



EVALUATION OF ADVISORY BODIES

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In a Welfare State all law becomes administration.¹ Orders controlling traffic, prices of foodstuff, release of foreign exchange or export of oilcakes are as much administrative as legislative. Under social legislation as social engineering goes on, the constitutional centre of gravity shifts from legislation to administration. Administration is invested with wide powers to tackle problems of social services which for sheer volume and mutability no parliament or law court can cope with. The administrator legislates. He adjudicates. He exercises discretionary powers that affect citizens materially, often with a great political impact. In his zeal he may presume to know ex-officio what is good for citizens. In his efforts to achieve immediately what he thinks to be the paramount purpose of Government, he may act arbitrarily. He comes to look upon constitutional limitations and guaranteed individual rights as obstacles on his way. The path of tyranny is often paved with best intentions and *trop de zèle*. Where cabinet consisting of political administrators forms the link between the executive and the legislative, it is not difficult to change laws to strengthen the hands of the administration and remove all checks and balances, all friction and all thorns. Even the amendment of the Constitution has not been difficult. Still no one would think of reducing the State to its old minimum functions of a policeman and a tax gatherer. The remedy lies in making administrative power responsible.

Different safeguards and restraints have been evolved. There is the judicial review of legislation, of delegated legislation, of actions of administrative bodies like local bodies and corporations, of discretionary acts of administrators and of disciplinary powers of the administration over its own employees. Decentralisation of power in setting up of local bodies, autonomous corporations, administrative tribunals, commissions and societies prevents concentration of absolute power. Legal responsibility is imposed by making the administration liable for compensation for acts of expropriation and by removing the State's

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1. Friedmann, *Legal Theory*—4th Ed. P. 332.



immunity from liabilities. There are administrative tribunals in other countries like *Conseil d' Etat* and officers like *Ombudsman* to control abuse, misuse or nonuse of administrative power. There are public inquiries for hearing before taking administrative action or decision, which are likely to curtail arbitrariness. But judicial review is inadequate. Administrative review is only a self-review. Legislative review is inevitably not deep in a parliamentary cabinet type of government. The greatest safeguard is popular control.

The administration must be not only for the people but also with the people. Advisory bodies of different types have thus emerged in the administrative process. They are set up to assist the administration in legislative, adjudicatory and executive functions. They help in understanding the psychology of the ordinary citizens. They furnish outside expert advice. They make a good forum for co-operation and collaboration, conciliation and compromise between different group interests and even different administrative departments. They may make good allies, where policy means choice and decision, with an inherent power to hurt and awaken resentment. They may be useful contrivances to restrain arbitrary exercise of administrative power.

There are different kinds of advisory boards or committees. Some are statutory. Some are creatures of executive orders or resolutions. Some consist purely of officials, some of officials and non-officials and some of non-officials alone. Some consist of technical personnel. Some are motley in nature. Some comprise of paid members. Some are manned by honorary workers.

A. P. Herbert writes,²

“There is that other splendid English thing
The men who work for nothing for the king.
All the Committees
Tribunals, Boards,
That clutter the cities
Without rewards,
.....
These do, or lubricate
The business of the State”.

Among the big advisory bodies, the Public Service Commission and the Law Commission, may be mentioned. There is the Advisory Board under s. 3 of the Preventive Detention Act, 1950, as a filter for

2. The Missing Show (A Pavilion of Royal Commissions).



executive action in detaining persons without trial. The proceedings are secret. But men of reputed impartiality with judicial training examine administratively the one sided materials placed before them on hearing the detinue only, if he so desires. There is statutory time-limit and so there cannot be delay. It is some sort of a procedural safeguard against arbitrary encroachment on personal liberty by the administration. Government is however bound to accept the opinion of the Advisory Board about absence of sufficient grounds for detention. This is better here than in England where the Home Secretary was free to reject such recommendation for release. In West Bengal the Board consists of 3 members ; one of them is a retired High Court Judge acting as the Chairman, on a honorarium for daily sitting, other two are members of the Higher Judicial Service as part-time workers unpaid for this particular job. In 1961, there were 41 sittings, 95 cases were reviewed.

Advisory bodies are a familiar feature of social welfare legislation. There are advisory committees to help in delegated legislation *e.g.*, the National Insurance Advisory Committee under the National Insurance Act, 1946 in England, which is to be consulted before regulations are passed. They consider objections to draft regulations after advertising. The Committee's report is laid before Parliament along with the regulations. There are similar provisions about consultation which such advisory bodies in England under the 'Trade Board's Act, 1918, Seeds Act, 1920, London Traffic Act, 1924, the Merchandise Marks Act, 1926, Mining Industries Act, 1926 and Road Traffic Act, 1930. Failure to consult such bodies might expose the instruments to attack of procedural ultra vires. No actual instance of such illegality is known as yet.

