Administrative Adjudication: Meaning

Modern public administration has taken a leaf not only from the legislature’s book but also from that of the judiciary. Administrative Adjudication is the latest addition to the administrative techniques. Administrative Adjudication means the determination of questions of a judicial or quasi-judicial nature by an administrative department or agency. Like a regular court, administrative bodies hear the parties, sift evidence, and pronounce a decision in cases where legal rights or duties are involved.

In the words of Prof White, “…administrative adjudication means the investigation and settling of a dispute involving a private party on the basis of a law and fact by an administrative agency.” Prof Dimock defines Administrative Adjudication as the process by which administrative agencies settle issues arising in the course of their work when legal rights are in question.

Blachly and Oatman describe administrative tribunals or Administrative Courts as, “authorities outside the ordinary court system which interpret and apply the laws when acts of public administration are attacked in formal suits or by other established methods.”

The agencies for administrative adjudication may comprise:

(i) The minister;
(ii) The head of the department (permanent);
(iii) A ministerial tribunal;
(iv) A special committee or commission like Independent Regulatory Commissions;
(v) Specialized courts of law;
(vi) Single member tribunal;
(vii) Composite tribunal. Dr. Robson has thus remarked, “One of the most striking developments in the British Constitution during the past half century has been the acquisition of judicial power by the great departments of the state and by various other bodies and persons outside the courts of law.”

The main point of difference between administrative adjudication and administration of justice by the courts is that administrative justice is administered by administrative agencies instead of
regular courts. The administrative courts follow the principles of natural justice and common good whereas the courts of law follow the settled principles of law and evidence. The administrative courts are manned by officers belonging to the executive branch whereas the judges are the members of the judiciary independent of executive control.

**Kinds of Administrative Adjudication:**

*Administrative adjudication may take the following forms:*

(i) Advisory administrative adjudication which means that the power of final decision is vested in the head of the department or other authority.

(ii) Administrative Adjudication may constitute a part of the regular functions of an administrative officer.

(iii) Administrative Adjudication may be combined with a legislative administrative process.

(iv) Regular suits may be filed against administrative decision.

(v) Administrative Adjudication sometimes applies to licensing activities.

(vi) Administrative Adjudication may be adopted for the settlement of claims.

(vii) Administrative Adjudication may sometimes serve as a condition precedent to the perform-ance of an administrative act.

**Causes of the Growth of Administrative Adjudication:**

1. **A By-Product of the Welfare State:**

   The Administrative Tribunals rendering administrative justice constitute a by-product of the welfare state. In the 18th and 19th century when ‘laissez’ faire theory held sway, law courts emerged out as the custodian of the rights and liberties of the individual citizens.

   At times they protected the rights of the citizens at the cost of State authority. With the emergence of welfare state, social interest began to be given prece-dence over the individual rights. The existing judiciary failed to uphold the new system.

   In the words of Robson, “with the extension during the nineteenth and twentieth centuries of the functions of the government to one new field after another, with the progressive limitation of the rights of the individuals in the interests of the health, safety and general welfare of the community as a whole, with the development of collective control over the conditions of employment and manner of living and the elementary necessities of the people, there has arisen a need for a technique of adjudication better fitted to respond to the social requirements of the time than the elaborate and costly system of decision provided by litigation in the courts of law.”
In brief the new system of administrative adjudication suited new social ends espoused by a welfare state. It proved a potential instrument for enforcing social policy and legislation.

2. Suitable to Industrialized and Urbanized Society:
Administrative Adjudication suits modern industrialized and urbanized society as well. The latter necessitates positive and prompt action which is possible if the problems arising out of the new order are not left to the mercy of ordinary courts.

In the words of Robson, “Parliament did not overlook the courts of law but they found the possibility of setting up new organs of adjudication which would do the work more rapidly, more cheaply and more efficiently than the ordinary courts, which would possess greater technical knowledge and fewer prejudices against government, which would give greater weight to the social interests involved and show less solicitude for private property rights which would decide with a conscious effort at furthering the social policy embodied in the legislation. This prospect offered solid advantages which induced the legislature to extend in one sphere after another the administrative jurisdiction of governmental departments so as to include judicial functions affecting the social services.”

