ADMINISTRATIVE TRIBUNALS IN THE SUBCONTINENT : A STUDY IN THEIR ORIGIN AND DEVELOPMENT

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I. Concept of Administrative Tribunal

The word 'Tribunal' is used in two senses: wide and narrow. In wide sense, it has been defined to mean "the seat of a judge"[1] and, as such, 'Tribunal' includes in it the court of law. Although Tribunal resembles court in determining controversies, it is not court in the real sense. It exercises judicial power and decides special matters and disputes brought before it judicially or quasi-judicially, but the courts are invested with the judicial powers as a part of the ordinary hierarchy of the regular courts of law.[2]

In narrow sense, the sense it is used in Administrative Law, the word 'Tribunal' is defined as an adjudicating body or authority other than a court or executive department, which exercises some judicial powers of the State in resolving special disputes between the parties under certain special laws. As the Indian Supreme Court in Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala[3] observed:

> 'Tribunals' mean those bodies of men who are appointed to decide controversies arising under certain special laws.

In the same vein, the Supreme Court of Bangladesh observed in the case of Bangladesh Vs. Dhirendra Nath Sarker[4] thus:

> 'Tribunals' mean those bodies of men who are appointed to decide controversies arising under certain special laws between parties.

Initially, all types of Tribunals were collectively called Administrative Tribunals.[5] No distinction was made between Tribunal

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1 Wharton: *Law Lexicon*, (1976 Reprint Edn.) p. 1012; quoted in Hoque, Azizul : *The Bangladesh Supreme Court Digest*, Vol. III (1980-81) p. 133.

2 Aiyar, K.J. : *Judicial Dictionary*, (1998) p. 343.

3 AIR 1961 SC 1669.

4 1981 BLD (AD) 378.

and Administrative Tribunal. Unlike in the U.K,[6] a clear distinction between Tribunal and Administrative Tribunal is now maintained in India, Pakistan and Bangladesh. But this distinction is recognised either in supreme laws or in ordinary laws of these countries of the Subcontinent.

In India, the 1949 Constitution recognises the distinction between Tribunal and Administrative Tribunal in its Articles 323A and 323B.[7] As Article 323A of the Constitution has empowered the Parliament to enact laws providing for the establishment of Administrative Tribunals to deal with disputes and complaints relating to the recruitment and conditions of services of public servants and other officials appointed in connection with the affairs of the Union or any State or of any local or other authority in the territory of India or under the control of Government of India or of any corporation owned and controlled by the Government.[8] On the other hand, under Article 323B, Parliament of India or any State Legislature has been given the mandate to pass laws providing for the establishment of Tribunals for the adjudication of disputes, complaints or offences with respect to matters relating to levy, assessment, collection, enforcement of any tax, foreign exchange, import and export across customs, frontiers, industrial and labour disputes, ceiling on urban property, etc. depending upon their legislative competence.

Therefore, it is evident that whereas Article 323A speaks of the Administrative Tribunal to resolve disputes relating to the recruitment and condition of services of civil servants, Article 323B provides for the establishment of Tribunal to deal with disputes relating to levy, assessment or collection of any tax, foreign exchange or customs, industrial and labour disputes, etc.

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5 Because, all tribunals were designed to be part of some schemes of administration. Wade, H.W.R. and Forsyth, G.F.: *Administrative Law*, (7th Edn.) p. 904.

6 In the U.K., there are no separate Administrative Tribunals to deal with disputes pertaining to service matters of civil servants.

7 Arts. 323A and 323B have been inserted in the Constitution of India by the Constitution (42nd Amendment) Act, 1976.

8 In compliance with the Art. 323A, the Indian Parliament has enacted the Administrative Tribunals Act, 1985. And the Administrative Tribunals Act, 1985, by its sec. 14, has empowered the Administrative Tribunal to deal with matters relating to the terms and conditions of service of persons appointed to public service or any body controlled by the Government.