There are consumers' councils attached to public corporations in England to look after the interests of citizens in nationalised industries. Under s. 15 of the Industrial Finance Corporation Act of 1948, in India, the Corporation appoints one or more advisory committees to keep it informed of the circumstances of, conditions prevailing in and requirements of, particular areas and industries. For ultimately acquiring a company, there may be a transfer agreement as under the Calcutta Tramways Act, 1951. Under the Agreement, in clause 3 of the Schedule to the Act, there is the provision for an Advisory Committee consisting of a chairman appointed by Government in consultation with the company, two members appointed by Government and two members appointed by the company. The Committee considers matters affecting any proposed extensions of the undertaking,



alteration of route involving realignment of tracks, questions involving labour disputes, the fare schedule of the services and capital expenditure and communicates their recommendation to Government and the company.

There are many other varieties of such bodies to give counsel to modern administration in all its kingship. They differ from the Advisory Board under the Preventive Detention Act both in substance and procedure. Here the proceedings are open and not secret. Materials are collected here from a wide range of evidence including legal evidence of witnesses unlike the one sided nature of materials in support of detention under the Detention Act. Boards are often left to regulate their own procedure. Often the provisions of the Code of Civil Procedure relating to summoning and enforcement of appearance of witnesses and production of documents apply to proceedings of Advisory Boards of a fact finding character, where parties or the public are invited to place their cases. To quote A. P. Herbert on Royal Commissions

“ They ’ll summon witnesses by scores,
All the Societies, and all the bores.....
.....
Meanwhile, of course and this is fun
It’s clear nothing can be done.”²

Of the innumerable statutory boards and committees, a few are mentioned below. There is the Board under the Electricity Act, 1910, s. 35, constituted and governed by executive orders. There is the State Electricity Consultative Committee or the local Advisory Committee under the Electricity (Supply) Act, 1948, sections 16 and 17,— the one having its composition and functions defined by the statute mainly, the other by rules. There is the Advisory Panel under the Cinematograph Act, 1918, s. 5, consisting of persons qualified in the opinion of the Central Government to judge the effect of films on the public. They are to be guided by certain principles in judging films under s. 5B of the Act. There is the Advisory Committee under Cotton Cloth Act, 1918, s. 5, appointed by State Government consisting of persons having knowledge of the cotton or cotton cloth trade to assist Controller who can make general or special orders regulating or giving directions about manufacture or transport, distribution, sale or purchase or other dealings in cotton cloth. The Controller not accepting the majority opinion of the committee is to refer the matter to Government. There is the purely technical body like the Drugs Technical Advisory Board under the Drugs (Control) Act, 1940, s. 5.



It is after consulting such a Board that the Central Government may permit manufacture, sale, distribution of drug or class of drugs not of standard quality subject to specified conditions. Such a Board may make bye-laws.

There are the Forward Markets Commission and Advisory Committees under the Forward Contracts (Regulation) Act, 1952, sections 2 and 25. In the Commission, whose function among others is to advise the Central Government in respect of the recognition of, or the withdrawal of recognition from any association, there must be one member who has a knowledge of forward markets in India. The Coal Mines (Conservation and Safety) Act, 1952 and the Rules of 1954 provides for the appointment of different varieties of Advisory Committees. Rule 20 provides for the technical Advisory Committee (Mining), rule 21 for the Advisory Committee on stowing and rule 22 for Research Advisory Committee. For Labour Welfare, there are the Advisory Committees under s. 8 of Coal Mines Labour Welfare Fund Act, 1947 and the rules of 1949. There is the Advisory Committee under s. 4 of the Mica Mines Labour Welfare Fund Act, 1946 and rules of 1948.

It is difficult to reject the advice of such bodies in view of public opinion or political agitation, though national economy or other factors not traversed by them may force a contrary decision by Government. To avoid such embarrassment and obviate delay and difficulty in having an Advisory Committee to complete a report in respect of minimum wages of 30 lacs of agricultural labour, the West Bengal Government proceeded without such a body under the law. The real danger lies, however, in the apathy of the members or citizen advisors. Further, discretionary nomination may fail to achieve effective representation of the people or interests. By their protracted procedure and restrictive attitude, such advisory committees or bodies may delay and defeat the purpose of legislation *e.g.*, in the case of the Housing, Town Planning Act, 1909, in England, making of it a "master piece of the obstructive act."³

I proceed now to discuss some problems arising out of the working of Advisory Bodies under different varieties of social welfare legislation.

