
CHALLENGES TO THE EFFICACY AND INDEPENDENCE OF INDIAN TRIBUNALS: THE URGENT NEED FOR A NATIONAL TRIBUNALS COMMISSION

Arun Kishor M, LL.B., Government Law College, Coimbatore, Tamil Nadu - 641046

ABSTRACT

Tribunal Systems were introduced in India, primarily through the 42nd Amendment of the Constitution in 1976, as specialised quasi-judicial bodies to dispense *justitia expedita* efficaciously, to alleviate the enormous backlog of cases in the traditional courts. These Tribunals, have however become victims of the very issues of delay and inefficiency in solving cases. The modern-day Tribunals are also heavily dependent on the executive for their funding, functioning and administration, severely undermining their judicial independence, a flagrant violation of the doctrine of separation of powers, a part of the basic structure of the Constitution of India. This research paper advocates for the emergent establishment of a National Tribunals Commission, as directed by the judiciary in various cases, to ensure the uniformity, judicial independence, and efficiency in disposal of cases through Tribunals, and help fulfil their *raison d'etre* as an efficient and speedy Alternative Dispute Resolution mechanism.

1. INTRODUCTION:

"The justice is the first virtue of social institution, as truth is of systems of thought."¹ A society is well-ordered only if it is effectively regulated by strong machineries to dispense justice². That the justice must be delivered in a swift manner *accelerando justitiam* is an understatement. *Justitia non est neganda, non differenda*³. The Courts in India also sought to establish this idea in some cases by according the status of fundamental rights of the Accused to "the right to fair and speedy trial"⁴. Despite this, the Modern Indian Courts are plagued with enormous backlogs in dealing with cases, along with the huge delay in the adjudicatory process in cases, from start to finish. The "tribunals" were established in the first place as a reformatory measure to deal with this backlog pendency and delay of cases⁵. It is to be noted that the Tribunal system, has however, till date, failed to solve this problem, but has instead, become a victim of the very problem it was constituted to solve.

The Tribunal system was already in existence in British India through the establishment of the Income Tax Appellate Tribunals in 1941. The Constitution (Forty-second Amendment) Act, 1976 accorded Constitutional Authority to the Legislature for the formation of tribunals by the Insertion of Articles 323A and 323B for forming Administrative Tribunals and Tribunals for other matters respectively⁶.

Tribunals, owing to their duty to discharge quasi-judicial functions, must possess the same independence in its functioning similar to normal Courts, an essential feature of the doctrine of separation of powers, which is an integral part of the basic structure of the Indian constitution⁷. This is, however, troubled by a lack of uniformity in the matter of qualifications, appointments, tenure, and service conditions of Members of the Tribunal⁸, which, according to the Hon'ble Supreme Court of India, can be corrected by the establishment of a single nodal agency for the purpose of monitoring the working of the tribunals and appointment of members

¹ John Rawls, *A Theory of Justice* 3 (Harvard University Press 1999)

² Id. 4

³ It means 'Justice is not to be denied or delayed'

⁴ *Hussainara Khatoon & Ors. v. Home Secretary, State Of Bihar, Patna*, 1979 INSC 66, AIR 1979 S.C. 1369, [1979] 3 S.C.R. 532 [5]

⁵ Thiruvengadam, Arun K., 'Tribunals' in Sujit Choudhry (eds.), *Oxford handbook of the Indian Constitution* 412-431 (Oxford University Press, 2016)

⁶ The Constitution (Forty-second Amendment) Act, 1976 § 46. (India)

⁷ *The Registrar (Admn.), High Court Of Orissa, Cuttack v. Sisir Kanta Satapathy (Dead) By Lrs. And Anr.* etc., 1999 INSC 406, AIR 1999 S.C. 3265, [1999] Supp. 2 S.C.R. 473, 476.

⁸ *L. Chandra Kumar v. The Union Of India And Ors.*, AIR 1997 S.C. 1125 ¶ 96 (hereafter *L. Chnadra Kumar*)

of the Tribunals. However, the Tribunals Reforms Act, 2021 excessively delegates this power onto the Central Government⁹, which may create an executive dominated tribunal design, a reversal to previous Hon'ble Supreme Court judgements that advocates for an independent judiciary.¹⁰ It is imperative, *ex necessitate rei*, to set up a National Tribunals Commission ('NTC') to ensure the independent and efficacious functioning of Tribunal systems across India, free from executive control¹¹.

2. DEFINITION AND ESSENTIALS OF TRIBUNALS:

The term 'Tribunal' is derived from the word 'Tribunes', which means 'Magistrates of the Classical Roman Republic'. In general, it refers to a person or institution having the authority to judge, adjudicate on, or to determine claims or disputes, whether or not it is called a tribunal in its title¹². Tribunals are quasi-judicial bodies or authorities, which is vested with the judicial power to adjudicate on questions of law of fact, affecting rights of citizens in a judicial matter¹³. They are not courts *stricto sensu*. While all courts are tribunals, all tribunals are not courts.¹⁴ For a body to qualify as a "tribunal", the following criteria must be met:

- (1) It must be constituted by the State through an act of Statute or Statutory rule¹⁵.
- (2) It must have permanency, independent of any administrative or executive direction.¹⁶
- (3) It must have all trappings of the Court, including, *inter alia*, authority to adjudicate cases between parties vested to it through inherent power of the State, public sitting, power to summon and examine witnesses, compel the production of evidence etc.¹⁷
- (4) It need not follow strict rules of justice and compliance with technical rules of law is not

⁹ The Tribunals Reforms Act, 2021 (Act No. 33 of 2021)

¹⁰ *L. Chandra Kumar*, supra note 8. See also *Union Of India v. R. Gandhi*, [2010] 6 S.C.R. 857 (hereafter *R.Gandhi*); *Madras Bar Association v. Union Of India & Anr.*, [2014] 10 S.C.R. 1 (hereafter *MBA (I)*); *Madras Bar Association v. Union Of India & Anr.*, [2015] 6 S.C.R. 638 (hereafter *MBA (II)*); *Roger Mathew v. South Indian Bank Ltd. & Ors.*, [2019] 16 S.C.R. 1 (hereafter *Roger Mathew*); *Madras Bar Association v. Union Of India & Anr.*, AIROnline 2020 S.C. 917 (hereafter *MBA (III)*); *Madras Bar Association v. Union Of India & Anr.*, [2021] 5 S.C.R. 791 (hereafter *MBA (IV)*).

