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## TRIBUNALISATION OF JUSTICE IN INDIA: EFFICIENCY OR EXECUTIVE CAPTURE?

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Gayatri Kammela, The West Bengal National University of Juridical Sciences, Kolkata

### Introduction

The expansion of the administrative state in modern times has brought about a radical transformation in the character of adjudication in its practical aspects. In India, with the spurt in the volume of regulatory legislation, the growth of welfare legislation and especially, the expansion of the economic sector of the country, the volume of disputes arose to a vast extent that traditional courts found themselves incapable of coping with them and a need was felt for special modes of adjudication. These modes took the form of what is now popularly referred to as “tribunalisation” of justice.

Tribunals or quasi-judicial bodies for the adjudication of disputes under specified heads of taxation, service matters, environmental and other forms of regulation, laws about corporate-organisational activity, were the result of an attempt to combine expert adjudication in law with that of the subject-matter itself and at the same time, take the pressure off the regular courts.<sup>1</sup>The constitutional status of these tribunals was further secured by Articles 323A and 323B of the Constitution of India.<sup>2</sup>

Unfortunately, tribunals though an innovative way out of a deadlock, have placed a question mark over their independence and if on the one hand they promise to hasten the delivery of social justice and make it more effectively attainable, on the other, their structure places them within the grip of the executive in so far as appointments, conditions of service, tenure, etc., are concerned. Thus, it poses a fundamental dilemma: Do tribunals simplify the path of justice, or do they constitute an avenue for the executive to pass over the head of the cherished and honourable old lady, the Judiciary?

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<sup>1</sup> MP Jain and SN Jain, *Principles of Administrative Law* (7th edn, LexisNexis 2017) 624.

<sup>2</sup> Constitution of India 1950, arts 323A–323B.

## Historical Background of Tribunalisation

The rise of tribunals in India has resulted from a gradual institutional response to the increasing complexity of governance and the expanding volume of disputes arising from the administrative state. The origins of tribunals predate the Indian Constitution, tracing back to the period before its adoption, when various specialised bodies were created to adjudicate disputes within specific sectors. Early examples include the labour law adjudicatory bodies and tax tribunals established to resolve specialised disputes.<sup>3</sup>

The majority of tribunals operated primarily under the Authority of Lodging in the years following the adoption of the Constitution in 1950. Among the earliest specialised adjudicatory bodies was the Income Tax Appellate Tribunal, which played a major role in resolving complex taxation disputes. Likewise, labour courts and industrial tribunals adjudicated conflicts between employers and employees under Labour Welfare Legislation. At this time in history, tribunals were viewed as adjuncts to the general judicial system rather than substitutes for it.<sup>4</sup>

In 1976, the Constitution was amended to create a legal basis for the establishment of tribunals by formally recognising their existence through the 42nd Amendment to the Constitution of India.<sup>5</sup> The provisions incorporated into the Constitution through this amendment are contained in Articles 323A and 323B.<sup>6</sup> Article 323A empowers Parliament to enact laws for establishing administrative tribunals to resolve disputes concerning recruitment and terms and conditions of employment in the public sector.<sup>7</sup> Article 323B empowers State Legislatures to develop tribunals in relation to specific areas, such as taxation, industrial disputes, land reforms, and elections for certain public offices, thus facilitating the establishment of tribunals for the specialised resolution of disputes and relieving stress on the Supreme Court of India and State High Courts through the more efficient resolution of disputes between parties.<sup>8</sup>

The tribunal system developed extensively within the regulatory framework after being given constitutional recognition, with tribunals now having jurisdiction to adjudicate disputes within

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<sup>3</sup> Dinesh Singh Chauhan, *Tribunalisation of Justice in India's Competitive Regime*, Legal Services India, available at <https://www.legalserviceindia.com/legal/article-3122-tribunalisation-of-justice-in-india-s-competition-regime.html>.

<sup>4</sup> Id.

<sup>5</sup> The Constitution (Forty-second Amendment) Act, 1976.