3. Ordinary Law Courts not Competent:
(i) Law courts, on account of their elaborate procedures, legalistic forms and attitudes can hardly render justice to the parties concerned in technical cases. Ordinary judges brought up in the traditions of law and jurisprudence is not capable enough to understand technical problems which crop up in the wake of modern complex economic and social processes.

Only administrators having expert knowledge can tackle such problems judiciously.

In the words of White, “Another important consideration was the desire to secure adjudication by a body of experts in the subject-matter of litigation rather than by a body of experts in the law.” Lord Summer also held a similar opinion. According to him, the common law judges are “ill-equipped to weigh the merits of one solution of a practical question against another.”

(ii) The expedient adopted by the courts is to examine the experts of the subject. The expert witnesses are only too often hired assassins of the truth; and even if they were just men made perfect the assimilation of technical facts at short notice, through the testimony of another individual, is a different thing from a first-hand knowledge of the groundwork based on personal experience or training.
In the recent past in a decision given by Madras High Court, it frankly admitted that it knew nothing of the subject. That clearly reflects the handicaps of regular judiciary.

(iii) The court procedures when tested by times are found wanting. Litigants have to face exasperating delay because of crowded dockets of these courts and an excessive right of appeal to the higher courts.

(iv) The justice in these ordinary courts has neither been speedy nor cheap. It has been dilatory or cumbersome. Hence an improvement was contemplated in administrative courts.

(v) Ordinary courts were under too much strain. Hence they were to be relieved of the strain.

Dr. White has graphically summed up defects of the ordinary courts which caused aversion to them and a swing towards administrative courts, in these words “For a half century, there had been growing dissatisfaction with the court procedure. Litigants were faced with exasperat­ing delay… they found the technical rules of evidence sometimes inappropriate and conducive to dispute among lawyers rather than to a just and early settlement; they were dubious about the value of jury in many kinds of cases; and the cost of judicial action including Attorney’s fees sometimes reduced victory to a hollow success.”

**4. Safety to be ensured:**

A good number of situations are such as require quick and firm action otherwise health and safety of the people may remain in jeopardy. For instance, ensuring of safety measures in coal mines, preventing of illegal transactions in foreign exchange, and unfair business practices necessitate prompt action.

Such cases, if to be dealt with in the ordinary courts of law, would cause immense loss to the state exchequer and undermine national prestige. However, the administrative courts presided over by the experts would ensure prompt and fair action.

**5. Standards of Conduct to be devised:**

Besides the points suggested above, the main business of the ordinary courts is to settle disputes and not to set standards of human behaviour. It is for the legislature to set such standards. The legislatures are not in a position to prescribe in exact details the pattern of conduct. This power is delegated by the legislature to the administration.

The disputes arising out of the enforcement of these standards can be properly tackled by the Administrative courts alone. For instance, the factory rules provide certain safety measures. A workman working in the factory gets injured. Has he been injured due to bad workmanship or
non-compliance of the safety measures by the management can be decided only by the administrative expert rather than an ordinary judge?

The sporadic rise of administrative adjudication was, however, widely denounced by the freedom-loving people of the democratic countries. In England, parliament was compelled to appoint a Select Committee on Ministers’ Power in 1931 to go into the question. The Committee was, however, of the view that the system of Administrative Adjudication was not inconsistent with the Rule of Law. Still they suggested certain safeguards to meet the dangers of the practices?

Advantages of Administrative Adjudication:

(a) Cheaper: Administrative justice is cheaper comparatively. In suits, lawyers may or may not appear. No court fees are to be paid, no solicitors are to be instructed, no counsel is to be briefed, no pleadings are to be printed, no affidavits are to be sworn.

Robson opines that it is also cheaper from the point of view of the state, if the relative salaries of the official members of the administrative tribunals and the judges are taken into consideration.