The Advisory Boards or Committees under Minimum Wages Act, 1948, shall consist of nominated representatives of employers and employees in the scheduled employments and independent persons. The

3. Ginsberg, *Law and opinion in the 20 h Century*.



employments are generally in unorganized and scattered industries e.g. 'Biri' making. Who will be nominated to represent employers or employees in such manufactories big or small scattered over villages and towns? Unless their representatives are there, the committee is not validly formed and fixation of wages on its advice by Government is bad in law.⁴ If they are taken from general bodies like the Indian National Trade Unions Congress they may not take much interest. Next who are independent persons? Generally, Labour Commissioner and Deputy Labour Commissioner were included as independent persons but the High Courts have decided that they are not so.⁵ They are committed to a policy, have departmental bias and cannot act as arbitrators adjusting interests of employers and employees.

Under the Plantations Labour Act, 1951, and West Bengal Plantation Labour Rules, 1956, there are two Advisory Boards for housing and medical facilities. In the Medical Board, besides representatives of employers and workers, there may be non-official nominees of Government. In the Housing Board, there may be officials and representatives only. Medical Board had two sittings only in 1958 and 1959. Nurses' training Scheme has been accepted as advised but has not materialised as the question of contributions from Plantations remains undecided. The Housing Board had 3 meetings in 1958 and one annually in 1959 and 1960. The standard and specifications of housing as recommended by the Board have been approved by Government and published in the Gazette. The question of exemption under rule 47 relating to construction of 8 p. c. of total requirement is important, as most of the plantations cannot furnish security even to take loan to the extent of 80% of the costs from the Government to make the constructions. The matter was left by the Board in 1960 to the Chief-Inspector, the Chairman of the Board who is also the Departmental Secretary, to be satisfied after scrutiny of the application for recommending to Government on consideration of overall economic position and performance of the garden. This is excessive delegation though convenient in the absence of more sittings of the abdicating Board. Rule 71 empowers the State Government to issue necessary instructions if there be any difficulty in the working of rules 47-70 but so long as the Board functions its advice cannot be substituted by the advice of its chairman alone. The delegation of

4. *N. K. Jain v. Labour Commissioner*, 1957 Raj. 35.

5. *K. hinoor Pictures Ltd., v. State of West Bengal*, 65 C. W. N. 1253. *Naruttamas v. P. B. Gowarikar* A.I.R. 1961 M.P. 182.



fact finding to a smaller committee by the Board like other advisory bodies is permissible, so long as the final report or advice to Government is of the Board.

Under the Bengal Vagrancy Act, 1943, there is the Board of not less than ten members to advise the State Government on all matters relating to control of vagrancy and administration of the Act. It had six sittings in the year ending with March, 1958. It was reconstituted by an order dated Feb. 12, '58 with effect from Nov. 18, '57. Its first meeting was held on March 12, '58. According to the Annual Report, the Chairman and members continued to take lively interest in all matters relating to vagrancy. There was no eagerness in constituting the Board in time, and interest notwithstanding, positive achievement remains doubtful.

This delay in formation of advisory bodies is almost chronic. There is an Advisory Committee for selection of candidates for appointment as Muslim Marriage Registrars under the rules framed under section 24 of the Bengal Mohammedan Marriages and Divorce Registration Act, 1876. The last Committee was formed in December, 1954. The term is 3 years.

There is the Visiting Committee attached to the School at Berhampore under the Bengal Borstal Schools Act, 1928. It is the duty of the visiting committee (a) to advise on all projects for the improvement of the School, (b) to advise the State Government on the drafting of the rules for management of the School and of any alterations therein, (c) to satisfy themselves that proper records of the inmates about to be discharged are made available to the Association for after-care and to report cases of neglect to the Inspector-General of Prisons. When the Superintendent is of opinion that any inmate should be released on licence under section 12 of the Act he is to place before the visiting committee full particulars regarding the past history, character and conduct of the inmate. The case of every inmate whose release is due within three months is to be similarly placed. The committee is to sit at least once a month to consider such cases. In 1961, 23 cases were placed before it, 7 cases were deferred or rejected and 15 were recommended for release on licence. The District Magistrate and the Chief Medical Officer are *ex-officio* members and there are five non-official visitors of whom the After-Care Association may nominate three. The Committee does not appear to have done anything except consideration of cases. In planned after-care, the most important factor for success lies in better discrimination by School Visiting Committee in selecting the right type of lads for licence. They may be



furnished with Parole Prediction Charts. In classification and individualisation the Committee may be useful. Visitors in England contact the homes of lads. Some probation officers may be employed to help the Committee. With reference to Advisory Revising Boards of Central Jails, it is suggested that District Magistrate and Police should not be associated with them. There should be full-time Boards and the release may be left to the Boards with advice of probation staff.⁶ Similar principles may be applied to such visiting committees.