<sup>6</sup> Constitution of India 1950, arts 323A–323B.

<sup>7</sup> Constitution of India 1950, art 323A.

<sup>8</sup> Constitution of India 1950, art 323B.

many areas where there is a need for specialist expertise, e.g., National Green Tribunal (environmental regulation), National Company Law Tribunal (corporate reorganisation), Central Administrative Tribunal (employment law), etc.

### **Normative Justification for Tribunalisation**

When traditional courts are unable to resolve disputes concerning highly technical matters of law, tribunalisation has been viewed as a structural measure that adds a layer to the general court system by offering specialist adjudication on technical matters in a more efficient manner.

One of the primary reasons tribunals exist is to provide specialist expertise. Many disputes arising from regulation are highly specialised and/or technical, meaning that generalist courts may not have the requisite knowledge or capacity to resolve them. As such, the design of tribunals includes both judicial members and technical experts in the adjudication process, so that both types of expertise may be called upon in making decisions. The hybridisation of expertise is perhaps best illustrated by the way environmental disputes are dealt with in India, where the National Green Tribunal comprises both environmental experts and judicial members, thereby facilitating more informed decision-making grounded in both legal and scientific reasoning.<sup>9</sup>

A second reason for establishing tribunals is to provide an alternative means of resolving disputes expediently and efficiently. Indian courts have historically been beset by large case backlogs, resulting in significant delays in resolving disputes. As such, tribunals have been viewed as bodies with streamlined procedures that facilitate quicker decision-making and reduce the general judiciary's caseload by diverting disputes from general courts to tribunals.<sup>10</sup>

Another consideration closely related to efficiency is the flexibility of the procedure. Generally, unlike general courts, there is no requirement for strict compliance with a procedural code (such as the Code of Civil Procedure) in tribunals, allowing them to adopt less formal and/or more flexible procedures. Tribunalisation has also been seen as providing greater relief to the higher judiciary by enabling it (i.e., the High Courts and the Supreme Court) to focus more on issues of constitutional interpretation and fundamental rights, and to adjudicate specialised

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<sup>9</sup> Ritika Juneja, *Future of Tribunalisation in India: Between Efficiency and Constitutionality*, Delhi Metropolitan Education, available at <https://dmejournal.com/index.php/DMEJL/article/view/518/228>.

<sup>10</sup> *Id.*

disputes at first instance.<sup>11</sup>

Despite the aforementioned theoretical advantages, the practical operation of tribunals raises significant questions about their independence, delays in procedural processes, and executive interference, casting doubt on whether the tribunalisation process has achieved the level of efficiency and autonomy originally envisaged.

### **Constitutional and Judicial Response to Tribunalisation**

Tribunals have grown amid ongoing judicial assessments of whether their decision-making adheres to the basic tenets of the Indian Constitution. The Constitution allows for tribunals to be used to facilitate the adjudication of specialised issues, and the Supreme Court has continually stressed that all such tribunals need to act within the confines of the Constitution and, more specifically, with respect to the principles espoused by judicial review, separation of powers, and the independence of institutions.<sup>12</sup>

The case of *L. Chandra Kumar v. Union of India*<sup>13</sup> serves as the foundation for this case law. This case addressed whether the constitutional status of the administrative tribunal(s) established by Articles 323A and 323B<sup>14</sup>, in relation to the powers granted to the High Courts under Articles 226 and 227 of the Constitution<sup>15</sup>, could be denied by the legislation creating them. The court determined that the power of judicial review of the High Court and the Supreme Court forms part of the basic structure of the Constitution and cannot be removed by a legislative act. As a result of the finding of the court, although the administrative tribunal(s) may serve as the first level of judicial process for specialised types of disputes, the decisions of those adjudicators will be subject to judicial review by the High Courts.

In a landmark case regarding the constitutional validity of the National Company Law Tribunal and National Company Law Appellate Tribunal, the Court in *Union of India vs. R Gandhi*<sup>16</sup> established statutory criteria for tribunal members' qualifications, the composition of selection committees, and the safeguards necessary to ensure institutional independence. Here, the

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<sup>11</sup> Id.