¹¹ *MBA (III)*, supra note 10 at ¶ 53(i)

¹² Walker, David M., *Oxford Companion to Law* 1239 (Oxford University Press 1980)

¹³ Shukla, V.N., *Constitution of India* 500 (Eastern Book Company, 14th edn., 2024)

¹⁴ Jain M.P., *Indian Constitutional law* 255 (LexisNexis, 8th edn, 2024)

¹⁵ *Engg. Mazdoor Sabha v. Hind Cycles Ltd.*, [1963] Supp. 1 S.C.R. 625, 633. (hereafter *Engg. Mazdoor Sabha*)

¹⁶ *Id.*

¹⁷ *Jaswant Sugar Mills v. Lakshmichand and Ors.*, [1963] Supp. 1 S.C.R. 242, 260

required, but their procedures may follow the principles of natural justice.¹⁸

- (5) It should not be administrative in nature, but it must exercise its judicial functions to adjudicate disputes independent of the influence of the executive¹⁹.

3. THE NEED FOR TRIBUNALS:

The *raison d'être* for the establishment of Tribunals is the delay in the administration of justice in the traditional courts system²⁰. In the words of H.W.R Wade, “The social legislation of the twentieth century demanded tribunals for purely administrative reasons; they could offer speedier, cheaper and more accessible justice, essential for the administration of welfare schemes involving large number of small claims”²¹, in accordance with the legal maxim “*Salus populi suprema lex esto*” for the benefit of the public²². Additionally, the modern Indian Judicial Systems are plagued with enormous pendency in cases across the various levels of Court Hierarchies. As on December 2022, the total cases in pendency in the Hon’ble Supreme Court of India were around 69,598. The total cases in pendency in the High Courts were around 59,78,714. The total cases in pendency in the District Courts and other subordinate Courts were around 4,32,07,597²³, which reflects the huge delay in the Court System in India from the time of initial filing to disposal of cases, and the backlog of cases that accumulates over time as a consequence.

Moreover, the Tribunals created through statutory means mostly deal with specific subject matters and hence, their advantage is particularly resonated here wherein the adjudicating authorities will have the required technical expertise and knowledge necessary to decide the cases in such in technical matters, an aspect which is severely lacking in the traditional Courts.²⁴ The Court in the case of *L. Chandra Kumar v Union of India*, reiterated the importance of having both judicial members and technical experts in the Tribunal panels to

¹⁸ *Engg. Mazdoor Sabha*, supra note 15 at ¶6

¹⁹ *Id.*

²⁰ Sinha, S. B., “*Judicial Reform in Justice-Delivery System*” [2004] 4 SCC (Jour) 35

²¹ Wade, H.W.R & Forsyth, C.F., *Administrative Law* 773 (Oxford University Press, 10th edn., 2009)

²² It means ‘*the welfare of the people shall be the supreme law*’

²³ Department of Justice, Ministry of Law and Justice, Government of India. (2023). “*Annual Report 2022-23*”. <<https://cdnbbsr.s3waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2023/07/2023071060.pdf>> last accessed June 5, 2025, [196]

²⁴ Jain, M.P., Jain, S.N., *Principles of Administrative Law* 1996 (Lexis Nexis, 7th edn., 2011)

involved specialised, technical knowledge to dispense more efficient and speedy justice.²⁵

The Franks Report on Administrative Tribunals and Enquiries (1957) which arose as a result of enquiry into the growing trend of creating Tribunals, identified their advantages to be “cost effectiveness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject”²⁶.

It is an understatement to say that Tribunals are critical in the modern society, which particularly opens up new domains for adjudication which, in absence of reformatory measures, places excessive burden on the already pressurised Traditional Courts.

4. LEGAL FRAMEWORK FOR TRIBUNALS IN INDIA:

The tribunal system in India is not something new. It was initially introduced in India through the establishment of the Income Tax Appellate Tribunal in 1941 as the first step towards Tribunalization. The heavy burden in dealing with litigations and appeals with the traditional courts alone proved to be ineffective, necessitating the need to constitute more efficient methods to dispense justice.

In its 14th report titled “Reform of Judicial Administration” in 1958²⁷, the Law Commission recommended the establishment of appellate Tribunals, at the state and the centre with an expectation to be both cost-effective and ensure speedy disposal of cases. The 58th Law Commission Report in 1974 vouched for the constitution of a separate high-powered Tribunal or Commission to be set up to deal with service matters and that approaching the Courts should be the last resort.²⁸

The High Courts’ Arrears Committee in 1972 recommended the establishment of independent Tribunals to deal with service matters of Government employees.²⁹ The Swaran

²⁵ L. Chandra Kumar, *supra* note 8 at ¶ 6.2

²⁶ Marshall, G., *The Franks Report on Administrative Tribunals and Enquiries*. 35(4) Public Administration 347-358 (1957) <<https://doi.org/10.1111/j.1467-9299.1957.tb01316.x>> last accessed June 5, 2025