(b) Speedy Justice: Justice by the Administrative Tribunals is speedy. Oral hearings are dispensed with. Intricate trial procedures are abandoned. Vexatious rules of evidence are conspicuously absent.

(c) Adequate Justice: In the fast changing world of to-day, administrative tribunals provide the most effective means of rendering fair justice to the individuals. Lawyers steeped in the old traditions and philosophy of law and environed by procedural dialectism generally discernible in the ordinary courts of laws, can hardly appraise the needs of the modern welfare society. Hence administrative courts alone can render adequate justice.

(d) Burden of Courts Lessened: The system provides the much needed relief to the ordinary courts of laws which are overburdened with varied types of ordinary suits. Many of the disputes coming before the ordinary tribunals are of ordinary nature and do not warrant the attention of highly paid judges or the necessity of elaborate procedures and rules of evidence. Such cases can easily be referred to these tribunals.

(e) Useful in Developing Democracies: In developing democracies which experiment with new social and economic programme, ordinary courts would be completely misfit. All the disputes arising out of such programmes will get struck, thus giving a setback to the programme itself unless we switch over to the Administrative Courts.
(f) **Fixing of Standards:** The disputes which come for adjudication before the Administrative Tribunals are not concerned with the proprietary or other claims of the disputants but the fixation of public standards of performance. Such standards of performance can be determined only by these administrative and not ordinary courts.

For example, a dispute concerning an injured employee’s claim for compensation from the employer is more a problem of enforcing standards of safety in the factory than a mere dispute of rights between the employer and the employees. Obviously ordinary courts are not capable of undertaking such work.

(g) **Flexibility:** The legalistic approach to problems is static, un-progressive and individualistic. An ordinary court intervenes only when a conflict arises. It moves in the direction of controversy alone. It is not concerned with the problems arising from the decisions the complications following such decisions and the other inter-relations involved.

The fast changing society necessitates a progressive attitude and an adaptation of policies to meet changing conditions.

Administrators formulate policy, develop administrative techniques, work out new methods of adjusting controversies, check and modify their standards in the ordinary functions and difficulties confronting everyday life and adjust their decisions and attitudes. Thus conditions fostering controversies are removed through such a type of flexibility.

**Disadvantages of Administrative Adjudication:**

Though these advantages of Administrative Courts are quite impressive, yet they have been target of criticism at the hands of certain critics like Dicey, Lord Hewart, Allen and K M Munshi. Lord Hewart calls administrative adjudication as ‘organised lawlessness’.

Dicey considers it derogatory to the rule of law. An Editorial Note in Times of India describes it a ‘Martial Law’. K.M. Munshi while realizing the indispensableness of Administrative Courts opines, “… it would in my opinion undermine the democratic structure if administrative methods of adjudication are considered convenient alternatives to the court of law.”

Moreover, such tribunals are not bound by precedents. They are free to go against the existing precedents. This makes administrative law flexible and enables administrative tribunals to further a policy of social amelioration unhampere by legal rigidities.

Robson has well summed up the advantages of Administrative Adjudication in these words, “cheapness, and speed with which they usually work; the technical knowledge and experience
which they make available for the discharge of judicial functions in special fields; the assistance which they lend to the efficient conduct of public administration; and the ability they possess to lay down new standards and to promote a policy of social improvement.”

Frederick and Miriam are also of the same view, “Administrative courts not only relieve the ordinary courts of a great bulk of work, but also serve purposes foreign to the latter…The informal and inexpensive procedure before most administrative courts and the possibility of specialization either in separate courts or in chambers are generally considered very desirable…The weight of expert opinion considers the continental system more satisfactory than the separate administrative courts practically always subject in certain respects to the judicial courts which are found in England and the United States. There IS no doubt that the administrative courts of some kind are a necessary and increasingly important part of modern governmental machinery.”

**Main defects of the administrative adjudication:**

(a) **Violation of Rule of Law:** It violates the rule of law-the cornerstone of democracy. Rule of Law stands for equality before law, supremacy of law and due procedure of law over governmental arbitrariness. The administrative tribunals, with their separate law and procedure often made by themselves, seriously circumvent the celebrated principles of Rule of Law.