<sup>12</sup> Anusha Ramesh, *Tribunalisation of India's Competition Regime*, NUJS Law Review (2016), available at <https://nujlawreview.org/wp-content/uploads/2017/01/2016-9-3-4-Anusha-Ramesh-%E2%80%98Tribunalisation%E2%80%99-of-India%E2%80%99s-Competition-Regime.pdf>

<sup>13</sup> *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

<sup>14</sup> Constitution of India 1950, arts 323A- 323B.

<sup>15</sup> Constitution of India 1950, arts 226-227.

<sup>16</sup> *Union of India v. R. Gandhi*, (2010) 11 SCC 1.

petitioners claimed that the tribunal structure created by parliament compromised the independence of the judiciary by allowing too much executive influence over the appointment and administration of tribunals.<sup>17</sup>

In several subsequent cases, the Supreme Court has also highlighted excessive executive influence in tribunal structures. Most notably, this theme emerged in the Madras Bar Association v. Union of India series of decisions. In the 2014 decision, the Court reviewed the appointment, tenure and administrative control of the tribunal structure, specifically examining the insulation of tribunals exercising functions of a judicial nature from excessive executive influence, notably where disputes arise against government entities. The Court has emphasised that selection committees must include at least some judges, that conditions of service must protect the independence of tribunal members, and that there should be ways to ensure tribunal members remain independent.<sup>18</sup>

The 2021 Madras Bar Association case examined the appointment of tribunals and their tenure. The Supreme Court reiterated its concern about the short tenure of tribunal members and the excessive control of executive agencies over tribunals' day-to-day operations, both of which would adversely affect tribunal members' independence. The judgment reaffirmed that tribunals that replace traditional courts must maintain both structural and functional independence to preserve public confidence in their decision-making.<sup>19</sup>

In conjunction with the ongoing judicial scrutiny of tribunal structures, Parliament has continued to seek to rationalise and reorganise its tribunal framework through legislation such as the Tribunals Reforms Act, 2021<sup>20</sup>. This legislation sought to streamline the administration of tribunals by abolishing some tribunal structures and changing how tribunal members are appointed and the conditions of service. However, many provisions of the legislation have been challenged in the Supreme Court on the ground that they are in direct violation of prior directives intended to protect the independence of tribunal members.<sup>21</sup>

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<sup>17</sup> Gautam Swarup, *Indiscriminate Tribunalisation and the Exclusive Judicial Domain: An Analysis of The 42<sup>nd</sup> Amendment in the Light of Decisions of the Supreme Court*, (2012) 23 (2), National Law School of India Review [pp. 97-119].

<sup>18</sup> Madras Bar Association v. Union of India, (2014) 10 SCC 1.

<sup>19</sup> Madras Bar Association v. Union of India (2021) 7 SCC 369.

<sup>20</sup> Tribunals Reforms Act, 2021.

<sup>21</sup> Madras Bar Association v. Union of India, 2025 INSC 1330, available at <https://www.scobserver.in/cases/madras-bar-association-union-of-india-tribunals-reforms-act-2021-case-background/>.

## Executive Capture of Tribunals

Despite certain theoretical advantages, there are serious problems of institutional independence and executive interference in the actual operation of tribunals. This arises from various fetters placed on the tribunal system, such as in the method of appointment, fixed term, financial dependence, and administrative disaggregation.