²⁷ Law Commission of India, *Reform Of Judicial Administration* (Vol II-Ch. 30- 57), 693 (14th Report, 1958) <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080541-2.pdf>> last accessed June 5, 2025

²⁸ Law Commission of India, *Structure and Jurisdiction of the Higher Judiciary* 3-4 (58th Report, 1974) <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080896-2.pdf>> last accessed June 5, 2025

²⁹ Law Commission of India, *Assessment of Statutory Frameworks of Tribunals in India* 23 (272nd Report, 2017) <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080896-2.pdf>> last accessed June 5, 2025

Singh Committee of 1976, in its report, recommended the creation of Administrative Tribunals at the Central and State level, and Tribunals for special matters in disputes related to revenue, land reforms, ceiling of urban property, procurement and distribution of food grains and other essential commodities.³⁰

As a direct consequence of these recommendations, the Union Parliament, through the 42nd amendment in 1976, inserted Chapter XIV-A into the constitution, to induct Articles 323A and 323B into the Constitution of India. Article 323A³¹ dealt with the establishment of administrative tribunals by an Act of Parliament at both Union and State levels, and delegated the powers of deciding the rules and procedure for such Tribunals to the Parliament itself. Article 323B dealt with the establishment of Tribunals for special matters, in matters of tax, customs, import and foreign exchange, industrial and labour disputes, election disputes, rent control etc. to the appropriate government. It also allowed for the legislative establishment of hierarchy of tribunals in this regard.

The Parliament passed the Administrative Tribunals Act, 1985 to establish Administrative tribunals of three kinds – The Central Administrative Tribunal, the State Administrative Tribunal and the Joint Administrative Tribunal as contemplated under Art.323A (2). Various Tribunals for special matters were also established through various statutes³².

Both Arts.323A and 323B, and the Administrative Tribunals Act,1985 specifically excluded the jurisdiction of all Courts barring the appellate jurisdiction of the under Art.136, ignoring the supervisory jurisdiction of the High Courts³³. This exclusion of jurisdiction was later overturned in *L. Chandra Kumar v Union of India (1997)*³⁴ as Tribunals cannot be an *effective substitute* to High Courts. Any appeals from the Tribunals must first be dealt by a Division Bench of the High Courts before proceeding to the Hon'ble Supreme Court of India. In the same case, the Court proposed the setting up of a central agency for managing the

³⁰ Id. 24

³¹ INDIA CONST. art.323A

³² For example, Securities Appellate Tribunal through Securities and Exchange Board of India Act 1992; Debt Recovery Tribunal through Recovery of Debts Due to Banks and Financial Institutions Act 1993; Telecommunications Dispute Settlement and Appellate Tribunal through the Telecom Regulatory Authority of India (Amendment) Act 2000; Armed Forces Tribunal through Armed Forces Tribunal Act 2007; The National Green Tribunal through The National Green Tribunal Act 2010; National Company Law Tribunal and National Company Law Appellate Tribunal through the Companies Act 2013;

³³ INDIA CONST. art. 323A, cl. (2)(d). art. 323B, cl. (3)(d); The Administrative Tribunals Act,1985, §28

³⁴ *L. Chandra Kumar*, supra note 8 at 1250.

appointment and the administration of Tribunals with an aim to bring uniformity in such procedures in Tribunals nationwide, and maintain the independence of Tribunals.³⁵

5. SHOULD THE TRIBUNAL SYSTEM BE REFORMED?

The Tribunalization of justice was brought in as a reformatory measure to help the traditional courts to cope up with the burden of handling the ever-rising number of litigations. However, it is widely acknowledged that such functioning of such Tribunals has not lived up to expectations and have rather become prey to the same problems for which they were constituted in the first instance. For the said reasons, The Report of the Arrears Committee, or the Malimath Committee (1989-1990), recommended the abolition and abandonment of the Alternative Institutional mechanisms, but instead resort to creating different divisions of the High Court for different branches of law as is dealt with in England. As per the findings of the Committee, the Tribunals have no invoked confidence in the public mind due to various reasons: *“The foremost is the lack of competence, objectivity, and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning.”*³⁶

The findings of the Malimath Committee are relevant to date. About 123966 cases are pending before the Central Administrative Tribunal across its 17 benches.³⁷ About 12351 cases are pending before the National Company Law Tribunal across its 15 benches.³⁸ About 2,15,431 cases were pending before the Debt Recovery Tribunals across its 39 branches.³⁹ Over 80,000 cases were pending before the Customs, Excise and Service Tax Appellate Tribunal across its 11 benches.⁴⁰ Over 15,473 cases were pending before the Railway Claims Tribunal

³⁵ Id. ¶7.

³⁶ Malimath, V.S. et al., *Report Of The Arrears Committee* ¶ 8.63-8.66 (1989-1990). <<https://dakshindia.org/wp-content/uploads/2016/08/Malimath-89-90.pdf>> last accessed June 5, 2025.

³⁷ ‘Total number of pending cases’ <<https://cgat.gov.in/>> last accessed June 5, 2025

³⁸ Srivats, K.R., ‘Insolvency cases dominate NCLT backlog, pending cases cross 12,000’ The Hindu Business Line (March 17, 2025) <<https://www.thehindubusinessline.com/economy/insolvency-cases-dominate-nclt-backlog-pending-cases-cross-12000/article69341511.ece>> last accessed June 5, 2025

³⁹ The Press Trust of India, ‘About 2.15 Lakh Cases Pending Before Debts Recovery Tribunals’ NDTV Profit (06 Feb 2024) <<https://www.ndtvprofit.com/law-and-policy/about-215-lakh-cases-pending-before-debts-recovery-tribunals>> last accessed June 5, 2025

⁴⁰ The Press Trust of India, ‘80,000 cases pending before CESTAT; Govt to set up committee to suggest steps to reduce litigation’ The Economic Times (March 18, 2023)

across all its benches⁴¹. The total cases pending before the Indian Tribunal System are in the range of lakhs of cases. This clearly reflects the unsatisfactory and suboptimal performance of the Tribunals in efficiently disposing off cases in a speedy manner.

