NOTES AND COMMENTS

INDIA'S TRYST WITH INDEPENDENT TRIBUNALS AND REGULATORY BODIES AND ROLE OF THE JUDICIARY

Abstract

In the new liberal economic regime the state has stepped down from its commanding heights to a regulatory role. In this system regulatory bodies and tribunals having quasi judicial powers become very important. Confusion between administrative and quasi judicial roles of the regulatory bodies, relationship of these bodies and tribunals with different organs of the state especially the executive and the judiciary, appointment of personnel and autonomy of these bodies have been matters of litigation in the high courts and the Supreme Court for some years now. The issue still does not seem to be completely settled. The present paper is basically an examination of this ongoing tussle. The tussle is largely between requirements of modern regulatory governance on the one hand and constitutional values and national integrity on the other.

I Introduction

MODERN CONSTITUTIONAL governments are a mix of democracy and oligarchy. Democratic branch consists of legislature and the political executive while the oligarchic branch consists of judiciary and the bureaucracy. Bureaucracy is subordinate to the political executive and is bound by the directions of the latter. However, judiciary is one of the organs of the state; therefore, on the principle of separation of powers and checks and balances it not only claims independence from the political branch but also asserts the power to check latter's activities on the touchstone of constitutional principles. This often brings about a tussle between the political branches claiming to represent the will of the people (or popular will) and the judiciary which claims to be repository of learning and wisdom and hence guardian of the constitution and its principles which comprises the rational will of the people (or general will).

Montesquieu identified three organs of the government: legislature, executive and the judiciary and developed the theory of separation of powers and checks and balances. However, with the growth of globalization and expansion of market economy, the governance structure of the state is getting scattered into autonomous regulatory bodies. Autonomous regulatory bodies have become a necessity to foster efficiency in the administration and also to inspire confidence of private investors and other private parties many of whom may be of foreign origin. However, autonomy has to be balanced with adequate regulation of the regulatory bodies to

prevent regulatory capture by private interest to the detriment of general public interest. Regulation of these regulatory bodies and their relationship with different organs of the government may become a thorny issue in many legal regimes. At least in India, it has become an important legal issue.

India has moved ahead on the path of integrating its economy with the global currents. However, the legal system of the country in accordance with the Indian spirit and tradition of continuity, with assimilation and adaptation is trying to channelize the current of globalization to foster Indian development according to the values of the Indian Constitution and traditions and vision of the constitution makers.

II Constitutional principles

Indian Constitution is framed on the edifice of liberal democratic principles moderated by the vision of equitable development and historical experiences. The federal structure of the Indian polity has adopted the Westminster model of parliamentary government with an independent judiciary. The bureaucracy usually selected by independent bodies on the basis of competitive exams is accountable to the political executive. The constitution makers although conscious of protecting the independence of judiciary wanted to make it the 'least dangerous branch' in the governance structure. Indian Constitution makers were no less mistaken about the Indian judiciary than Hamilton was about the Supreme Court of the United States of America. The Supreme Court of India had to assert its role and step into protecting the well debated and cautiously cultivated principles of the, Indian Constitution makers from destruction by swings of popular opinions created by opportunist politics. And the court developed the principle of basic structure or basic features of the Indian Constitution. Basic structure comprises of certain principles which are foundational rock of the Indian Constitution and provide the document with its present identity, hence outside the amending power of the Parliament because Parliament itself is a creature of the Constitution. From time to time the Supreme Court has been identifying these principles. Recently there has developed a political consensus with regard to maintenance of essential identity of the Indian Constitution on the ground that it documents the social contract among various political and social groups of the Indian society. Possibly Tushnet is right in saying that constitution lays down the framework within which the national politics operates.[1]

Broadly some of the principles identified have been principle of equality, secularism, democracy, rule of law, separation of powers, judicial review, independence and dignity of judiciary *etc*. For this paper last four principles are

---

1 Mark Tushnet, *Why Constituion Matters* (Yale University Press, New Haven and London, 2010).

especially important. The very enunciation of the principle of basic structure strengthens the foundations of rule of law in the country. The other three principles are different facets of the principle of rule of law. Principle of separation of powers was appreciated by Montesquieu because it ensures rule of law and protects against authoritarianism that would jeopardize rights of citizens. A government based on rule of law and liberal democracy necessarily requires independent judiciary for its sustenance. No wonder the judiciary in India has been jealously guarding not only its own independence and dignity but also principles of separation of power and rule of law. In the case of *L. Chandrakumar* v. *Union of India,*[2] the court referred to the task entrusted to the superior courts in India thus:[3]

> The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence.