Unlike the Indian Constitution, which makes a distinction between Administrative Tribunal and other Tribunals, the Constitution of Pakistan, 1973,[9] merely speaks of the establishment of the Administrative Tribunal with wide and extensive powers including even the jurisdiction to settle down the disputes in connection with the acquisition, administration and disposal of enemy property under any law. As Article 212 of the Constitution has empowered the Federal Parliament and the Provincial Assemblies to enact laws for the establishment of Administrative Courts or Tribunals to deal with exclusively the matters relating to the terms and conditions of services of civil servants;[10] claims arising from tortious acts of Government, or its servants while acting in exercise of their duties, or of any local or other authorities empowered to levy any tax or cess;[11] or the acquisition, administration and disposal of enemy property under any law.[12]

But, the Service Tribunals Act passed by the Federal Parliament in 1973 in pursuance of the provisions of Article 212 of the Constitution provides for the establishment of Administrative Tribunal (named in the law as Service Tribunal) with limited powers to resolve only disputes relating to the terms and conditions of services of civil servants including their disciplinary matters.[13] Therefore, the Service Tribunal's power and jurisdiction have been confined merely to deal with service matters of civil servants. Thus, despite the constitutional provisions, the Tribunal has not been given the authority to settle disputes relating to claims arising from tortious acts of the Government or its employees or in respect of matters relating to the acquisition, administration and disposal of enemy property. Although the Constitution of Pakistan does not contain provision regarding the establishment and jurisdiction of any other Tribunals except Administrative Tribunals, the Federal Parliament, besides passing the Service Tribunals Act in 1973 for the establishment and operation of Administrative Tribunals, has also passed many other Acts in a piecemeal manner for the establishment of other Tribunals especially to resolve disputes of special nature between contesting parties. These other Tribunals are, among others, Election Tribunal established

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9 *The Constitution of the Islamic Republic of Pakistan.*

10 Art. 212 (1) (a), ibid.

11 Art. 212 (1) (b), ibid.

12 Art. 212 (1) (c), ibid.

13 Sec. 3, the Service Tribunals Act, 1973.

under the Representation of People Act, Mines Tribunal established under the Mines Act, Railway Rates Tribunal established under the Pakistan Railways Act, etc.

Like the Constitution of Pakistan, the Constitution of Bangladesh does not recognise any distinction between Administrative Tribunal and Tribunal. It speaks merely of Administrative Tribunals and is absolutely silent as to the setting up of other Tribunals. As Article 117 (1) of the Bangladesh Constitution empowers the Parliament to make laws for the establishment of one or more Administrative Tribunals to deal with matters relating to the terms and conditions of persons in the service of the Republic;[14] the acquisition, administration, management and disposal of any property vested in or managed by the Government and service in any nationalised enterprise or statutory public authority;[15] and any law mentioned in the First Schedule to the Constitution.[16]

But, the Administrative Tribunals Act, passed in 1981,[17] has empowered the Administrative Tribunals to resolve disputes only relating to or arising out of the terms and conditions of service of persons in the service of the Republic or of any statutory public authority.[18] Despite the constitutional provisions, the Administrative Tribunals have not been vested with the power to deal with matters relating to the acquisition, administration, management and disposal of any property vested in or managed by the Government, service in any nationalised enterprise and most of the laws mentioned in the First Schedule to the Constitution.[19] Indeed, the House of the Nation (Bangladesh Parliament) did not fully comply with all the provisions contained in Article 117 of the Bangladesh Constitution.

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[14] Art. 117 (1) (a), *the Constitution of the People's Republic of Bangladesh.*

[15] Art. 117 (1) (b), ibid.

[16] Art. 117 (1) (c), ibid.

[17] The Administrative Tribunals Act, 1980, was tabled before the legislature in 1980 and it was passed in 1981 and as such it is numbered as Act No. VII of 1981. It received the assent of the Acting President on 5.6.1981 and was also published in the Bangladesh Gazette on the same date. It came into force on 01.02.1982.

[18] Sec. 4, the Administrative Tribunals Act, 1980.

[19] Arts. 117(1)(b) and 117(1)(c), *the Constitution of the People's Republic of Bangladesh.*

Apart from enacting the Administrative Tribunals Act in 1981 for the establishment and operation of Administrative Tribunals, Bangladesh Parliament has also passed several other Acts from time to time for the establishment and operation of other Tribunals in Bangladesh with a view to resolving disputes of special nature. The other Tribunals established are, among others, Labour Court[20] and Labour Appellate Tribunal established under the Bangladesh Sromo Ain, 2006; Taxes Appellate Tribunal established under the Income Tax Ordinance, 1984; etc.

Taking into account the provisions of the Constitutions of India, Pakistan and Bangladesh concerning jurisdiction of Administrative Tribunals and the various enactments passed accordingly providing for the establishment and defining jurisdiction of Administrative Tribunals, the term 'Administrative Tribunal' may be defined as the Tribunal which resolves litigation relating to the terms and conditions of service of persons appointed in the public service or in any statutory body controlled by the government. In this sense, the expression 'Administrative Tribunal' has been used in this Article except the United Kingdom perspective as, unlike in France and the Subcontinent, there are no separate Administrative Tribunals in the United Kingdom to deal with disputes pertaining to service matters of civil servants.