The Hon'ble Supreme Court of India has earlier reflected upon the Malimath Committee's Report in *L. Chandra Kumar* case, and while acknowledging its shortcomings and failure to meet expectations, the Court refused to connect their failure in performance to the unsoundness of the Tribunal system's foundational principles, but instead advocated for more reforms to improve the efficiency of tribunal systems.⁴² The Court sought to resolve this by first, *inter alia*, reinstating the supervisory jurisdiction of the High Courts over the Tribunal decisions, citing the inability of Tribunals to become an "effective substitute" to the High Courts. The Tribunals' decisions are merely supplementary, and must be subject to the scrutiny of the Division Bench of the High Courts⁴³.

The *L. Chandra Kumar* case also addressed the competency of the members of the Tribunal in adjudicating matters, who have primarily held administrative positions rather than judicial, which was argued as reason for the ineffectiveness of Tribunal adjudications. The Court however held that Tribunal bodies must comprise both administrators and judicial members, to bring in both specialised knowledge and judicial experience to dispense efficacious speedy justice⁴⁴. The Court, for the first time, recommended the setting up of an *independent supervisory body to oversee the working of the Tribunals*.⁴⁵

The 21st Law Commission in 2017, in its 272nd report titled '*Assessment of Statutory Frameworks of Tribunals in India*', recommended certain changes to solve issues in the statutory framework of Tribunals in India and rules & procedures for the members of such Tribunals.

Thence, the deficiencies in the functioning of Tribunals in India can be outlined as

<<https://economictimes.indiatimes.com/news/india/80000-cases-pending-before-cestat-govt-to-set-up-committee-to-suggest-steps-to-reduce-litigation/articleshow/98758131.cms>> last accessed June 5, 2025

⁴¹ *Pending Claims Before Railway Claims Tribunal*, Rajya Sabha Unstarred Question No. 2202, answered on 13.12.2024 <<http://164.100.24.220/loksabhaquestions/annex/172/AU1599.pdf>> last accessed June 7, 2025

⁴² *L. Chandra Kumar*, supra note 8 at 1244-5.

⁴³ *L. Chandra Kumar*, supra note 8 at 1246-7.

⁴⁴ *L. Chandra Kumar*, supra note 8 at 1248

⁴⁵ *L. Chandra Kumar*, supra note 8 at 1249.

follows:

- (1) Lack of judicial independence in the functioning of Tribunals,
- (2) Enormous pendency of cases and delay in disposal of such cases across various tribunals,
- (3) Lack of Uniformity in the functioning of Tribunals across India,
- (4) Executive's influence in the appointment of members of the Tribunals, their rules and procedures, their qualifications and tenure of such members,
- (5) Adequate training, funding, and infrastructure for the functioning of Tribunals,
- (6) Prevalent vacancies in various Tribunal Boards.⁴⁶

The Tribunal Reforms Act, 2021 was brought in as a measure to introduce some uniformity in deciding the Qualifications, Appointments of the Chairpersons and Members of Tribunals. However, it delegated those powers onto the Central Government which was seen as a threat to the independence of judiciary and a breach of the doctrine of separation of powers⁴⁷, and overturning the Hon'ble Supreme Court's previous Judgements in this regard, and the functioning of such Tribunals under those Ministries against which such Tribunals were expected to pass orders⁴⁸ constituted a violation of principle of "*Nemo debet esse judex in propria causa*" (No one shall be a judge of his own cause)⁴⁹. It was reportedly passed without much deliberation and discussion in the Parliament, which was criticised by the Hon'ble Supreme Court of India⁵⁰. The Tribunals Reforms Act, 2021 also abolished over nine appellate Tribunals, transferring their functions to other judicial entities and the High Courts, which will only further increase the already existing over-workload in these Courts⁵¹. This move, was,

⁴⁶ Ahuja, Namrata, 'Analysing The Impact Of Tribunalisation In Contemporary Era w.r.t NTT and NCLT case' 1(1) Lawfoyer International Journal Of Doctrinal Legal Research (2023) <https://lijdlr.com/wp-content/uploads/2023/04/LIJDLR_PAPER-11.pdf> last accessed June 5, 2025

⁴⁷ Dwivedi, Prakhar 'Analysis: Tribunal Reforms Bill 2021' Jus Corpus (November 16, 2021) <<https://www.juscorpus.com/analysis-tribunal-reforms-bill-2021/>> last accessed June 6, 2025

⁴⁸ Advocate Navdeep Singh, 'Tribunals Reforms Act: The Good, the Bad and the Ugly' Bar and Bench (August 22, 2021) <<https://www.barandbench.com/columns/litigation-columns/tribunals-reforms-act-the-good-the-bad-and-the-ugly>> last accessed June 6, 2025

⁴⁹ Supra note 12

⁵⁰ Singh, Vijay Kumar, '10. The Tribunal Reforms Act, 2021' in 'A Prologue: Contemporary Issues in Law and Policy – Ten Major Reflections from 2021' (2021) VI UPES Law Review <<https://ssrn.com/abstract=4005729>> last accessed June 6, 2025

⁵¹ Id.

however, welcomed by some sections due to lack of remedies through such appellate Tribunals due to the absence of adjudicating members owing to vacancies in the Tribunals.