Hence, the Supreme Court has emphatically declared separation of powers, rule of law, judicial review and independence of judiciary as some of the basic features of the Indian Constitution. In *Indira Nehru Gandhi* v. *Raj Narian*[4] the Supreme Court stated that Parliament cannot perform adjudicatory function and any dispute regarding election of the prime minister has to be cleared by the court or the tribunals established for the purpose because separation of powers was part of the basic structure of the Indian Constitution. Through a series of decisions the Supreme Court ensured independence of judiciary in matters of appointment and transfer of high court judges. Appointment of judges was effectively taken away from the executive and entrusted to a collegium of judges comprising judges of the Supreme Court and high courts. In *Indira Nehru Gandhi* v. *Raj Narian* the Supreme Court held:[5]

> It is true that no express mention is made in our Constitution of vesting in the judiciary the judicial power as is to be found in the American Constitution. But a division of the three main functions of Government is recognized in our Constitution. Judicial power in the sense of the judicial

2 (1997) 3 SCC 261.

3 *Id.* at 301.

4 (1975) Supp. SCC 1.

5 *Id.* at 45

> power of the State is vested in the Judiciary. Similarly, the Executive and the legislature are vested with powers in their spheres. Judicial powers has lain in the hands of Judiciary prior to the Constitution and also since Constituion. It is not the intention that the powers of the Judiciary should be passed to or shared by the Executive or the Legislature or that the powers of the Legislature or the Executive should pass or shared by the Judiciary.
>
> The Constitution has a basic structure comprising the three organs of the Republic: the Executive, the Legislature and the Judiciary. It is through each of these organs that the sovereign will of the people has to operate and manifest itself and not through only one of them. None of these three organs of the Republic can take over the functions assigned to the other. This is the basic structure or scheme of the system of Government of Republic

The era of liberal market economy is bringing new challenges to the principles of separation of powers, rule of law, judicial review and judicial independence. The new fragmented regulatory regime with autonomous regulatory bodies and independent tribunals are becoming the new testing grounds for the application of these principles.

III Independent tribunals and autonomous regulatory bodies in India

Even before India embarked on the journey towards liberalizing government control over the economy, government felt the need for speedier justice in certain matters and application of specialized skill and more sensitized decision making in place of detached adjudication of disputes. Hence independent tribunals made an earlier entry in the regulatory regime than autonomous regulatory bodies. The 42nd amendment of the Indian Constitution among other things empowered the Parliament and appropriate legislatures to provide for alternative tribunals and courts for adjudication of disputes. Under article 323A Parliament has been given the power to constitute administrative tribunals for adjudication and trial of matters related to services under the government. Under article 323B the appropriate legislature has been given the power to constitute tribunals for adjudication and trial of matters enumerated under clause (2) of that article.[6]

6 The appropriate legislature includes Parliament and state legislatures depending on their power to legislate on the matters enumerated in article 323B (2). Under the Indian Constitution powers of Parliament and state legislature to legislate on different subjects have been enumerated in list 1, 2 and 3 of VII Schedule. Parliament and state legislatures have exclusive powers to legislate on subjects enumerated in list 1 and 2 respectively. With regard to subjects enumerated in list 3 both Parliament and state legislature have concurrent powers to legislate but the state law to the extent it is inconsistent with Parliament's law remains inoperative.

When India shifted considerably from mixed economy principle to liberal market economy, autonomous regulators became a necessity in order to foster confidence of private players and also for the requirement of including specialists in the governance structure of the country. Hence Securities Exchange Board was established in 1992, Telecom Regulatory Body was established in 1997, Central and State Electricity Commissions were established in 1998 onwards, Tariff Authority for Major Ports was established in 1997, Competition Commission of India was established in 2003. The process moves on with bills pending in the Parliament for autonomous regulatory bodies in sectors like higher education where foreign investments have been now allowed. Most of these regulatory systems provide for independent tribunals for speedy disposal of cases.

Independent tribunals constituted either as part of the autonomous regulatory system or otherwise have raised certain pertinent constitutional issues:

(a) How far can these tribunals replace the constitutional adjudicatory system?
(b) Issue of separation of powers.
(c) Issue of role of judges in tribunals their independence and dignity.
(d) Role of judges in appointment of members of tribunals.