II. Origin and Development of Administrative Tribunals in France and the United Kingdom

It is said that the French and English Legal Systems of Europe have exerted considerable influence in shaping Administrative Tribunals in the Indo-Pak-Bangladesh Subcontinent. An attempt is, therefore, made in this part to examine the origin and development of Administrative Tribunals under both French and English Legal Systems.

i) Under the French Legal System

Under the French Legal System, there are two sets of judicial bodies, ordinary courts of law and administrative tribunals, independent of each other. The ordinary courts administer the ordinary law of the country as between private individuals. The administrative tribunals

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[20] In Pubali Bank Vs. Chairman, Labour Court, Dhaka, (1992) 44 DLR (AD) 40, it was clearly held by the Appellate Division of the Bangladesh Supreme Court that Labour Court is not to be considered as a court; as such, it is a tribunal.

administer the law called *Droit Administratif*[21] as between a private individual and the State.[22] If an administrative authority by its act inflicts an injury upon a private individual by violating any provision of law, an action will only be before an administrative tribunal and not before an ordinary court of law. In France, presently there are two types of administrative tribunals. These tribunals are –

a) *Conseil d' Etat* (1799 – to date); and

b) Tribunaux Administratif (1953 – to date).

Before *Conseil d' Etat* came into existence, another sort of administrative tribunal called *Conseil du Roi* had functioned in France.[23] An attempt is made below to trace the development of these tribunals in France.

Conseil du Roi

In the pre-revolutionary France,[24] *Conseil du Roi* had to perform various functions viz., legal, executive and judicial. Among others, it advised the King in legal and administrative matters. It also discharged judicial functions in resolving disputes between great nobles.

After the French Revolution of 1789, a major change was brought in the legal system. The first step taken by the revolutionaries was to curtail the power of the executive in pursuance of the theory of 'Separation of Powers' propounded by French writer Montesquieu. *Conseil du Roi* was abolished and the King's powers were curtailed. Nepoleon, who became the first consul, favoured freedom for the administration and also favoured reforms. He wanted an institution to give relief to the people against the excesses of the administration. Therefore, in 1799 *Conseil d' Etat* was established.[25]

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21 *Droit Administratif*, ordinarily known as French system of Administrative Law, is a body of rules that determine the organisation and the duties of public administration and which regulate the relation of administration with citizens of the State. It consists of rules developed by the judges of administrative tribunals and does not represent the principles and rules laid down by the French Parliament.

22 Takwani, C. K.: *Lectures on Administrative Law*, (1998) p. 21.

23 Massey, I. P. : *Administrative Law*, (1985) p. 21.

24 French Revolution was held in 1789.

25 Massey, I.P. : *Administrative Law*, (1985) p. 21.

Conseil d' Etat

At the beginning, *Conseil d' Etat* was not an independent adjudicating body. It was an appendage of the executive. Its main task was to advise the minister with whom the complaint was to be lodged. In fact, the minister was the judge and the *Conseil d' Etat* administered only advisory justice. It did not have public sessions. It had no power to pronounce judgments.[26]

In 1872, *Conseil d' Etat* was empowered to give independent decision against the administration. Its formal power to give judgment was established. Subsequently, in the year 1889, a significant change was brought out in the justice approach of *Conseil d' Etat.* The minister was deprived of his powers to hear the complaint, and the complainant was allowed a direct access to *Conseil d' Etat* subject to the condition that he was to state the cause that led to his grievance.[27]

But, with the ever-expanding activity of administration, the *Conseil d' Etat* worked successfully till 1945, when the number of cases began to grow disproportionately. Later, its work was bifurcated into eight sub-sections, but still it fell behind in its race to go with the speed of litigation. By the end of 1953 as many as 26000 cases were pending before it.[28] To remedy the situation, its work on the original side was assigned to local courts, which were named as *Tribunaux Administratif.*

Tribunaux Administratif

Initially, the object of *Tribunaux Administratif* was to quicken the process of justice and reduce the workload of *Conseil d' Etat*, though the *Conseil* exercised the appellate jurisdiction over the newly created *Tribunaux Administratif.* All other matters, which fell beyond the jurisdiction of *Tribunaux Administratif*, could be brought before the Conseil. Thus, the Reform of 1953 conferred a new jurisdiction and new status upon these local adjudicating bodies. However, in case of conflict between the ordinary courts and the Administrative Tribunals regarding jurisdiction, the matter is decided by the *Tribunal des Conflicts.*

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26 Ibid.