The issues which plagued the Courts and necessitated the creation of Tribunals is now plaguing the Tribunal Systems due to their deficiencies. It is essential that the Tribunal System be reformed to accommodate additional measures to ensure the uniformity, independence, reliability, and efficiency of Tribunal systems across India. It is the opinion of the Court that these issues can be solved by the institution of a NTC, which has not been created till date.

6. THE QUEST FOR INDEPENDENT & EFFICACIOUS FUNCTIONING OF THE TRIBUNALS:

The independence of the judicial and quasi-judicial bodies is a *sine qua non* of an adjudicating authority. The process of Tribunalization in India was initiated by the Government as a reformatory measure to help conduct a more speedy and more efficient disposal of cases. However, it was mostly functioned under the administration of the executive branches of the government under various Ministries. Judicial review, which is a basic and essential feature of the Constitution of India⁵² proved to be the key instrument to decide the legality of the constitutional infirmities that were present in the Tribunal systems, in matters of breach of the doctrine of separation of powers and an independent judiciary by placing the Tribunals under the effective control of the executive.

The first dicta of the Hon'ble Supreme court of India in this regard came in *S.P. Sampath Kumar vs Union of India*⁵³. The judgement questioned the mode of appointment of the Chairman, Vice Chairman and members of the Administrative Tribunals by the President of India⁵⁴ through the '*unfettered and unrestricted discretion in the executive*', perceived as a threat to the independence of the Judiciary. Any such appointments made will be prejudiced in favour of the executive and the appointment procedure itself results in creation of an obligation to '*repay the executive*', a severe impairment on the efficacy and the independent functioning of the Administrative Tribunals, by deeply influencing the decision-making process⁵⁵. Such influence in the appointments made to Administrative Tribunals may also, in the opinion of the

⁵² *Minerva Mills Ltd. & Others v. Union of India and Ors.* [1981] 1 S.C.R. 206

⁵³ *S.P. Sampath Kumar Etc. v. Union Of India & Ors.* [1987] 1 S.C. R. 435 (hereafter *S.P. Sampath Kumar*)

⁵⁴ The Administrative Tribunals Act, 1985. §6

⁵⁵ *S.P. Sampath Kumar*, supra note 53 at 446-7

Courts, render them to be an ineffective substitute to the Jurisdiction of the High Courts.⁵⁶ The Court, at the time, sought to resolve this by making the Government make such appointments through an independent mechanism, after consultation with the Chief Justice of India or by means of a High Powered Selection Committee headed by the Chief Justice of India or a sitting Judge of the Supreme Court or a concerned High Court nominated by the Chief Justice of India⁵⁷.

The *L.Chandra Kumar* case overruled the *S.P.Sampath Kumar* case in declaring Tribunals to be not full and effective substitute of the High Courts due to the lack of constitutional safeguards to secure the independence of the Tribunal System created by *ordinary legislations*⁵⁸, thereby rendering the exclusion of the Jurisdiction of the High Courts and the Supreme Courts unconstitutional⁵⁹, making the role of Tribunals merely *supplementary* rather than *substitutional*, as the *courts of first instance*. Moreover, the expenses of the Tribunal are to be met by the concerned executive department rather than an independent source like the Consolidated Fund of India, making the Tribunals dependent on the executive for their functioning⁶⁰. The Court, for the first time, suggested the creation of a *wholly independent agency* to administer the Tribunal System to bring in both uniformity and independent functioning to Tribunals.⁶¹

The case of *Union of India vs R. Gandhi*⁶² arose out of a dispute regarding the constitutional validity of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). The Court declared that Tribunals in India had not achieved full independence due to their dependence on their '*sponsoring department*' for funds, infrastructure, personnel and functioning, and the membership of the Secretary of those department in the Selection Committee for appointment. The proper and efficacious discharge of the Tribunal's judicial functions can be assured only if continued and assured judicial independence is in place⁶³. The court mandated the addition of Technical members other than judicial members to the Tribunals only in those concerning specialised matters that requisite

⁵⁶ *S.P. Sampath Kumar*, supra note 53 at 447

⁵⁷ *S.P. Sampath Kumar*, supra note 53 at 438

⁵⁸ *L. Chandra Kumar*, supra note 10 at ¶ 1191

⁵⁹ *L. Chandra Kumar*, supra note 10 at ¶ 1192

⁶⁰ *L. Chandra Kumar*, supra note 10 at ¶ 1218

⁶¹ *L. Chandra Kumar*, supra note 10 at ¶ 1248

⁶² *R. Gandhi*, supra note 10

⁶³ *R. Gandhi*, supra note 10 at ¶ 3.1-3.2

expertise or specialised knowledge to adjudicate such cases.⁶⁴ The Court recognised the *gradual erosion of the independence of the judiciary* in this regard.⁶⁵ Any appointment of members of the civil services who is allowed to retain his post with the parent cadre, would not act as an independent, impartial and fair *judge* but rather, as a member of the civil services, resulting in the dilution of the independence of the Judiciary⁶⁶, as an act of transfer of judicial functions to the executive which would breach both the independence of the judiciary and the doctrine of separation of powers⁶⁷. The Court drew attention to the incapacity of *able administrators* to be *good, able, and impartial adjudicators* who follow the principles of natural justice to adjudicate cases with reasoned decisions to dispense justice appropriately⁶⁸, thereby declaring such members to be eligible only as technical members of the Tribunal, while considering only Judges and Advocates to be qualified for appointment as Judicial members⁶⁹. The Court also necessitated the need for the members of the National Company Law Tribunal (which took over certain functions of the High court) to have their rank, competence, or competence equivalent to that of a Judge of the High Court⁷⁰. As a means of ensuring *considerable time* to achieve expertise in the subject matter of adjudication, the term of the office was increased from 3 years to 5 years with eligibility for reappointment or 7 years.⁷¹ Further, any member appointed should dissociate himself from the Executive to maintain the independence of the judiciary⁷². Provided further, the administrative support for the tribunals or their members were mandated to be done by the Ministry of Law and justice and were dissuaded from seeking or accepting facilities from their parent departments to exclude the influence of the executive in the decision-making process⁷³.