Independent tribunals in constitutional adjudicatory system

India has an integrated and hierarchal adjudicatory system with the Supreme Court of India at the apex. Below the Supreme Court there are high courts which are highest courts in the states. There are courts lower to high courts in various districts. Appeals from district courts in civil and criminal matters go to high courts, from high courts to the Supreme Court. Apart from having appellate jurisdiction, high courts and the Supreme Court are also constitutional courts. Writs can be filed in a high court or Supreme Court. Decisions of the Supreme Court are binding on every court of the country.[7] Decisions of a high court are binding on courts under that particular high court. Supreme Court under article 32 and high courts under article 226 have the power of judicial review. Under article 227 high courts have power of superintendence over all the courts and tribunals within its jurisdiction.

The idea of tribunals parallel to regular courts has been challenged in few cases. In *State of Karnataka* v. *Vishwabarathi Housing Building Coop. Society*[8] competence of the Parliament to establish consumer forums with hierarchy in the form of district forum, state forum and national commission was challenged. It was contended that Parliament cannot establish a hierarchy of courts parallel to district courts, high courts and the Supreme Court in absence of suitable amendment under article 368

7 Art. 141 of the Indian Constitution provides that the 'law declared by the Supreme Court shall be binding on all courts within the territory of India.'

8 (2003) 2 SCC 412.

of the Constitution. It would result in conflict of decisions with hierarchy of courts established under the Constitution having similar jurisdiction. It was contended that Parliament by recourse to article 323A and 323B cannot establish forums which are substitute to civil courts including the high courts.

The Supreme Court referred to article 246(2)[9] whereby Parliament has the requisite power to make laws with respect of constitution of organization of all courts except the Supreme Court and the high courts. Referring to item 77,[10] 78,[11] 79[12] and 95[13] of list 1 and item 11A[14] and 46[15] of list III, the court held that they do not leave any doubt about legislative competence of the Parliament to provide for creation of special courts and tribunals. Administration of justice; constitution and organization of all courts, except the Supreme Court and high courts is squarely covered by entry 11A of list III of the Constitution of India. The court also referred to *L. Chandrakumar* v. *Union of India*[16] wherein the court held that the constitutional provisions vest Parliament and the state legislatures, as the case may be, with powers to divest the traditional courts of a considerable portion of their judicial work. It was observed that the Parliament and the state legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and high court apart from the authorization that flows from article 323A and 323B in terms of entries 77, 78, 79 and 95 of list I so far as the Parliament is concerned and

9 Art. 246 ascertains the legislative competence of the Parliament and the state legislatures. Cl. (1) states: "Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List"). Cl. (2) states: "Notwithstanding anything in clause (3), Parliament, and, subject to clause (1) the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List"). Cl. (3) states that state legislature have exclusive powers to enact laws on subject enumerated in list II which is called the State List. Exceptions to this are provided in Articles 249, 250, 252 and 253 whereby Parliament gets the power to legislate on matters related in the State list as well.

10 Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practice before the Supreme Court.

11 Constitution and organization [including vacations] of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts.

12 Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.

13 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

14 Administration of Justice; constitution and organization of all courts, except the Supreme Court and High Courts.

15 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

16 (1997) 3 SCC 261.

in terms of entry 65[17] of list II and entry 46 of list III so far as the state legislatures are concerned. It was further held that power of judicial review being the basic structure of the Constitution cannot be taken away. The court further held that the forums provided for in the Consumer Protection Act supplement and do not supplant the civil courts. If a consumer has a complaint with regard to the decision of the state or national consumer forums he may resort to review under article 226 and article 32.

In the case of *Union of India* v. *Delhi High Court Bar Association*[18] constitutional validity of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was challenged. The Delhi High Court had held that though tribunal could be constituted by Parliament even though it was not within the purview of articles 323A and 323B of the Constitution, and that the expression "administration of justice" as appearing in entry 11-A of list III of the seventh schedule to the Constitution would include tribunals administering justice as well, the impugned legislation was unconstitutional as it erodes the independence of the judiciary and was irrational, discriminatory, unreasonable, arbitrary, and was hit by article 14 of the Constitution. The Delhi High Court held that the Act lowered the authority of the high court *vis-à-vis* the tribunal in view of the fact that suits for recovery of money exceeding Rs. 10 lacs were to be filed before the tribunal whereas suits for an amount between Rs. 5 lacs and Rs. 10 lacs were to be filed before the Delhi High Court and for less than Rs. 5 lacs before the subordinate courts. This lowered the status of the high court inasmuch as the tribunal, which was presided by an officer who did not have the status of a high court judge would be deciding the suits for recovery of money exceeding Rs. 10 lacs. The high court also held that the Act eroded the independence of the judiciary since the jurisdiction of the civil court had been truncated and vested in the tribunal. It also came to the conclusion that the independence of the judiciary was eroded as the high court had no role to play in the appointment of the presiding officers.