27 Chhabra, Sunil : *Administrative Tribunals,* (1990) p. 7.

28 Wraith and Hutchesson : *Administrative Tribunals,* (1973) p. 33.

Tribunal des Conflicts

Tribunal des Conflicts consists of an equal number of ordinary and administrative judges, and is presided over by the Minister of Justice. It was established in France in 1871.[29]

Thus, France, with its experience of administrative courts extending over nearly two centuries, offers a very useful guidance to countries experimenting with Administrative Tribunals.

ii) Under the English Legal System

An important feature of the English Legal System is the establishment of various types of administrative tribunals[30] mainly in the 20th century as a by-product of the welfare state,[31] although some trace their origin before the 20th century.

Under the English legal system, the King's Council and the Court of Star Chamber are considered as the oldest among the tribunals established in the United Kingdom before the 20th century. The other important tribunals established before the 20th century are the Commissioner of Customs and Excise, the General Commissioner of Income Tax, and the Railway and Canal Commission. These tribunals were established by the Customs and Excise Act, 1660; the Income Tax Act, 1799; and the

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[29] Report of the Pakistan Law Reform Commission (1967-70) on Administrative Tribunals, Chap. XXVII. Quoted in Rahman, Syed Lutfor: *Administrative Tribunals Manual,* (1991) p. 59.

[30] In this part of the Article, the expression 'Administrative Tribunal' has been used in wide sense. The expression 'Administrative Tribunal' is, in wide sense, a generic name which represents all types of tribunals dealing with special matters under special laws between contesting parties, since tribunals are designed to be part of some schemes of administration. Under the English Legal System, there exists, in narrow sense the sense it has been used in this Article, no Administrative Tribunals in the United Kingdom to deal with disputes pertaining to service matters of government servants.

[31] The chief characteristics of welfare state are : i) a vast increase in the range and detail of government regulation of privately owned economic enterprise; ii) the direct furnishing of services by government to individual members of the community – the economic and social services as social security, low-cost housing, medical care, etc.; iii) increasing government ownership and operation of industries and business which, at an earlier time, were or would have been operated for profit by individuals or private corporations.

Railways Act, 1873, and dealt with disputes relating to customs and excise, income tax and Railways respectively.

At the beginning of the 20th century, a number of tribunals were established by statutes, of which the Local Pension Committee and the Board of Education are worthy of note.[32] During the early years of the 20th century, several different authorities were given judicial powers to resolve various disputes under the Housing Act, 1919; the Unemployment Insurance Act, 1920; the Roads Act, 1920; the National Health Insurance Act, 1924; etc.

But in the year 1929, there was a sharp reaction against the growth of these adjudicating bodies. Lord Hewart, the then Chief Justice, wrote a book titled "The New Despotism" where he launched a scathing attack on the ousting of the court's jurisdiction and vesting it in the hands of bureaucracy.[33] The view of the learned Chief Justice had an impact on the thinking of the English Government, and it was because of such a reaction that the British Parliament in the same year appointed a Committee on Minister's Power headed by Lord Donoughmore known as Donoughmore Committee.

Donoughmore Committee

The Committee was asked to examine as to whether England should adopt a full-fledged system of Administrative Courts on French model. Describing the criticism by Lord Hewart against administrative tribunals as not well founded, the Committee submitted its report in 1932. In the report, the Committee gave its opinion against the proposal of Administrative Court on the French model on the ground that it was opposed to the flexibility of the English Constitution and the system of normal judicial control over administrative proceedings.[34] Instead, the Committee laid stress on the independence of administrative tribunals and, among others, recommended that –

i) Administrative tribunals should continue to function and exercise judicial powers; and
ii) there should be an appeal to the High Court on the point of law.

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[32] The Old Age Pensions Act, 1908, and the Education Act, 1921, established these tribunals respectively.

[33] Chhabra, Sunil : *Administrative Tribunals,* (1990) p. 4.

[34] Basu, Durga Das : *Administrative Law,* (1998) p. 308.