The *MBA (I)* case arose to decide the constitutional validity of the National Tax Tribunal Act, 2005⁷⁴. The Court reflected upon the authority conferred to the Central Government to notify the areal extend of jurisdiction of each bench, their constitution and transfer of members between benches, and declared that, such authority will make the Central Government a stakeholder in the National Tax Tribunal, as a threat to the independent functioning of the

⁶⁴ *R. Gandhi*, supra note 10 at ¶ 4.5

⁶⁵ *R. Gandhi*, supra note 10 at ¶ 5.4

⁶⁶ *R. Gandhi*, supra note 10 at ¶ 5.7

⁶⁷ *R. Gandhi*, supra note 10 at ¶ 5.1

⁶⁸ *R. Gandhi*, supra note 10 at ¶ 5.3

⁶⁹ *R. Gandhi*, supra note 10 at ¶ 6.1

⁷⁰ *R. Gandhi*, supra note 10 at ¶ 6.2

⁷¹ *R. Gandhi*, supra note 10 at ¶ 6.9

⁷² *R. Gandhi*, supra note 10 at ¶ 6.10

⁷³ *R. Gandhi*, supra note 10 at ¶ 6.11

⁷⁴ *MBA (I)*, supra note 10

National Tax Tribunal, and that such members are supposed to have the same level of independence and security possessed by the Judges of High Courts, declaring Sections 5(2)-(5) of the National Tax Tribunal Act, 2005 which conferred such powers unconstitutional.⁷⁵ Also Section 8 of the same Act, which mandated provisions of reappointment of Chairperson or members to the Tribunal after the first term, was declared unconstitutional for creating constraints in independent thinking to adjudicate cases with a view for reappointment.⁷⁶

The *Rojer Mathew* case⁷⁷ upheld the constitutional validity of the Finance Act, 2017, especially with respect to Tribunals as per S.184 of the Act. However, the Court, with respect to the *Tribunal, Appellate Tribunal, and other Authorities (Qualifications, Experience, and other Conditions of Service of Members) Rules, 2017*, reflected the findings in *Supreme Court Advocates-on-Record Association vs Union of India*⁷⁸ that called for the *complete exclusion of the control of the executive over quasi-judicial bodies*, including Tribunals⁷⁹. The Search-cum-Selection Committee allowed for the discretionary appointment of technical members as judicial members, and judicial participation in appointments made a mere formality, which is blatant and excessive interference on the independence of the judiciary by the Executive⁸⁰. Also, the exclusion of Supreme Court Judges from the enquiry procedure to remove judges, and conferral of such powers to a committee constituted by the Central Government was rendered unconstitutional due to the threat to the independence of the Judiciary⁸¹. Also, the Court rendered the *need to vest the power of relaxing rules for appointments* to the Search-cum-Selection Committee and not the Central Government⁸². Once again, the Court reiterated the need for an independent agency to oversee all Tribunals, an All-India Tribunal Service, and the need for them to have financial independence for their administration⁸³.

The *MBA (III)* case⁸⁴ in a dispute related to the validity of the *Tribunal, Appellate Tribunal, and other Authorities [Qualification, Experience, and other conditions of service of Members] Rules, 2020*, finally directed the Union Government to constitute a *National*

⁷⁵ *MBA (I)*, supra note 10 at ¶ 13

⁷⁶ *MBA (I)*, supra note 10 at ¶ 17

⁷⁷ *Rojer Mathew*, supra note 10

⁷⁸ *Supreme Court Advocates-on-Record Association and another v. Union of India*, [2015] 13 S.C.R. 1

⁷⁹ *Rojer Mathew*, supra note 10

⁸⁰ *Rojer Mathew*, supra note 10 at ¶ 3.2

⁸¹ *Rojer Mathew*, supra note 10 at ¶ 3.3

⁸² *Rojer Mathew*, supra note 10 at ¶ 3.4-3.5

⁸³ *Rojer Mathew*, supra note 10 at ¶ 4.1-4.2

⁸⁴ *MBA (III)*, supra note 10.

Tribunals Commission, an independent umbrella body to supervise the functioning, administrative & infrastructural needs of the Tribunals and appointments & removals of members of the Tribunals to remove the interference and dependence on the Executive in these matters⁸⁵. The Court called for the presence of current or former Supreme Court or High Court Judges in the Search-Cum-Selection Committee, and exclude the Secretary of the sponsoring department from involving in that Committee. It modified Rule 4(2) of the same to allow for the recommendation of only person for each post by the Search-Cum-Selection Committee for his appointment by the Central Government, to exclude the discretion of the Central Government in making such appointments.⁸⁶ Also, the Court mandated a longer tenure i.e. 5 years for the members of the Tribunal or till the age of 70 years, to allow for such a higher efficiency in the working of the Tribunals⁸⁷. It is to be noted that no such NTC has been established till date.

Finally, the *MBA (IV)* case⁸⁸ struck down certain provisions of *the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021*, related to the Security of Tenure and Conditions of service of the Tribunal members including, *inter alia*, adequate remuneration, recognising them as *core components to the independence of the judiciary*. Citing the principle of *legislative override* to override previous Supreme Court Judgements, the Hon'ble Supreme Court of India struck down the three provisos to S.184 of the Finance Act, 2017, and the amendments to the judgement of the Court in *MBA(III)* with respect to number of recommendations by the Search-cum-Selection Committee and tenure of the members of the Tribunal, as amended by this Ordinance.