An important matter is executive control over appointments. Many tribunals are appointed through appointment codes that involve high-level officials (at the government level). On the one hand, the judiciary is two-tiered. However, executive power typically controls many of these processes. Since many tribunals (most) adjudicate matters initiated by a government agency or public body, having an executive hand in the appointments process can create concern about and cast doubt on the independence of the tribunal.<sup>22</sup>

Then comes the tenure of members. Many tribunals prescribed a short term of service, with the possibility of reappointment. The short and uncertain term of appointment to adjudicatory posts can blunt the edge of independence in adjudicators, who may seek to make their results pleasing to the executive, to protect future appointments, or to secure the extension of their existing appointments. The Supreme Court has frequently condemned such an arrangement and recognised that many bodies would need the comfort of sufficient tenure if they were to bear the independent character assumed by courts.<sup>23</sup>

Further, there is a problem of subsistence. “Administrative” dependence of tribunals upon executive “departments” is a further aspect of the problem of independence. In several instances, tribunals are administered by the executive departments they are set up to review. The Central Administrative Tribunal works under the Department of Personnel and Training, an extension of the executive. “Administrative”, budgetary, and infrastructural dependence do not promote insulated tribunals.<sup>24</sup>

Over the years, the staggered creation of various tribunals through different statutes, with different methods of appointment, procedures, terminology, and basic arrangements, has led to fragmentation and a loss of neatness and convenience in the system. The courts would quite

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<sup>22</sup> Rozena Correia, *India's Interlude with Tribunalisation of Justice: Efficacy Conundrum & Strategic Reforms*, (2024) 4 (3) Journal of Informatics Education and Research.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

properly find it within their competence, in the public interest, to uphold judicial independence.

Tribunals have lapsed from being constantly beset by infrastructural difficulties to being beset by vacancies. The appointments take too long, and there aren't enough staff. The physical standard infrastructure is left to gather dust. Things take time, but perhaps it is ironic that tribunals instituted for ensuring a quicker end to delay, that is, the abolition of judicial delay, have resulted in mere procedural ease for an incompetent entity.

### **The National Tribunal Commission: Viability and Feasibility**

The National Tribunal Commission (NTC) is a proposal for a national body to oversee tribunals and address issues related to the executive's control over them. The establishment of an NTC has received significant attention in both the academic and judicial realms and has frequently received the Supreme Court's backing in numerous tribunal-related decisions. The need for an NTC to create an independent institutional framework for oversight of tribunals and to support their independence, effectiveness, and accountability through the establishment of a unified administrative system for all tribunals across India is obvious.<sup>25</sup>

The NTC will also perform some of the most important roles in the tribunal system. The first role will be to establish an oversight body responsible for the appointment process for tribunal members, ensuring that appointments are fair, transparent, merit-based, and free from undue executive influence. The NTC would also be responsible for regulating the conditions of service for tribunal members. Among the issues that would be addressed through the regulation of conditions of service are tenure, salary and retirement benefits. These functions would support adjudicators' independence and create stability and security in tribunal members' working environment, thereby insulating tribunals from undue executive influence.

The NTC will also be responsible for administering all financial and administrative aspects of the tribunals. At present, a number of the tribunals are administered by various ministries, thereby creating an administrative dependency on the executive branch. The NTC will consolidate these responsibilities under the NTC as a single, independent body, thereby providing the tribunals with greater independence regarding their financial, human, and

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<sup>25</sup> *Tribunalization of Justice in India: Challenges, Reforms and Future Prospects*, PW OnlyIAS, available at <https://pwonlyias.com/upsc-notes/tribunalization-justice-india/tribunalization-of-justice-in-india-challenges-reforms-and-future-prospects/>

physical resources. The establishment of a single authority to administer all tribunals will provide consistency and uniformity amid the current fragmentation of the tribunal system, improve case management, and increase operational efficiency.

Despite these concerns, establishing an NTC offers one of the best opportunities to address the systemic deficiencies of India's tribunal system. When adequately constructed to protect the independence and accountability of the tribunal system, the NTC will create a critical institutional mechanism to promote the efficient adjudication of cases and the independence of the judiciary within the tribunal system.

### **Comparative Perspective: The United Kingdom and The United States of America**

The United Kingdom ("UK") and the United States of America ("USA") have developed their tribunals in different ways through law and practice, providing some insight into how India could improve its tribunal system.