After the recommendations of the Donoughmore Committee, there has been an extensive growth of administrative tribunals in the United Kingdom that indeed took tremendous proportion after the Second World War. The National Service Act, 1945, the Town and Country Planning Act, 1945, the Family Allowances Act, 1945, the National Insurance Act, 1946, the National Assistance Act, 1946, the National Insurance (Industrial Injury) Act, 1946, the Transport Act, 1947, and the Agricultural Act, 1947, are considered as the vital among the Acts passed by the Parliament after the World War II. These Acts, indeed, have increased the number, enlarged the jurisdiction and raised the status of different kinds of administrative tribunals in the United Kingdom. In most cases, tribunals consisting of three persons have been set up. Their Chairmen are independent, but the other members represent the various interests involved. In some cases, even judicial powers have been given to ministers and superior tribunals have been appointed to hear and decide appeals from the lower tribunals.[35]

But there were many complaints from different quarters, especially from the Treasury against the working of these tribunals. And as a result of reaction from the Treasury, a Committee under the chairmanship of Sir Oliver Franks, known as Franks Committee, was appointed in 1955 by the Lord Chancellor to report on the working of administrative tribunals engaged in different areas of State-activity vis-a-vis human relationship.

Franks Committee

The Franks Committee submitted its Report in 1955. The Report, containing a number of recommendations, rejected the view of the Treasury that the administrative tribunals were a part of the administration and consequently were not judicial institutions. Rather, the Report justified that the administrative tribunals were independent organisations to settle legal claims and disputes.

The report of the Franks Committee, published in 1957, gave the administrative tribunals a higher status than they had earlier enjoyed. The Committee accepted the principle of openness, fairness and impartiality as the very basis of the functioning of the tribunals. The Committee, among others, recommended a Council on Tribunals to supervise their workings. As a result, the British Parliament enacted the Tribunals and Inquiries Act in 1958.

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[35] Mahajan , V. D. : *Select Modern Governments,* (1988) p. 149.

The Tribunals and Inquiries Act, 1958

In the history of the development of tribunal system in the UK, the role played by the Tribunals and Inquiries Act, 1958, is considered as crucial. The Act, indeed, provided for a control of the administrative tribunals by the courts of law and maintained the traditional Rule of Law. The Tribunals and Inquiries Act, 1958, was amended in 1959 and 1966. Later, it was consolidated first by the Tribunal and Inquiries Act in 1971, and then in 1992. Adequate judicial control over the administrative tribunals was provided for. The tribunals were established without affecting its special procedure and without introducing the system of administrative courts on the pattern of French Law. Thus, tribunalisation of justice was accepted as an important part of the judicial system of the United Kingdom.

At present, there are administrative tribunals in the United Kingdom to deal with personal welfare, service pension, education, employment, health service and immigration. There are also administrative tribunals, which deal with economic matters such as agriculture, commerce, transport, and housing. These are in addition to matters relating to revenue that cover taxation, statutory levies, industrial matters, etc.[36]

Besides, the English legal system, which was traditionally averse to any separate courts or tribunals for administrative law matters, is slowly moving towards establishment of such tribunals, although there are no separate Administrative Tribunals in the UK to deal with cases relating to the terms and conditions of service of civil servants. Ordinary courts have been dealing with these matters and that also in a limited way in view of Crown's prerogative and doctrine of master and servant. Recent development (making unfair dismissal justifiable) has made the civil servants subject to the jurisdiction of Industrial Tribunals from which appeals lie to the Employment Appeal Tribunal. Civil servants are being dealt with at par with the workmen, but jurisdiction in their case is mostly limited to awarding compensation.[37]

III. Origin and Development of Administrative Tribunals in the Subcontinent

The origin and development of Administrative Tribunals in the Subcontinent can be traced to the ancient[38] and medieval[39] periods

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[36] Chhabra, Sunil : *Administrative Tribunals*, (1990) p. 6.

[37] Rashid, Pirzada Mamoon : *Manual of Administrative Laws*, (1998) pp. 51-52.

[38] Ancient Period begins with the earliest known civilizations and extends to the fall of the Western Roman Empire in A. D. 476.

although their main developments have been made during the modern period.[40]

During the ancient period, the King's Court was the highest court of appeal as well as original court in the cases of vital importance. In the King's Court, learned Brahmins, judges, ministers, elders and representatives of trading community advised the King. The Court of Chief Justice was below the King's Court. Legally, the Chief Justice was empowered to constitute special tribunals to deal with the disputes of special nature among traders, craftsmen, artisans and artists. These special tribunals consisted of three to five members one of whom was to act as the President. They were from both technical professions as well as from the judiciary.[41] The decisions of these tribunals, as legal history reveals, were made appealable to local courts; the second appeal lay to Royal Judges and sometimes a special appeal in extra ordinary circumstances was also provided to the King's Court.[42]

During the medieval period, no imporant changes concerning tribunal system were made in the administration of justice. The earlier system, indeed, remained operative until the beginning of the modern period and the advent of the British in this Subcontinent.[43]

The British came to the Subcontinent in 1601 as a "body of trading merchants" in the name of East India Company.[44] At the beginning, the

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[39] Medieval Period extends from the fall of the Western Roman Empire to the close of the 15th century, the period of Oceanic discoveries. Roughly, it extends from about A. D. 477 to about 1400.