However, as a case of *legislative override*, the Central Government once again passed the *Tribunal Reforms Act, 2021* to effectively reinstate the *Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021* in its entirety as it was prior to the judicial review in *MBA (IV)*. On a positive note, the Tribunal Reforms Act, 2021 seeks to end the excessive Tribunalization processes for each and every specialised matter in India by the abolition and abandonment of 9 appellate Tribunals and transferring their jurisdiction back to traditional courts, namely, *Film Certification Appellate Tribunal Constituted under Cinematograph Act*,

⁸⁵ *MBA (III)*, *supra* note 10 at ¶ 1

⁸⁶ *MBA (III)*, *supra* note 10 at ¶ 2-4

⁸⁷ *MBA (III)*, *supra* note 10 at ¶ 5

⁸⁸ *MBA (IV)*, *supra* note 10

1956⁸⁹, Intellectual Property Appellate Board Constituted under Copyright Act, 1957⁹⁰, Intellectual Appellate Board Constituted under Trademarks Act, 1999⁹¹, Appellate Authority for Advance Rulings [Customs] Constituted under Customs Act, 1962⁹², Intellectual Property Appellate Board Constituted under Patents Act, 1970⁹³, Airport Appellate Tribunal Constituted under Airports Authority of India Act, 1994⁹⁴, National Highway Tribunal Constituted under Control of National Highways (Land and Traffic) Act, 2002⁹⁵, Plant Varieties Protection Appellate Tribunal under Protection of Plant Varieties and Farmers Rights Act, 2001⁹⁶ and the Intellectual Property Appellate Board under the Geographical Indications of Goods (Registration and Protection) Act, 1999⁹⁷. This measure introduces more burden to the over stressed traditional courts and renders the purpose of specialised tribunals useless.

Section 3 of Tribunal Reforms Act, 2021 gives the provisions relating to the constitution of the Search-cum-Selection Committee (SCSC)⁹⁸, with provision given only for Chief Justice of the Supreme Court of India or a judge of the Supreme Court of India, a clear indication of the absence of sufficient judicial members in the SCSC. Further, the Act provides for appointments to be made even in the absence of a member of the SCSC⁹⁹. This not only allows for the reduction in judicial primacy in terms of appointments made, but also allow for such appointments even in the absence of the all-judicial members in the committee.

It is evident the Tribunal Reforms Act, 2021 is, at least in parts, a colourable legislation that aims to reintroduce provision previously struck down by the Hon'ble Supreme Court of India, a violation of *Quando aliquid prohibetur ex directo prohibetur et per obliquum* (what cannot be done directly cannot be done indirectly).

Another glaring issue is the huge number of vacancies in the boards and panels of various Tribunals across India.

⁸⁹ The Tribunals Reforms Act, 2021, §9

⁹⁰ The Tribunals Reforms Act, 2021, §10

⁹¹ The Tribunals Reforms Act, 2021, §21

⁹² The Tribunals Reforms Act, 2021, §12

⁹³ The Tribunals Reforms Act, 2021, §13

⁹⁴ The Tribunals Reforms Act, 2021, §19

⁹⁵ The Tribunals Reforms Act, 2021, §24

⁹⁶ The Tribunals Reforms Act, 2021, §23

⁹⁷ The Tribunals Reforms Act, 2021, §22

⁹⁸ The Tribunals Reforms Act, 2021, §3(2)

⁹⁹ The Tribunals Reforms Act, 2021, §3(8)

In analysing all the previous cases, it is safe to state that the Tribunal system in India is in need of reforms to ensure that they fulfil the purpose for which they are initially constituted i.e. speedy disposal of justice and reducing the burden of traditional courts. Also, the legislative measures made push the control over the Tribunals to the Executive rather than making them an independent body free from external interference. Also, the Tribunals are plagued with vacancies and inefficient adjudicating members all over.

7. SUGGESTED REFORMATORY MEASURES FOR TRIUBNALS:

The Tribunals in India require drastic reforms to ensure their relevant as a more efficient and speedier alternative to traditional courts. The reforms must be aimed towards ensuring the independence in the functioning and the appointments made to Tribunals, and bringing in uniformity across all Tribunals across India.

A case study can be made out of similar models in the international arena. In Canada, the Tribunal system is administered by the *Administrative Tribunals Support Service of Canada*¹⁰⁰ while the Tribunals still function independently. The U.K. example is more relevant to India, especially as the current Tribunal systems scenario in India mirrors that in the U.K. before 2007. However, the '*Tribunals for Users: One System, One Service*', or the '*Leggatt Report*' of 2007¹⁰¹ suggested Tribunal reforms which directly resulted in the enactment of the Tribunals, Courts and Enforcement Act 2007 which brought the entire Tribunal System in the United Kingdom into one single unified organisation, and its overseer i.e., the Senior President of Tribunals, a statutory office, who presides over the U.K.'s Tribunal Systems¹⁰², is appointed by the Judicial Appointments Commission (JAC)¹⁰³. All Tribunal Systems in the U.K. were statutorily guaranteed Continuing Judicial Independence in its functioning¹⁰⁴.

¹⁰⁰ Administrative Tribunals Support Service of Canada. 2020. Departmental Results report 2019-20, <<https://www.canada.ca/content/dam/atssc-scddata/documents/2019-20-drr-main-report-en.pdf>> last accessed June 7, 2025

¹⁰¹ Andrew Leggatt. 2001. *Tribunals for Users: One System, One Service*, available at <<https://webarchive.nationalarchives.gov.uk/ukgwa/+http://www.tribunals-review.org.uk/leggatthtml/leg-00.htm>> last accessed June 6, 2025

¹⁰² Tribunals, Courts and Enforcement Act, 2007, §2 (Eng.) <<https://www.legislation.gov.uk/ukpga/2007/15/data.pdf>> last accessed June 6, 2025.

