental role to the higher judiciary, it was held that these tribunals and the lower judiciary had the power to test the vires of legislative and administrative action, subject to their decisions being appealable to a Division Bench of the respective High Court.

It was observed that the working of the administrative tribunals was not up to the standards required of a body supposedly functioning as a substitute to a High Court. The court recommended the establishment of a nodal agency to supervise their working. The court also made suggestions regarding the appointment of members to these tribunals and the qualifications that such persons must have so as to qualify for appointment.³¹

Some of the arguments raised in this case are worthy of further examination. It was contended that the decision that judicial review was part of basic structure was erroneous, because there are many Constitutional provisions, which exclude judicial review in certain important issues. Art.136 (2) and Art.226 (4) exclude judicial review in laws related to armed forces, Art.22 (2) excludes judicial review in river water disputes, Art.103 (1) on disqualification of MPs and Art.329 (a) and (b) on laws relating to delimitation of constituencies, seek to exclude judicial review. However, it is essential to note that these Constitutional provisions must be read in the context of the Constitutional scheme and with respect to the fact that such provisions would undoubtedly be subject to Art.32. Secondly, it is important to note that the disputes relating to armed forces are very sensitive in nature and so the framers of the Constitution thought it prudent to expressly remove such matters from the ambit of judicial scrutiny. The emotive nature of river water disputes was a factor, which influenced the move to remove it from the ambit of judicial scrutiny.³²

Though there exists no rigid separation of powers in the Constitution between the three spheres of government, they have been entrusted with certain specific

31 See, The Malimath Committee Report, *cited from supra.*, n. 30 at p.1153.

32 It must be noted that all these provisions are subject to Art. 32.

powers and functions. In order to ensure that each of the branches do not transgress their Constitutionally defined parameters, there is a Constitutionally created system of mutual checks and balances. In this clear demarcation of functions, judiciary is given the role of deciding disputes and determining the legality of executive and legislative action. This power of *Judicial review* flows from Art.32 and 226 and is an integral part of the Constitution, in so far as the exercise of the doctrine seeks to uphold the rule of law and to ensure that the executive and legislature remains within their allocated domains.

The judges in *Sampath Kumar's* case, relying on the minority judgment of Bhagwati, J., in *Minerva Mills v. Union of India*, held that alternate institutional mechanisms which were as effective as High Courts could exercise the power of *judicial review* and consequently oust the jurisdiction of High Courts under Art.226. There is no denying the fact that the Parliament may under Art. 32(3) create special courts to deal with matters that the Supreme Court is empowered to deal with under Articles 32 (1) and (2) but the consequence of the provision does not lead to the ouster of jurisdiction of Supreme Court under Art.32. So while conceding that alternate institutional mechanisms may be established, it is not permissible for them to exercise the power of judicial review as substitutes to High Courts, even if they are as effective as High Courts.

It can be contended that the Constitutional bar is against the conferment of judicial power on agencies outside the judiciary and so if arrangements within the judiciary are made to limit the scope of Articles 32 and 226, it will be constitutionally valid. However, before the judgment in *Chandrakumar*, tribunals existed as a structure parallel to the established judiciary and hence they were clearly outside the judicial set up. Unlike French Constitutional practice, which allows for such a dual system, it is clear that our Constitution does not provide for this practice.

In India, the Constitution has clearly created a judiciary which would be independent and which is immune to the pressures and pulls from the legislature and the executive. However tribunal system in India does not provide for such independence. They are clearly extra judicial authorities, which can be influenced immensely by the executive and hence cannot carry out their functions independently. This can be visualised as the infringement on the way the Constitution envisaged the Judiciary as a check on the other two branches.

So the Supreme Court in *L. Chandrakumar v. Union of India* laid down that:

- (i) The powers of *Judicial review* on legislative action vested in the Supreme Court and High Court under Art.32 and 226 are a part of the basic structure of the Constitution.

