ADMINISTRATIVE TRIBUNALS IN MODERN DEMOCRATIC STATE

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I associate myself with the wholehearted welcome given to you by our President, the Chief Justice. This is the first Seminar which is held by the Indian Law Institute and let me hope that it will be the forerunner of many more which will carry research in the different problems of law which face this country and may be helpful in affording solutions to many of the complex problems which face our Government and the courts, as well as the practitioners and teachers of law.

The learned Chief Justice has already told us the problems of administrative law which we are here to discuss and consider and for which we must seek a solution. The central problem, however, as has already been stated before the jurists of the free world as before this seminar, is how to adjust legal practice and jurisprudential thought in a free, democratic state like ours, with the administrative needs of a welfare state. In other words, in terms of our Constitution, the problem is how to harmonize the claims of justice mentioned in the Preamble of our Constitution—' Justice—social, economic and political ' with ' liberty of thought, expression, belief, faith and worship ' ; the claims of ' equality of status and of opportunity ' with ' dignity of the individual. ' A modern State like ours, therefore, can no longer be content with the rudimentary functions of the old *Laissez-faire* State. It has a much wider concern for the citizens as it has assumed a comprehensive social responsibility towards them.

In view of the extended range of the functions of the State, no jurist will maintain, I am sure, that justice in the comprehensive sense of social, economic and political justice, could be exclusively administered by the ordinary law courts. In fact, the judicial technique is scarcely fitted to determine the problems, the solution of which depend more upon social policy than legal precepts. Specialised tribunals and administrative agencies who share the adjudication of disputes under modern conditions have therefore come to stay and are no longer to be viewed as undesirable intruders.

Administrative tribunals, no doubt, are often more suited to discharge the functions in this sphere, even when by their very nature they are of a judicial or quasi-judicial character. Justice administered in this way, as Dean Pound says, has the merit of directness, expedition, freedom from the bonds of purely technical rules and the consequent ability to give effect to the legislatively expressed policy. The

procedure in some cases might also prove cheap and flexible. In view of these advantages over the law courts, administrative tribunals have been naturally assuming increasing importance in matters concerning social and economic affairs.

Apart from the indispensability of such tribunals in a modern State, however, their increasing popularity is due to several factors which we cannot ignore. Modern governments are impatient of delay as also of control. Often they do not share the view of Frederick the Great, who said: 'Woe to the State which is afraid of the independent judge.' There is also the popular revulsion to the over-formalism of justice as dispensed by the ordinary courts of law; the law's delay induce in the common people the mood of Hamlet whether 'to be or not to be.'

In spite of this growing popularity, the problem in a free democratic State, as I envisage it, is how to invest justice dispensed by the tribunals with impartiality, certainty and predictability. This problem gives scope for extensive research.

I have some experience of the administrative tribunals in our country. By their very nature, they are often manned by officers whose pay, prospects and promotion depend upon the good-will of the authorities. They lack the detachment where affairs of the Government are concerned. They are afraid that their decisions will be judged by their superiors, not by their merits alone, but by the way they further the policies of the government, if not the wishes of those who speak in its name. Such decisions, therefore, cannot possibly be given finality, so commonly given to them in continental Europe; if it is given, it will have serious repercussions on our infant democracy. That is a question which I submit, deserves to be seriously pondered over by this seminar.

To accept the inevitability of such tribunals is one thing; to disregard their inherent weakness is another. In the nature of things, the merits of efficiency and successful execution of policy are not achieved by these tribunals without developing a tendency to encroach upon the fundamental values for which a democratic State stands, *viz.*, the rule of law and fundamental rights of a free man, without which human dignity cannot be preserved.

The Franks Committee thus states the difference:

"The rule of law stands for the view that decisions should be made by the application of known principles or laws. In general, such decisions will be predictable, and the citizen will know where he is. On the other hand there is what is arbitrary. A decision may be made without principle, without any rules. It is therefore

unpredictable, the antithesis of a decision taken in accordance with the rule of law."

It is therefore of the highest importance that a code of judicial procedure for such tribunals should be devised and insisted upon. The policy of Government also should be expressed in the form of regulations capable of being administered by an independent tribunal. What form such regulation should take is a matter which the seminar might well consider.

Unless such safeguards are provided, a democratic State would stand the danger of being converted into a 'Power State' by insidious encroachments. According to the Soviet theory, for instance, cases are decided not according to well-defined precepts, but according to 'healthy public sentiment or socialistic conception of justice',—which in the case of that juristic system means no more and no less than the attitude of the party bosses on the problem for the time being. The rule of law is thus replaced by the will of the ruler.