¹⁰³ Constitutional Reform Act 2005, §75A,

¹⁰⁴ Tribunals, Courts and Enforcement Act, 2007, §1 (Eng.) <<https://www.legislation.gov.uk/ukpga/2007/15/data.pdf>> last accessed June 6, 2025 read with Constitutional Reform Act 2005, §3(7B) (Eng.) <<https://www.legislation.gov.uk/ukpga/2005/4/data.pdf>> last accessed June 6, 2025

A similar approach can be made in India. The appointments to Tribunals in India should be made through the NTC as directed by the Hon'ble Supreme Court of India in *MBA (III)* case¹⁰⁵. To ensure that the proposed body will fulfil its objectives of having an efficacious and independently functioning Tribunal system, the following measures can be adopted:

- (1) The NTC should be a constitutional body, to ensure its permanent status, to be guaranteed protection from arbitrary amendments by the Legislative and to have constitutional safeguards from undermining its independence functioning and governance.
- (2) The expenses of the NTC should be charged to the Consolidated Fund of India rather than depending on an executory body¹⁰⁶.
- (3) The NTC should be provided with constitutional safeguards to prevent executive or legislative interference in its operational affairs, administration, and appointments.
- (4) The NTC should have full, autonomous control over appointments made to tribunals, their qualifications, service conditions, and conduct, without any executive interference.
- (5) To ensure the efficacy and independence of the NTC, the elected members should be guaranteed security of tenure and also stable service conditions, while preventing them from holding any other office in the Government, during or after their service in NTC, bans on reappointment of candidates and bans on appointing retired judicial personnel in Tribunals, to avoid any instances of *quid pro quo*.
- (6) The appointments or the SCSC committee must have judicial primacy in its constitution.
- (7) To ensure that the NTC is held accountable for its actions, the NTC must have provisions, mandating it to present reports to the Legislature or any superior judicial body in its proceedings, financial status etc... It must be answerable for any vacancies in the Tribunal boards or panels that may undermine the proper functioning of such Tribunals.
- (8) NTC should itself constitutionally prohibited from interfering with the independent functioning of the Tribunals under it.

¹⁰⁵ *MBA (III)*, supra note 10 at 273 ¶ 2-4

¹⁰⁶ *L. Chandra Kumar*, supra note 10 at 1218.

(9) NTC should unify the Tribunal System in India under one wing, by classifying all Tribunals into various chambers and benches (based on their specialization) of one single First-Tier Tribunal, as the Court of first instance. Tribunals with Appellate jurisdiction should be reinstated, with a status similar to High Courts similar to the Tribunal System in the United Kingdom¹⁰⁷. This move is to stop the excessive Tribunalization in India for each and every specific subject matters.

Pending the establishment of the NTC, the Central government should consider establishing, *pro tempore*, an interim overseeing body for Tribunals i.e. a separate Tribunals wing under the Ministry of law and justice until the proposed NTC is in place¹⁰⁸.

Another game changer move would be the wide implementation of electronic court system in India which has been a gamechanger in reducing the workload of traditional courts aiding them to dispense cases faster than the traditional court methods, and allow for more transparency in court proceedings¹⁰⁹. A similar wide implementation in Tribunals and their inclusion into the National Judicial Data Grid will help them dispense cases speedily, and also instil confidence in the minds of public regarding the legitimacy and judiciousness of Tribunals.

8. CONCLUSION

In summation, the Tribunal Systems in India is in need of radical restructuring. The current Tribunal System is heavily dependent of the executive for its functioning, the very organ against whom most cases are filed in such Tribunals, a threat to the independence of the Tribunal systems, which are quasi-judicial bodies in India. Successive judicial interventions, through *Gandhi* case, and the series of *Madras Bar Association* case, constantly advocated for achieving efficacious functioning and independence of Tribunals by establishing an independent overseeing body i.e. the NTC to administer and make appointments to Tribunals to avoid executive overreach in Tribunal functioning and bring in uniformity across all Tribunals in India. The recent legislative reforms, especially the Tribunals Reforms Act, 2021

¹⁰⁷ Tribunals, Courts and Enforcement Act, 2007, §7 (Eng.)
<<https://www.legislation.gov.uk/ukpga/2007/15/data.pdf>> last accessed June 6, 2025.

¹⁰⁸ *MBA (III)*, supra note 10 at ¶1

¹⁰⁹ Kumaran, P, 'Legal impact on integration of information and communication technology and digital justice: new era of judicial efficiency in India' [2024] 6(3) International Journal of Law, Policy and Social Review
<<https://www.lawjournals.net/assets/archives/2024/vol6issue3/6092.pdf>> last accessed June 8, 2025

have fallen short of addressing these issues, especially in matters of executive overreach in administration of the Tribunals and ensuring independence in Tribunal functioning. This research paper has highlighted the critical need for systemic reforms, chief among them being the establishment of a National Tribunals Commission. Such a body, ideally endowed with constitutional status and drawing its expenses from the *Consolidated Fund of India*, must possess autonomous control over appointments, service conditions, and overall superintendence of tribunals, ensuring judicial primacy in selection processes and judicial independence in its functioning. Also, By adopting modern models like electronic court systems that ensure structural and functional independence, akin to international best practices, India can turn its tribunal system into an efficient, expert, and fair place for dispensing justice. Therefore, the establishment of a strong and independent NTC is not just a suggestion; it is a necessary step to fix the current problems in the Tribunal systems and maintain the integrity of the judicial process in these specialized courts.