The Supreme Court, however, held that high courts have only appellate jurisdiction and do not have original jurisdiction in such matters and those high courts which have original jurisdiction may divest themselves and vest the original jurisdiction in the district courts. The court further observed that tribunals are very much part of the justice delivery system of the country but care has to be taken to ensure that it is manned by persons with requisite experience and skill to be able to take place of the civil courts:[19]

17 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

18 (2002) 4 SCC 275

19 *Id.* at 293.

> The manner in which a dispute is to be adjudicated upon is decided by the procedural laws which are enacted from time to time. It is because of the enactment of the Code of Civil Procedure that normally all disputes between the parties of a civil nature would be adjudicated upon by the civil courts. There is no absolute right in anyone to demand that his dispute is to be adjudicated upon only by a civil court. —— This forum, namely, that of a civil court, now stands replaced by the Banking Tribunal in respect of the debts due to the bank. When in the Constitution Article 323A and 323B contemplate establishment of a tribunal and that does not erode the independence of the judiciary, there is no reason, to presume, that the Banking Tribunals and the appellate tribunals so constituted would not be independent, or that justice would be denied to the defendants or that the independence of the judiciary would stand eroded.

> Such tribunals whether they pertain to income tax or sales tax or excise and customs have now become an essential part of the judicial system in this country. Such specialized institutions may not strictly come within the concept of the judiciary, as envisaged by Article 50, but it cannot be presumed that such tribunals are not an effective part of the justice delivery system, like Courts of law.

Another issue that has been raised is whether tribunals constituted under article 323A and 323B can replace the jurisdiction of high court. The enactments constituting these tribunals initially eliminated both the appellate and supervisory jurisdiction of high courts and provided for direct appeal to the Supreme Court. The case of *S.P. Sampath Kumar* v. *Union of India*[20] involved the examination of validity of section 28 of the Administrative Tribunal Act which ousted the jurisdiction of the high court under articles 226 and 227 and vested exclusive jurisdiction in the administrative tribunals. The Supreme Court stated that it was already held in *Minerva Mills* case[21] that judicial review is part of the basic structure of the Indian Constitution therefore judicial review cannot be dispensed with. However, Parliament has the power to provide for alternative institutions with the same power provided the alternative institution was as efficacious as the high court. The court stated:[22]

> It is necessary that those who adjudicate upon these questions should have same modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained judges in the High Courts and the Supreme

20 1987 (1) SCC 124.

21 *Minerva Mills Ltd.* v. *Union of India* (1980)3 SCC 625.

22 1987 (1) SCC 124 at 131.

> Court. That is the reason why at the time of the preliminary hearing of these writ petitions we insisted that every bench of the Administrative Tribunal should consist of one judicial member and one administrative member and there should be no preponderance of administrative members on any bench. Of course, the presence of the administrative member would provide input of practical experience in the functioning of the services and add to the efficiency of the Administrative Tribunal, but the legal input would undeniably be more important and sacrificing the legal input or not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal as compared to the High Court.

The apex court also objected to the provision of appointment of chairman and vice-chairman of the tribunal by the government. According to the court since the government does not have absolute and unfettered power in the appointment of high court judges therefore any tribunal that replaces the high court should have independence equivalent to the high court. Therefore the Supreme Court stated that chairman and vice-chairman could be appointed by the government only after consultation with the Chief Justice of India and such consultation "must be meaningful and effective and ordinarily the recommendation of the Chief Justice of India must be accepted unless there are cogent reasons, in which event the reasons must be disclosed to the Chief Justice of India and his response must be invited to such reasons."