- (ii) The power of High Courts under Art.227 to exercise superintendence on all courts and tribunals under its jurisdiction is also basic to the Constitution and therefore even if tribunals are allowed the power to perform *judicial review*, they may do it in a supplementary role and not as substitutes to the High Courts.
- (iii) Though tribunals may act as courts of first instance for the areas they are dealing with, they are subject to the appeal jurisdiction of a Division Bench of the High Court under whose jurisdiction they fall.
- (iv) Though tribunals can examine the Constitutionality of statutes, the power does not extend to the parent statute under which they are constituted.
- (v) In order to supervise the administration of tribunals and to increase their efficiency, an independent agency has to be set up and till then a nodal Ministry has to see to these aspects.

The Court in *Chandrakumar* merely held Section 28 of the Act unconstitutional. It did not explicitly Articles 323A(2)(d) and 323B(3)(d) unconstitutional. It is therefore imperative that an Amendment removing the above two provisions is made so as to maintain the position of judicial review in the Constitution of India.

Conclusion

Clearly the Constitution of India has vested the powers of judicial review in the High Courts and the Supreme Court, in order to make its scheme of checks and balances effective. Any other agency performing this function can only be doing it in a subordinate role. The system of tribunalisation, which removes the above power from the higher judiciary, will amount to a importation of the French position in to the Indian context. As has been stated earlier, French system of tribunals developed in a totally different context and hence their interpretation of the doctrine of separation of powers in the scheme of governance is different. In India, the Constitution is supreme unlike in France, where a change effected by the Parliament is seen as an expression of the popular will and therefore is treated as an amendment of the Constitution. However, such an interpretation is not acceptable in India where the Constitution remains the supreme and paramount law which the Legislature cannot amend by a mere expression of popular will. So the mechanism of tribunalisation, in the strict French sense, is constitutionally impermissible.

The decision in *Chandrakumar* is constitutionally, a step in the right direction, though it does not offer a solution to the problem of backlog of cases. By conceding, (and rightly so) the point that the writ jurisdiction of the High Courts and the Supreme Court under Articles 226 and 32 respectively, cannot be removed by these tribunals and that their orders are appealable to the higher judiciary, the very object of setting up these tribunals has been defeated, even if the disputants go to

the Administrative Tribunals, the party aggrieved from the decision of the Tribunal will go on appeal and clog the higher judiciary with as many cases as before.

At the same time, not accepting the need for the speedy disposal of cases by specialised personnel would amount to adopting a blinkered and narrow-minded approach. As has been spelt out by many Commissions and Reports, tribunals are a speedy, effective and cheap fora for the disposal of cases. Hence the advantages of their methods must not be lost due to a regressive and blind adherence to the procedural law. As alternate modes of dispute resolution are gaining in popularity, it is therefore essential that their methods are incorporated in the mainstream judicial system by making the required modifications in accordance with the Constitution and thereby benefit from them.

An effective solution will be to create specialised Benches of the High Courts to address the issues that tribunals previously addressed. These Benches must be manned by experts in the particular field, who are given adequate judicial training, which would qualify them for that position. Their mode of appointment, salaries, tenure, etc should be the same as any other High Court Judge. These special Benches should adopt the method of tribunals so as to benefit from their so-called advantages. In other words, for a particular class of cases which earlier required tribunalisation, now we are creating a special procedure for adjudication within the framework of the High Courts. But this requires an amendment to Article 217 of the Constitution, which prescribes the qualifications of a High Court Judge. However, this raises another complicated question, that is, whether the Legislature can alter the qualifications prescribed by the Constitution itself. So before the parliament sets out to pass any Amendment in this regard, it is advisable that the President may seek the opinion of the Supreme Court under Article 143. In case this change is held to be Constitutionally impermissible by the Judiciary, the only other option available is to appoint ordinary Judges to these additional Benches; but the procedural law can be suitably amended, so as to enable these Special Benches to be mandatorily assisted by a panel of experts in that particular area.

The avowed purpose of the Constitution is to bring into place a welfare state and increase the prosperity and interests of the people, while balancing these objects with the rights of the individual. An effective mechanism to adjudicate these administrative disputes on the lines suggested above, would be beneficial to individuals and to society at large and will facilitate the establishment of a true welfare state. "The ultimate purpose of the Constitution is to make the country a welfare state with the added guarantee of fundamental rights for each individual. A solution lies in the happy blending of these two conflicting interests."³³

³³ *Supra.*, n. 8 at p.181.