CHAPTER I

INTRODUCTORY

If Dicey were alive today he would have been greatly hurt in his pride with which he spoke about the virtues of regular courts monopolising the business of adjudication of disputes between the administration and the individual in England. He spoke with a sense of contempt about the dichotomy between the regular courts and the administrative courts of the French system. He thought that the English system afforded a much better protection than the French system and that there was denial of the rule of law in France. Later studies have, however, proved otherwise. Brown and Garner,[1] while comparing the British system with the French system, say :

> . . . the authors see in the French system undoubted advantages, especially the administrative expertise of those called upon to sit in judgment upon the administration, the simplicity of the remedies, the process of written instruction permitting an intimate dialogue between court and administrator, and, most salutary of all, the depth to which the court may probe into administrative action yet without trespassing on policy or usurping the administrator's role as the ultimate arbiter on 'opportunité'. In all these respects the *droit administratif* is strong, the English law weak ; and while the Conseil d'Etat has shown its capacity to police intelligently the complex administration of the modern state, the English Courts have still to prove their ability to do so.[2]

About the general confidence of the people in the French administrative courts, they say :

> Confidence in the administrative courts is shared by administration and public alike; the members of the Conseil d'Etat are not only judges but they are also fully trained in the expertise of administration, and there is considerable movement between posts inside and outside the Palais-Royal. In its relations with the public the Conseil d'Etat commands surpris-

1. *French Administrative Law* (1973).
2. *Ibid.* at 161-62.

> ingly fully press reporting of its activities and enjoys a general respect comparable with that shown to the High Court Bench in England.[3]

Dicey was never entirely correct even during his times. While he was denying the existence of administrative law in England his contemporary Maitland was emphasizing its emergence.[4] The advent of the welfare state to which the state in England became committed gave a boost to administrative law and the system of administrative adjudication in that country. A special feature of the English administrative law now is the tribunal system, *i.e.*, adjudicatory bodies wherein the minister has no responsibility for the decision. The magnitude of the role of tribunals in the adjudicative process will be clear from the fact that there are about 2,000 bodies which come under the general supervisory jurisdiction of the Council on Tribunals.[5]

In India, too, after 1947 innumerable quasi-judicial bodies and a number of "tribunals" grew as a result of the vast proliferation of administration regulating human activity in multifarious ways, distributing bounties and benefits, and levying taxes. All the litigation generated by these factors could not surely have been handled by the system of ordinary courts due to several factors, necessitating the growth of administrative adjudication. The Constitution though recognised the existence of these bodies by providing a method of judicial supervision over these bodies through articles 32, 136, 226 and 227, yet did not make any provision for the establishment of these bodies. Only recently the Forty-second Amendment to the Constitution, however, makes a change in this scheme by empowering the legislature to create tribunals in the areas of civil service ; levy, assessment, collection and enforcement of any tax ; foreign exchange, import and export across customs frontiers; industrial and labour disputes; land reforms by way of acquisition by the state of any estate, etc.; ceiling on urban property; elections to the legislature; production, procurement, supply and distribution of foodstuffs and such other goods notified by the President to be essential goods including control of their prices. Even offences in relation to all these matters could be tried by these tribunals. The Amendment also empowers the legislature to exclude the jurisdiction of all courts with respect to all or any of the matters falling within the jurisdiction of these tribunals (including the supervisory jurisdiction of the High Courts under article 226), except that of the Supreme Court under article 136. It seems, therefore, now we plan to enter the era of tribunals in a big way. Already a number of administrative tribunals function in the country and every now and then tribunals are created by statutes to

3. *Ibid* at 153.
4. *Constitutional History of England* 501 (1908). See M. P. Jain and S. N. Jain, *Principles of Administrative Law* 12-14 (1973).
5. See *The First Report of the Council on Tribunals* 1 (1960).

deal with specific problems.[6] The Forty-second Amendment may give an added momentum to the tribunal system.

This, however, does not mean that we are moving towards th French system. There are a few fundamental differences between our tribunal system (existing and proposed) and the French system. Firstly, in France there are separate systems of courts for private law litigation (disputes between individuals *inter se*) and public law litigation (disputes between the administration and individuals). The two systems exist side by side without coordination or assimilation of the jurisprudence developed by them both. However, under the common law system so far as the courts keep their supervisory jurisdiction over tribunals there is assimilation of the jurisprudence developed by tribunals with the general jurisprudence of the country. Secondly, the administrative courts of France have general jurisdiction over administrative litigation, unlike the specialised jurisdiction of the tribunals in the common law system. Thirdly, in the common law system, administrative tribunals have also been created to decide disputes of private nature, *e.g.*, the rent tribunals or the industrial tribunals. This is, however, not so in France. Thus courts deciding issues between landlords and tenants are essentially civil in France. Fourthly, "the largest single group of French 'administrative tribunals' are one which we [common law lawyers] should classify rather as domestic tribunals, namely the disciplinary organs of the various public professions such as medical practitioners, architects, dentists, pharmaceutical chemists and all levels of the teaching profession . . . . Over all these specialised administrative jurisdictions the Conseil d'Etat exercises supervision by way of cassation."[7]

After the euphoria surrounding the Forty-second Amendment has subsided and the calm descended (which it has by the time of publication of this small monograph), careful thinking needs to be given to the following cardinal questions: What types of tribunals do we want? What types of matters should be assigned to tribunals? What should be the scope of review over their decisions? Should any administrative mechanism be developed to have general supervision over tribunals? Finally, should the supervisory jurisdiction of the High Courts over tribunals be dispensed with? It was a political decision (which was relatively easy to take, especially in the context of the rather limited national debate around the constitutional changes), as to what should be

6. A few of the statutes enacted during the last few years which provide for establishment of tribunals are: the Urban Land Ceiling Act, 1976; the Textiles Committee (Amendment) Act, 1973; the Constitution (Thirty-second Amendment) Act, 1973; the Smugglers and Foreign Exchange Manipulations (Forfeiture of Property) Act, 1976. See also Appendix I, *infra*.
7. Brown and Garner, *supra* note 1 at 27-28.

the future trend of our legal institutions for adjudication of claims and controversies (as against the courts), but the above questions raise complex issues which are certainly not so easy to resolve. It was perhaps these complexities which led the draftsmen of the Forty-second Amendment to do no more than *enable* the legislature to create tribunals in certain areas to the exclusion of the jurisdiction of the courts (except 136 jurisdiction of the Supreme Court).