(b) **Principle of Natural Justice Undermined:** Administrative Adjudication violates the principles of natural justice, viz., no man should be a judge in his own case; no party ought to be condemned unheard; party should know the reason for the decision. The Administrative courts do not often give the reasons for decision.

The quality of investigation is also poor. Free from the trammels of judicial procedure, administrative courts depend on unsworn written statements, unsupported by verbal testimony given on oath and subjected to cross-examination. Neither the documents are not sent for nor are witnesses compelled to attend. Thus justice remains at stake.

(c) **Limited Right to Appeal:** The right to appeal from the decisions of these courts is either very limited or is non-existent. The opportunity for judicial review is restricted. This is apt to lead to miscarriage of justice.

(d) **Lack of Publicity:** The rules of procedure of administrative courts do not provide for the publicity of proceedings. Provision of oral hearing may not be there or if it is there it may not be open to the public and the press. Reports of the cases so decided may not be publicized.
Even the statement of reasons on which they are based, may not be given. In the absence of proper publicity, it is not easy to predict the trend of future decisions. In the words of Robson, “without publicity, it is impossible to predict the trend of future decisions and an atmosphere of autocratic bureaucracy is introduced by the maintenance of secrecy which in the ordinary course of events is quite unnecessary…”

(e) Tribunals do not Act Judicially:
Tribunals are not maimed by judicial luminaries. As such, they do not have the impartial outlook. They become the limbs of the executive, and dance to its tune and cease to act judicially.

(f) Prediction of Future Decisions not Possible:
The Administrative courts hold summary trials and do not take into consideration precedents. Hence, it is rather impossible to predict the course of future decisions. It is contended by the critics that administrative law to-day is a medley of confusion practically in all those countries where rule of law prevails. It is neither written, nor definite, nor known.

(g) Uniform Procedures Non-Existent:
The Administrative courts do not observe uniform procedures. It leads to inconsistent and arbitrary decisions. Fixed standards of conduct are conspicuous by their absence. Hence justice is negated.

Lord Hewart correctly remarked, “Justice should not only be done but should undoubtedly and manifestly be seen to be done.” In the U.S.A., however, the Administrative Procedure Act 1946 has clearly laid down minimum procedural requirements.

According to Schwartz, “The Administrative Procedure Act represents the first legislative attempt in the common law world to state the essential principles of fair administrative procedure. The Congress, in enacting the law of 1946, mirrored the mood of discontent with the administrative process which existed in the United States among many of those subject to administrative authority…”

Though these defects seem to be quite alarming yet they are not inherent defects. There is a necessity of providing proper safeguards to eliminate these defects. In reality, there is a need for striking a proper balance between cheapness and promptness of justice and the liberty of individuals.
SAFEGUARDS IN ADMINISTRATIVE ADJUDICATION:
Three types of safeguards if provided, Administrative Adjudication may prove an asset to a democracy. They are – organisational, procedural and judicial.

A. Organisational Safeguards:
(a) The Adjudicator of disputes should be a person different from the one who is involved in a dispute against the individual or group of individuals. He may be drawn from the same service responsible for administration of the functions of the agency.
(b) An adjudication board or tribunal rather than a single officer should be empowered to adjudicate. This is in consonance with a well-established rule of fair justice.
(c) The appointment of the members and particularly of the chairman should not vest solely with the minister concerned. The Franks Committee in U.K. had recommended that to insulate the Tribunal from departmental influence, the chairman of all such Tribunals should be appointed by the Lord Chancellor.
It further suggested that the members of such Tribunals should be appointed by Council on Tribunals. Such a suggestion may be of use for India as well. A Council or Tribunal in India may comprise judges both existing and retired, lawyers, academicians and reputed persons in other walk of life. Such a council should be consulted in matters concerning composition and procedures of administrative tribunals.