However, in the case of *L. Chandrakumar*, 7 judge bench of the Supreme Court overruled its earlier decision and held that article 226 and 227 were part of the basic structure of the Indian Constitution therefore no tribunal can abrogate the power of the high courts. Tribunals constituted thereafter replace the high court only in matters of appeal and do not abrogate the jurisdiction of high courts under articles 226 and 227. The Law Commission of India in its 162nd report recommended constitution of national appellate administrative tribunal which would be headed only by a chief justice of high court or judge of the Supreme Court of India. The appellate tribunal would thus in practical terms have a status higher than the high court but lower than that of the Supreme Court. In its 215th report the Law Commission recommended for reconsideration of *L.Chandrakumar* case by a larger bench of the Supreme Court and in the alternative suggested suitable amendments to provide for the appellate tribunal. The Law Commission in the two reports highlighted the problems of overburdened judiciary and divergence in the decisions of various high courts with regard to interpretation of provisions of the Act. While the problem of overburdened judiciary is real, the problem of divergence of decisions between various high courts would be there with regard to any legal issue. In such

cases the Supreme Court resolves the matter either in an appeal or by taking up matters pending in various high courts.

Tribunals and separation of powers

Principle of separation of powers and checks and balances has been held to be part of the basic structure of the Indian Constitution. Petitioners have contended in few cases that adjudication process by tribunals and mixing up of regulatory and adjudicatory function in autonomous regulatory bodies violates the principle of separation of powers. The Competition Act 2002 before amendment provided adjudication by the Competition Commission of India with no provision for appellate body. It was challenged in the case of *Brahmo Dutt* v. *Union of India*[23] as violating the principle of separation of powers which was part of the basic structure of the Constitution. The government undertook to amend the Act and made provision for the Competition Appellate Tribunal. The appellate tribunal is headed by a person who is or has been a judge of the Supreme Court of India. The same contention was raised in the case of *Union of India* v. *R. Gandhi*.[24] The Madras High Court pointed out some defects in the Companies Amendment Act, which required modifications to provide for separation of judicial function from the executive and legislative function. Government of India accepted those defects pointed out by the court and undertook to amend the Act accordingly.

The pattern that India appears to following in constituting the regulatory bodies and tribunals is to create a regulatory body like the Competition Commission of India and the National Companies' Law Tribunal. Over these bodies there is an appellate tribunal headed normally by a retired judge of the Supreme Court of India. This structure does not completely follow the principle of separation of powers. The regulatory bodies have also been entrusted with adjudicatory function like the Competition Commission of India. It has adjudicatory powers including the power to impose penalty. The creation of appellate tribunal does not much satisfy the principle of separation of powers, it rather fulfills the conditions laid down in the *Sampath Kumar* case for the constitution of tribunals. Provision for appeal to high court is taken away by constitution of the tribunals. In view of the decision in the *L. Chandrakumar* case, high court's power of judicial review under article 226 of the Indian Constitution and supervision under article 227 of the Indian Constitution cannot be taken away. The Law Commission of India in its 162nd report and 215th report suggested that a way out can be found by creating an appellate tribunal which can be headed by a sitting or retired Supreme Court judge. In such situation high courts would give more deference to decisions of an appellate

---

23 (2005)2 SCC 431

24 *Madras Bar Association* v. *Union of India* (2010) 11 SCC 1.

tribunal which is headed by a Supreme Court judge if challenged under article 226. Therefore reason for creation of appellate tribunal seems less to accommodate the principle of separation of powers and more to minimize the chances of high courts' interference in the decisions of the appellate tribunal.

Issue of separation of powers has also arisen with respect to the appointment of personnel of the regulatory bodies and the tribunals. In the case of *Union of India* v. *R. Gandhi*[25] it was argued that members of the bureaucracy who became part of the National Company Law Tribunal and its appellate tribunal cannot remain permanently on lien from their parent cadre in government ministry/departments. After some time they should choose whether they want to continue as members of the tribunal or want to go back to their previous posts. The court held that the provision conflicts with the principle of independence of the tribunals. The provision also clearly violates the principle of separation of powers.

Role of judges in tribunals, their independence and dignity

With the advent of liberal market economy and regulatory age in the Indian legal system, an issue has often arisen with regard to role of judges in the tribunals and regulatory bodies. Debate started with the notification of the Competition Act of 2002. The Act originally provided for Competition Commission of India (CCI) with both regulatory and adjudicatory powers. The commission would have a sitting or retired judge of high court or any person eligible to be a high court judge. However, it was not necessary that the high court judge would be the chairperson of the tribunal. In accordance with the provisions of the Act, a member of the bureaucracy was appointed as the chairperson of the CCI. Validity of the Competition Act was challenged in the case of *Brahmo Dutt* on the basis of decision in *Sampath Kumar* case. It was argued that as per the Act a high court judge might be a member of the tribunal without being its chairperson. If a high court judge works under any person from bureaucracy that would affront the independence and dignity of the judiciary. It was argued that as per the decision in the *Sampath Kumar* case a tribunal could replace the high court but it has to be ensured that it is as efficacious as the high court and the guidelines given in the decision on the constitution of tribunal should be adhered to which was not done in the impugned legislation. The Parliament amended the Act with a provision for Competition Appellate Tribunal headed by a judge of the Supreme Court and removed the provision for a high court judge in the CCI.