[40] In historical use, it is commonly applied (in contradistinction to Ancient Period and Medieval Period) to the time subsequent to the Medieval Period. It extends from about A. D. 1401 to the present day.

[41] In the cases of disputes among traders, craftsmen, artisan, artists, etc., it was difficult for the courts to arrive at correct decisions in view of the technical problems involved. As such, the rule of associating technical experts in resolving disputes in such specialised fields had been recognised and adopted.

[42] Kulshreshtha, V. D. : *Landmarks in Indian Legal and Constitutional History,* (1981) p. 6.

[43] Chhabra, Sunil : *Administrative Tribunals,* (1990) p. 9.

[44] The first Englishman to set foot on Indian soil was Thomas Stephens. He set sail to India from Lisbon in April 1579, and reached Goa in October 1579.

East India Company did not bother much about the administration of justice. In subsequent years the Company, when maintained its stronghold over the soil of the Subcontinent, began to think in terms of setting up courts at the three presidencies, viz., Bombay, Calcutta and Madras. As a result, Courts were established at the three presidencies. But, the matter regarding the establishment of tribunals for specified matters and disputes did not receive the attention of the British in the 17th and 18th century; the basic idea of the foreign rulers was to capture power and not to impart justice to the people of the Subcontinent.[45]

The East India Company's rule in India came to an end in 1858 and the Subcontinent was brought under the direct control of the British Government.[46] Thereafter, the enactment of the Indian High Courts Act in 1861 was the first major step in imparting justice to the people. Under the Indian High Courts Act, 1961, High Courts were established in some of the States.[47] These High Courts were empowered to decide all civil and criminal cases of civil servants. All the cases of serving personnel relating to different fields like labour, industry, income tax, railway and transport and commercial transaction fell within the overall jurisdiction of High Courts.

It was in the subsequent years that a thought was given to take some specialised matters out of the jurisdiction of the court to confer on tribunals. As a result, a number of tribunals were established in the Subcontinent under the British rule,[48] of which the Railway Rates

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Kulshreshtha, V. D. : *Landmarks in Indian Legal and Constitutional History,* (1981) p. 37.

45 Chhabra, Sunil : *Administrative Tribunals,* (1990) p. 9.

46 With the passing of the Government of India Act in 1858, the Government of India was transferred from the East India Company to the British Crown.

47 On the basis of the authority given by the Indian High Courts Act of 1861, the Crown issued Letters Patent dated the 14th May 1862, establishing the High Court of Judicature at Calcutta. The Letters Patent establishing the High Courts at Bombay and Madras were issued on June 26 1862. As the Letters Patent of 1862 were found defective in certain respects, fresh Letters Patent were granted in 1865 that revoked the earlier Letters Patent. They were identical in terms, and defined the jurisdiction and powers of the three Presidency High Courts.

48 British rule in the Subcontinent was ended in August 1947.

Tribunal, Motor Accident Claim Tribunal and Commissioner for Workmen's Compensation are noteworthy and important.[49]

The enactment of the Indian Independence Act in 1947 constitutionally ended about two hundred years' British rule in the Subcontinent in August 1947. As a result, two independent States, India and Pakistan came into existence in the geographical as well as political map of the world on the 15th and 14th August, 1947, respectively. Since then the process of development of tribunals continued under two separate legal systems of India and Pakistan. As such, an attempt is made in this part to examine the origin and development of Administrative Tribunals under both the Indian Legal System and Pakistan Legal System.

i) Under the Indian Legal System

In the post-independence era, some new tribunals have been established in India. Among the tribunals established, the Industrial Tribunal, the Copyright Board, the Rent Control Tribunal and the Income Tax Appellate Tribunal are of vital importance.[50]

A new phase of development of tribunal system began in India with the passing of its Constitution (42nd Amendment) Act, 1976. The Act, for the first time in the history of India, paved the way for the establishment of Administrative Tribunals to deal with disputes relating to service matters of civil servants.