This is a family trait in nations drifting away from the rule of law. When democratic Germany was being transformed into a National Social State, a new legal theory was propounded to suit the omnipotence of executive power which, to quote Schwartz, enunciated that the 'Judge who does not recognise the needs of the hour will be removed from the office'—of course, by Adolf Hitler. In support of this theory, Frank, the Nazi Minister of Justice, stated: 'Service to the vital necessities of our people, not service to the theories, is the ideal of the German guardians of law.' And an admiring and grateful people thanked their rulers for rescuing policy from law, a policy which ended in the complete extinction of human dignity in Nazi Germany.

Thinking in terms of a democratic State, all lovers of freedom, and particularly the lawyers, must therefore recognise that an undue emphasis on policy and on speedy disposal of cases by experts exposes administrative tribunals to the danger of ignoring legal and constitutional limitations. That is why our Constitution, without taking a narrow view of justice or being hostile to the idea of administrative justice outside the ordinary law courts, wisely contemplates the existence and establishment of administrative tribunals. At the same time, it provides for superintendence, control and review by the courts by virtue of Articles 32, 136 and 226 of the Constitution, leaving to the legislatures to determine by law in what manner and in what respect the court should exercise the power.

This supervisory jurisdiction enables the courts to ensure the following: whether an administrative tribunal acts within the powers

conferred by the legislature ; whether natural justice, which the Supreme Court of the United States of America once described as the 'fundamentals of fair-play,' has been respected ; whether there has been an error of law apparent on the face of the record of the decision ; above all, whether the legislative or administrative action is *ultra vires* of the Constitution or violates the fundamental rights on which the liberty of the individual is based. The position is well defined by the Attorney-General's Committee in England: "We expect judicial review to check, not to supplement, administrative action." By such review alone is the supremacy of the law maintained in a democratic State.

As students of administrative law, we have to recognise that tribunals and administrative procedure are essential to modern India. At the same time, it would, in my opinion, undermine the democratic structure if administrative methods of adjudication are considered convenient alternatives to the courts of law. The Franks Committee has recommended the ratio to be followed in such cases: where adjudication involving the administration and the individual citizen has to be carried out, preference should be given to the ordinary courts of law, rather than to a tribunal, unless there are *special reasons* which make a tribunal a more appropriate forum.

Further, I would like the seminar to explore certain factors, which to me appear important: firstly, whether there should be a code for administrative tribunals which could prevent them from disregarding the fundamental values of individual liberty and fair administration of justice ; secondly, whether there should be a high-power council in the nature of the Lord Chancellor's Council of Tribunals recommended by the Franks Committee to supervise the constitution and functions of the tribunals ; thirdly, whether it is necessary that the policy which the tribunal is expected to carry out should be expressed in the form of regulations so that the tribunal may, in coming to the decision, act in a normally predictable manner; fourthly, what provision should be made to prevent a tribunal from becoming an appendage to the ministry of the department to which its functions appertain.

These provisions are necessary, for, in spite of the powers of judicial review which our constitution has provided, the constitutional writs of *mandamus*, prohibition and *certiorari* are in many cases impotent to secure a proper review of administrative decisions. The constitution of the tribunal also requires research and study.

In view of the experience which I have had of appearing before tribunals of several sorts, I have come to the conclusion that the role

of the expert in such tribunals, though a vital one, is being over-emphasized. The mind of the expert moves in a specialized groove ; it is not trained either to ascertain or marshall facts or to draw appropriate inferences. He has a horror of giving reasons. He has rarely an open mind. His specialized experience dictates a restricted outlook. He has the intolerance of the man in the street for legal rights. And it is only when the facts and the law, in their broader perspective, are subjected to the trained scrutiny of the presiding chairman—if he is a sitting or a retired judge—that the tribunal is able to take a dispassionate view broader than the professional bias of the expert or the administrator.

The administrative law of France is of little use to us. It is a peculiar solution evolved by the French people since the Napoleonic times. It is the product of their history and local genius, as also of their peculiar administrative structure. The administrative courts of France, which are super-courts on occasions, scrutinize even ministerial acts. They are entirely unsuited to the pattern of parliamentary democracy evolved in U.K., U.S.A., the Dominions and India.

In England, it seems that the probe for some fundamental principles and institutional or other means of adjustment is being vigorously continued. The Lord High Chancellor's Committee on Administrative Tribunals and Enquiries, appointed two years back under the chairmanship of Sir Oliver Franks, has recently made some important and far-reaching recommendations. The reaction of the British public and of the British Government to these recommendations is yet to be seen.

In the United States, an attempt in the same direction was made through the passage of the Federal Administrative Procedure Act of 1946. The operation of the Act has revealed certain other aspects of the situation and has attracted mixed criticism in the United States and abroad.

We, in this country, face today the same problem of adjustment of new values with the indispensable old ones. I have, therefore, ventured to place before you what I consider the broad frontiers within which our quest in the seminar would lie. Let me hope that this Conference will help us to take a major stride in solving the problem.