Contentions have been raised that matters such as competition, regulation of market *etc.* require technical expertise for which a judge may not be the best person. Before the amendment of the Competition Act it was argued that regulation of

25 (2010) 11 SCC 1.

market requires experts in areas of economics, commerce *etc.* rather than judge who is generalists and may not necessarily possess the requisite skill and dynamism to be a successful chairperson of a regulatory body. However, the courts have consistently followed the principle laid down in *Sampath Kumar* case that bench of the tribunals should comprise of at least one technical member and atleast one judicial member.

Role of judges in appointment of members of tribunals

The issue became contentious in the case of *Brahmo Dutt*, in the case of *Union of India* v. *R. Gandhi* as well as in the still pending case of National Tax Tribunal. In *R. Gandhi* the Madras High Court expressed the opinion that the president/ chairperson of the tribunal should be appointed by a committee headed by the Chief Justice of India in consultation with two senior judges of the Supreme Court. In National Tax Tribunal it has been argued that although members of the National Tax Tribunal would be selected by the committee headed by the Chief Justice of India, but two other members of the selection committee would be part of the executive branch. Therefore the majority of the selection committee would represent the political or administrative branch of the government and opinion of the Chief Justice of India might not get due importance. Similar provision in the Competition Act was also challenged which was accommodated by removing the high court judge from the regulatory branch and providing for an appellate tribunal headed by the Supreme Court judge. In the case of *R. Gandhi*, the Supreme Court emphasized upon the constitution of tribunal in a manner that can inspire confidence of the public in its ability and independence. In line with the judgment of the court in *Sampath Kumar* case, the court emphasized that the technical members of the tribunal should also a have a position in the administrative hierarchy and expertise that can be compared to that of a high court judge of atlest five years standing.

IV Conclusion

A legal system is shaped according to the historical, legal, social, political and cultural context of a country. Indian legal system is no exception to this principle. It has developed and adjusted itself according to the social, political and legal history of the country. The growth of globalization is resulting in the fragmentation of the regulatory regime of the country. For a stable political and legal environment it is necessary that this regulatory regime should have coherence. To put in Dworkin's terms, a legal system not only comprises of rules but also of certain principles. It is these principles which provide coherence and identity to a legal system. These principles develop according to the social, historical, economic and legal environment of the country. If globalization has to result in peaceful integration of the world it has to accept this reality.

Role of judiciary and judges in regulatory bodies and tribunals is being resented

generally by the political parties as well as by certain thinkers. However, taking into account the Indian legal development after independence, it becomes necessary to include members of judiciary in the tribunals and regulatory bodies to ensure that the principles that have developed in the Indian legal system in due course of time are not easily meddled with. Although much criticized, the Indian pattern of including members of bureaucracy in regulatory bodies or tribunals is more beneficial in Indian circumstances as it would ensure that decisions are taken in more accountable manner. In Indian context experts may be beneficial in advisory capacity but their outlook may sometime be too radical or remote from the real Indian conditions. Often experts and academicians get too influenced by prevalent theories to be able to cross check it with socio-political and economic requirements of the country. Bureaucracy and judiciary on the other hand by nature are more cautious and conservative in their outlook.

Same stands true about tussle between the political branch of the state's governing system and the judicial branch. Although judicial role in regulatory bodies should be limited to ensure separation of powers and checks and balances, its role in the tribunals should be significant to ensure coherence in the legal system. However, to provide due justice to the principle of separation of powers and checks and balances it is necessary that public control of judicial appointments should be more than it is at present in the collegium system. Since retired judges are playing significant role in the constitution and working of regulatory bodies and tribunals as well, it is necessary that representatives of people should also have a role in the appointment of judges. The role should not be confined to the political executive only but also to representatives who are in opposition in the Parliament. It is necessary that persons who are appointed in the tribunals and regulatory bodies as well as those who appoint them should have an accountability and general affinity towards the Indian legal and political system to ensure that the fragmented regulatory regime remains accountable to the people of India and the vision of the constitution makers is maintained.

*Sheela Rai**

---

* Assistant Professor, Amity Law School, Amity University Rajasthan