Administrative Tribunal in India : New Phase of Development

In 1976, the Indian Parliament passed the Constitution (42nd Amendment) Act, 1976. The Act inserted a new Article 323A in the Constitution empowering the Parliament to establish by law Administrative Tribunals to deal with disputes relating to service matters of civil servants.[51] Accordingly, the Indian Parliament, in pursuance of Article 323A, enacted the Administrative Tribunals Act, 1985. The Act came into force on 01 July 1985, and an Administrative Tribunal was

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[49] The Railways Act, 1890; and the Motor Vehicle Act, 1939; and the Workmen's Compensation Act, 1923, established these tribunals respectively.

[50] The Industrial Disputes Act, 1947; the Copyright Act, 1951; the Delhi Rent Control Act, 1958; and the Income Tax Act, 1961, have established these tribunals respectively.

[51] Art. 323 A(1), *the Constitution of India* (1949).

established on 01 November 1985[52] with its benches in different parts of the country.

ii) Under the Pakistan Legal System

After the establishment of Pakistan in 1947, statutes have established many new tribunals.[53] These are, among others, Labour Court and Labour Appellate Tribunal established under the Industrial Relations Ordinance; Railway Rates Tribunal established under the Pakistan Railways Act; Election Tribunals established under the Representation of People Act; Mines Tribunal established under the Pakistan Mines Act; and the Rent Controller appointed under the Rent Restriction Ordinance.

Most of the tribunals established in Pakistan normally consist of a Chairperson (legally trained) and two other non-legally qualified people, who have some particular expertise in the particular field over which the tribunal has jurisdiction. For example, Labour Court, established in Pakistan under the Industrial Relations Ordinance, 1969,[54] consists of a Chairman and two members to advise the Chairman. It resolves, among others, industrial disputes and disputes arising out of employment of labour. Against an award given by a Labour Court, an appeal may be taken to the Labour Appellate Tribunal for decision.

In Pakistan, a new phase of development of tribunal system began in 1972. For, the 1972 Interim Constitution of Pakistan, for the first time in the history of Pakistan as well as of the Subcontinent, provided provisions for the establishment of Administrative Tribunals to deal with disputes relating to service matters of civil servants. The Interim Constitution of 1972, thus, paved the way for a new phase of development of Administrative Tribunals in Pakistan.

Administrative Tribunal in Pakistan : New Phase of Development

In legal sphere, neither the 1956-Constitution nor the 1962-Constitution of Pakistan had any provision for establishment of Administrative Tribunals pertaining to service matters of civil servants. For the first time, as mentioned earlier, Article 216 of the Pakistan Interim Constitution,

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52 Basu, Durga Das : *Administrative Law*, (1998) p. 636.

53 By virtue of the Indian Independence Act, 1947, Pakistan, consisting of East Pakistan (now Bangladesh) and West Pakistan (now Pakistan) came into existence on the 14th August, 1947, as an independent State.

54 Sec. 35, the Industrial Relations Ordinance, 1969.

1972, contained provisions for the establishment of Administrative Tribunals to resolve disputes concerning service matters of civil servants. Subsequently, the new Constitution of Pakistan, came into force on 12 April 1973, provided in Article 212 for the establishment of Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of services of civil servants; claims arising from tortious acts of Government, or its servants while acting in exercise of their duties, or of any local or other authorities empowered to levy any tax or cess; or the acquisition, administration and disposal of enemy property under any law.

In pursuance of the provisions of Article 212 of the Constitution, the Service Tribunals Act, 1973, was enacted in Pakistan on 26 September, 1973, to provide for the establishment of Administrative Tribunals to exercise jurisdiction only in respect of matters relating to the terms and conditions of service of civil servants and for matters connected therewith or ancillary thereto. Accordingly, under Section 3(1) of the Service Tribunals Act, 1973, the Government of Pakistan by notification in the official Gazette established an Administrative Tribunal (statutorily called Service Tribunal) in the same year 1973.[55]

The British left the Subcontinent in 1947 giving independence to British India by dividing it into two independent States, India and Pakistan. Pakistan consisting of West Pakistan (presently Pakistan) and East Pakistan (since 1971 Bangladesh) existed together up to 1971, when independence of Bangladesh was declared on 26 March 1971 and Bangladesh emerged as an independent State free from occupation on 16 December 1971. An attempt is, therefore, made hereunder to examine the origin and development of Administrative Tribunals in Bangladesh under its legal system since independence.

iii) Under the Bangladesh Legal System

Apart from the tribunals inherited from Pakistan,[56] important tribunals e.g. Commissioner of Taxes and Taxes Appellate Tribunal[57] have been

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[55] Rashid, Pirzada Mamoon : *Manual of Administrative Laws*, (1998) p. 49.