There are many non-statutory Advisory Boards or Committees *e.g.* the Standing Labour Committee, Industrial Committee on Plantations, Central Committee on Employment with State Employment Advisory Committee in the Departments of Labour. They may and do make valuable suggestions. Wage Boards are being set up by executive order for tea, jute, cement, cotton etc. The Standing Labour Committee has proposed legislation for setting up Wage Boards. Although advisory, it may be mentioned that even before the final report some ad hoc recommendation of a Wage Board for an interim increment is accepted by Government Industrial Committee on Plantations, suggests amendment of the Tea District Labour Act and also the Composition of Central Wage Board for the Plantations. A Sanskrit University has to be started. The administrator in the Education Branch appoints an Advisory Committee first to examine the proposal and report for Government decision prior to legislation. There are advisory bodies of experts, of officials and non-officials. There is the advisory body composed solely of top ranking officials *e.g.* W.B. Evaluation Advisory Board formed by a resolution. Its functions are (i) to provide advice and guidance to the programme evaluation organization of the state in selecting problems for investigation, in planning and designing evaluation studies, through administrative, intelligence, sample surveys, case studies, over-all qualitative analysis and costing on modern lines and in presenting the result of such studies, (ii) to assist the State Government in developing facilities for evaluation and training and (iii) to advise the State Govt., generally in the evaluation of development programmes. Such a body, evaluating actual achievements for the time and money spent, is more or less like putting heads together by high executives to facilitate co-operation among different departments for policy making by the political administrators. The people have no place here in such an Advisory Body.

I conclude with a problem arising out of functioning of a non-statutory advisory council. The participation of outside experts and

6. *Social Legislation* p. 397 (published by the Planning Commission in 1956).



citizens is a welcome feature of democratic administration. But the advice of such a body leaves a quandary. Take for example the Food Advisory Council in Assam whose advice in pursuance of the decision of the National Development Council led the Government to direct that the right of monopoly for procurement of paddy might be given to the Assam Co-operative Apex Marketing Society Ltd., under the Assam Food Grains (Licensing and Control) Order of 1958, promulgated in compliance with the provisions of the Essential Commodities Act, 1951. The administrator could not ignore the directions. A monopoly was granted. Others were refused licence on that ground. The statute provided how and to whom licence could be granted. In striking down the order as violative of Arts. 14 and 19 of the Constitution, the Supreme Court observed :

“ Before we part with the case we must express a deep concern over the manner in which the State Government or its officers have issued instructions in the matter of granting of licences, instructions which clearly enough are not in consonance with provisions of law governing the grant of such licences. We doubt the wisdom of issuing executive instructions in matters which are governed by provisions of law ; even if it be considered necessary to issue instructions in such a matter, the instructions could not be so framed or utilised as to override the provisions of law. Such a method will destroy the very basis of the rule of law and strike at the very root of orderly administration of law ”.⁷ This reminds one of the observations of Justice Black Dissenting from the majority view in *Brannan v. Stark*⁸ disapproving an allowance to Milk Producers’ Co-operative under the Agricultural Marketing Agreement Act of 1937.

“ I feel deeply that the Court’s action in this case checkmates the congressional will, unjustifiably inflicts a grievous wrong on co-operatives and plays havoc with a national farm policy that is working peacefully and well. The judiciary should not cavalierly throw a monkey-wrench into its machinery ”.

The administrator, with executive instructions on advice of advisory bodies on the one hand and the statutory procedure on the other is placed between the Scylla of judicial chastisement and Charybdis of official disfavour. The unwary advice of the Advisory Board or Council may founder like a frail vessel on constitutional rocks.

7. *Manna Lal Jain v. The State of Assam* A.I.R. 1962 S.C. 386, /393.

8. 342 U.S. 451.



We see thus the evolution of the advisory bodies in the administrative process. We see them at work in law and out of law. They may be usefully employed by Govt. They may usefully employ themselves. But it is no good littering the country with moribund advisory bodies of one sort or the other screening arbitrary decisions from public view and sponging on public money or time. Appleby⁹ has seen in the administration the operation of an orchestra capable of wide variations responsive to audience perception and reaction. Dunnill¹⁰ has seen in it the awe-inspiring spectacle of a procession of state elephants directed by cabinet gentlemen on the Howdah and prodded by mahouts and attendants including parliamentarians. With advisory bodies more colourful than useful in dispensing administration, one might easily be reminded of show-bottles of a dispensing chemist. If they are to play any role in the Indian Orchestra, one would like to see them in the dramatic representation of the *Kanada Rag* with its drums of victory and grunts of the subdued elephant, as presenting the tusks of the elephant to the sovereign on the throne, here the people of India.*

9. *Morality and Administration.*

10. *The Civil Service.*

* Adapted from the author's address on Evaluation of Advisory Bodies before the Committee on Administrative Law of the Third All India Law Conference held at New Delhi in August 1962.