B. Procedural Safeguards:
Purely from procedural point of view the Administrative Tribunals in countries following the Anglo-Saxon system of law present a picture of complete disharmony and utter confusion. The Committee on Ministers’ Powers appointed in U.K. re-reported in 1932 that administrative tribunals should follow the principles of natural justice.
They suggested:
(i) No man should be a judge in his own case;
(ii) No man should be condemned unheard;
(iii) Party concerned should know the reasons for the decision. Besides the above, following procedural improvements can also be helpful;
(iv) All the evidence and documents on the basis of which a decision is to be taken should be disclosed. No one should be taken by surprise;
(v) The concerned should be entitled to represent his case either by himself or through a legal expert.

(vi) The accused should be entitled to cross-examine the evidence and challenge the evidence produced against him.

(vii) The accused should not only be given an opportunity to examine the evidence produced against him but should also have an opportunity to call evidence, oral and documentary.

(viii) He should be given the right to full judgment which should reveal the reasons for the order and not merely the order.

(ix) He should possess the right to appeal for further and higher judgment.

C. Judicial:

The system of Judicial Review over judicial and semi-judicial action of the administrators and tribunals can prove a very adequate safeguard. In France and Germany, supreme Administrative Court has been provided to supervise all administrative tribunals and authorities.

In the Rule of Law countries the jurisdiction of the Supreme and the High Courts should not be curtailed. The right to judicial review on points of law should remain unimpaired.

In the words of M.C. Setalvad, India’s Attorney General, “Any judicial review of administrative action in which the highest court of the country is not the predominating authority, would not inspire public confidence.”

In a developing democracy like India in particular, the judicial review is almost a necessity. Articles 32, 136, 226 and 227 of the Constitution provide for judicial review of the decisions of the Administrative Tribunals. Some of the Acts are immune from judicial control.

The Opium Act, 1857, the Ganges Tolls Act, 1867, the Explosives Act, 1884 the Ancient Monuments Preservation Act, 1904, the Indian Cotton Cess Act, 1923, the Trade Marks Act 1940 the Mines Maternity Benefit Act, 1941, the Minimum Wages Act, 1948, and the Representation of the People Act, 1950, the Air Corporation Act, 1953, and the Inter-State Water Dispute Act, 1956, are some of the examples of such Acts.

Though these safeguards will help in removing the lacunae of the functioning of the Administrative Courts, yet it is advisable that indiscriminate recourse to Administrative Courts must be avoided. The democratic superstructure is likely to be undermined if administrative adjudication is used as an alternative to the ordinary court system.
Lord Green has rightly re-marked “It is only certain classes of questions which are suitable for submission to a special tribunal to the exclusion of the courts, In deciding whether a case falls within these classes, it is relevant to consider the number of individuals likely to be affected and their probable pecuniary position the necessity or otherwise of providing a speedy and inexpensive procedure and one affording opportunities for decentralization… In all cases there should be a right of appeal to the courts on questions of law. In no circumstances should the power of the courts to restrain a special tribunal from exceeding its jurisdiction be taken away.”

Talking of suitability of Administrative Adjudication to India, S.R. Dass, ex-Chief Justice of India, correctly stated. “To us who have been brought up on the tradition of the Anglo-Saxon system of jurisprudence and nurtured on the basic ideals of the Rule of Law, the idea of Tribunals appears to be odious. But we have to adjust ourselves to the needs of modern times.”

ADMINISTRATIVE TRIBUNALS IN INDIA:

In India also like U.K. and U.S.A., their growth has been rather haphazard. They have come into existence as or when required. Though their number has been gradually multiplying, yet they have never been organized into a coherent system. Over 3,000 such courts exist in India. Income Tax Appellate Tribunal, Railway Rates Tribunal, Labour Courts, Industrial Tribunals, Wage Boards, Compensation Tribunals, Election Tribunals, Central Administrative Tribunal, Rent Tribunals are some of the examples of such Tribunals.

Certain other agencies of Government as Central Board of Revenue, Collectors of Customs and Excise, Custodian General of Evacuee Property also perform adjudicatory functions. They constitute part of administrative machinery.