[56] The Laws Continuance Enforcement Order, 1971, which was made effective from 26 March 1971, legalised all the tribunals inherited from Pakistan subject to the Proclamation of Independence, 1971. According to this Order, no tribunals would be valid if they were inconsistent with the consequential

established in Bangladesh since its independence. It should be mentioned here that during long past time, disputes arising out of the administrative actions both in the public and private sectors had been subject of judicial review in the courts of law. The courts with the growth of population and socio-economic complexities had been crowded with influx of cases of various nature. The volume of cases on the administrative sides also increased with considerable dimension occupying great chunk of court's time to deal with such cases. The result was that there was inordinate delay in the disposal of cases, which adversely reflected on the efficiency and sound functioning of the administration. Taking into account of these realities, the framers of the 1972 Constitution of Bangladesh included in it for the first time provisions concerning the establishment of Administrative Tribunals for the purpose of ensuring speedy and efficacious disposal of cases relating to service matters, by ousting the jurisdiction of the ordinary courts in respect of such matters.

Administrative Tribunal in Bangladesh : New Phase of Development

A new phase of development of tribunal system began in Bangladesh with the adoption of its new Constitution in November 1972. The Constitution in its Article 117 provides that the Parliament may, by law, establish one or more Administrative Tribunals to deal with disputes relating to, among others, service matters of civil servants. In pursuance of the provisions of Article 117 of the Constitution, the Bangladesh Parliament enacted the Administrative Tribunals Act, 1980 in 1981 (Act No. VII of 1981). The Government, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Act, for the first time in the history of Bangladesh, established an Administrative Tribunal at Dhaka on 01 February 1982,[58] to resolve disputes merely relating to service matter of civil servants. The number of Administrative Tribunal has gradually been increased to seven,[59] which cover the whole country.

IV. Conclusions

The development of Administrative Tribunals in the Subcontinent have been influenced to a great deal by the French *Droit Administratif* with

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changes as would be necessary on account of the creation of Bangladesh as a sovereign State.

[57] The Income Tax Ordinance, 1984, has established these tribunals.

[58] Notification No. S.R.O. 58-L/82-JIV/1T-1/81, dated 01 February, 1982.

[59] Notification S.R.O. No. 288-Law/2001, dated 22 October, 2001.

Conseil d' Etat and *Tribunaux Administratif* having separate hierarchy to settle all administrative claims and disputes independent of any interference by judicial review by the ordinary court of law. Besides, the English legal system has also exerted considerable influence in shaping Administrative Tribunals in the Indo-Pak-Bangladesh Subcontinent.

During the British Rule in India, service rules in respect of private and industrial sectors were formulated. Labour Courts were established for adjudicating disputes relating to the terms and conditions of service in the private and industrial sectors. For the purpose of ensuring speedy and efficacious disposal of cases relating to the terms and conditions of service of persons appointed in the public service or any statutory body controlled by the government, provisions for the establishment of Administrative Tribunals were finally made in the Constitutions of the countries in the Subcontinent by ousting the jurisdiction of the ordinary courts in such matters.

Indeed, in respect of the specific matter of movement from courts to tribunals in the common law countries, Pakistan, India and Bangladesh made the most radical move in the field of service laws. Pakistan took the lead by providing for the establishment of tribunals for civil servants under Article 216 of the Interim Constitution of 1972, followed by Article 212 of the Constitution of 1973. Similar provisions were incorporated in Article 117 of the Constitution of Bangladesh 1972. India added Article 323A to its 1949 Constitution through Forty-Two Constitutional Amendment in 1976. Pakistan was the first country in the Subcontinent to pass federal and provincial laws establishing Service Tribunals for civil servants in the years 1973 and 1974. Bangladesh passed such a law in the year 1981 and India waited until 1985 to pass law providing for the establishment of Administrative Tribunals to deal with the disputes concerning the terms and conditions of service of civil servants.

But, in respect of vesting jurisdiction in the Administrative Tribunals, the legislatures of Pakistan and Bangladesh did not fully comply with all the provisions contained in their respective Constitutions. Despite having larger scope in constitutional provisions, Administrative Tribunals in Pakistan and Bangladesh have been entrusted with very limited jurisdiction.