There is a common feeling that the administrative tribunals in India do not act impartially and the citizens fail to get justice at their hands. The principles of natural justice are not observed and the administrative courts do not give speaking orders.

However, the Constitution of India under Articles 32, 136, 226 and 227 provides adequate safeguards against the miscarriage of justice. The decisions of administrative courts are open to judicial review.

(i) Income Tax Appellate Tribunal:

Section 252 of the Income Tax Act, 1961 provides that the Central Government shall constitute an Appellate Tribunal consisting of many Judicial Members and Accountant members as it thinks fit to exercise the powers and functions conferred on the Tribunal by the Act.
Under the Act, a judicial Member shall be a person, who has held a judicial office for at least ten years or has been a Member of the Central Legal Services and has held a post in Grade II of that service or any equivalent or higher post for at least three years or who has been an Advocate for at least ten years.

For an Accountant Member, the person must have been for at least ten years a Chartered Accountant or a member of the Income Tax Service Group A and has held the post of Additional Commissioner of Income Tax or any equivalent post for at least three years.

The powers and functions of the Tribunal are exercised and discharged by the Bench constituted from amongst the members of the Tribunal. A Bench consists of one Judicial Member and one Accountant Member. The Benches of the Tribunal have been constituted in different parts of the country presently there are 63 benches.

The Tribunal is empowered (i) to hear and decide appeals; (ii) to state a case to the High Court on any question of law arising in the case. The powers of the Tribunal include the imposition of a penalty in addition to the tax, up to a maximum limit of one and a half times the amount of the tax.

It may confirm, reduce, enhance or set aside the assessment or may send back the case to the lower authority. The Tribunal is the final court of Appeal in Income Tax matters. However, an appeal on a question of law can be taken to the High Court first and then to the Supreme Court.

The Tribunal follows judicial procedure in the hearing of a case.

(ii) Central Administrative Tribunal:

Article 323 A added in the Constitution of India in 1985 provides for the setting up of Administrative Tribunal for adjudicating the disputes relating to service matters of persons employed to public services and posts in the Central Government and the States. In Pursuance of the above amendment the Administrative Tribunals Act, 1985 was enacted.

The CAT enjoys the status and powers of a High Court in respect of service matters. Appeals against its orders He to the Supreme Court only. It has 17 regular Benches operating at the principal seats of High Court. These regular Benches also hold circuit sittings at other seats of High Courts.

The sanctioned strength of the CAT is Chairman – 1, Vice-Chairman 16, Members – 49. The process of appointment of Chairman, CAT is initiated by the Chief Justice of India on a reference made to it by the Central Government.
The appointment of Vice-Chairman and Members of CAT are made on the basis of recommendations of a Selection Committee chaired by a nominee of the Chief Justice of India who is a sitting judge of the Supreme Court. The appointments are made with the approval of the Appointments Committee of the Cabinet. The members are drawn both from judicial as well as administrative streams.

**The CAT is distinguished from the ordinary courts in the following respects:**

(i) The Tribunal exercises jurisdiction only in relation to the service matters of public servants covered by the Act;

(ii) The Tribunal is free from the shackles of many of the technicalities of the ordinal courts in respect of hearing of evidence and pleading by the lawyers and the presentation of the case.

(iii) The government can present its case through the departmental officers or legal practitioners.

(iv) Further, only a nominal fee is to be paid by the petitioner for filing an application before the Tribunal.

(v) The members of the Administrative Tribunals are drawn from the administrative stream also, whereas the judges of ordinary courts belong to the legal stream.

(vi) The Ministry of Personnel, Public Grievances and Pensions looks after the Administrative Tribunals providing them better conditions of service and improve their functioning.

One of the main objectives of setting up the Administrative Tribunals was to provide cheap and speedy justice to public employees in disputes relating to their service matters. The CAT has been able to achieve this objective to a considerable extent, despite many constraints faced by it. Through an amendment in the Administrative Tribunal Act, 1985, the States have been given the power to abolish the State Administrative Tribunals if they so desire.