In the UK, the development of the modern tribunal system was facilitated by a series of legislative measures that created a more transparent and fair administrative process by increasing oversight of administrative decisions. The establishment of these legislations were made possible through the recommendations of the Franks Committee in 1958 through which the first piece of legislation passed concerning the establishment of a system of administrative tribunals and the introduction of the Councils on Tribunals that aimed to provide a mechanism for monitoring the operation of tribunals and regulating the administrative justice system as a whole to ensure the fairness of the adjudicative process.<sup>26</sup> Eventually, the tribunal structure established under the Tribunals, Courts and Enforcement Act<sup>27</sup> was restructured to create a unified tribunal comprising the First-tier Tribunal and the Upper Tribunal. From the UK system, we can see three major components for an effective administrative tribunal system: centralised administration, uniform procedures and standards, and institutional oversight.<sup>28</sup>

On the other hand, in the USA, the Administrative Procedure Act<sup>29</sup> ("APA") governs the

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<sup>26</sup> Robert Thomas, *The Development of Administrative Law in the United Kingdom*, Oxford Academic [pp. 257-281], available at <https://academic.oup.com/book/39621/chapter-abstract/339567765?redirectedFrom=fulltext>.

<sup>27</sup> Tribunals, Courts and Enforcement Act, 2007.

<sup>28</sup> Robert Thomas, *From 'Adversarial v Inquisitorial' to 'Active, Enabling, and Investigative': Developments in UK Administrative Tribunals*, Research Gate, available at [https://www.researchgate.net/publication/256033556\\_From\\_'Adversarial\\_v\\_Inquisitorial'\\_to\\_'Active\\_Enabling\\_and\\_Investigative'\\_Developments\\_in\\_UK\\_Administrative\\_Tribunals](https://www.researchgate.net/publication/256033556_From_'Adversarial_v_Inquisitorial'_to_'Active_Enabling_and_Investigative'_Developments_in_UK_Administrative_Tribunals).

<sup>29</sup> (1946) 5 U.S.C. §§ 551–559.

processes of administering justice through administrative courts, as well as the rulemaking and decision-making authority of all federal agencies.<sup>30</sup> A key aspect of the American administrative adjudication process is that Administrative Law Judges ("ALJs") conduct hearings and adjudicate disputes involving administrative agencies on behalf of the President. While ALJs perform their duties within the executive branch of government, the APA added procedural safeguards to protect ALJs' independence, including merit-based appointments and safeguards against arbitrary dismissal.<sup>31</sup>

Another central tenet of the American system is the provision of procedural due process. Agencies are required to give the public sufficient notice, an opportunity to be heard and a sufficient explanation of the findings made during administrative hearings. The ability for parties to seek judicial review of administrative decisions provides an additional level of oversight and accountability, ensuring that administrative agencies operate within the limitations of applicable statutory law.<sup>32</sup>

The experiences of the USA and the UK provide useful insights for India on the framework for an effective system of administrative tribunals. The UK system places considerable emphasis on establishing a national body to exercise authority over the administrative tribunal system, while also developing integrated relationships with the judiciary. The USA system demonstrates the necessity of providing a clear statutory framework, including procedural protections, to assure the independence of adjudicatory functions within administrative structures. Additionally, both the UK and USA experiences indicate that an effective administrative tribunal system must have a governance framework that adequately balances the independence and efficiency of the tribunal and administrative systems.

### **Possible Reforms**

As evidenced by the current structural challenges to independence and efficiency in the Indian tribunal system, there is an urgent need for reform. Tribunals have played a significant role and will continue to play a vital role in the adjudication of disputes within their area(s) of specialisation. They must also be strengthened, through their institutional form, to function as

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<sup>30</sup> *Summary of the Administrative Procedure Act*, EPA, available at <https://www.epa.gov/laws-regulations/summary-administrative-procedure-act>.

<sup>31</sup> Prof. Harold J.Krent, *An Overview of the United States Administrative Procedure Act*, Chicago Kent College of Law, available at <https://doi.org/10.26881/gsp.2020.2.05>.

<sup>32</sup> *Id.*

independent and credible adjudicators (and not as extensions of the executive).

The establishment of a National Tribunals Commission has been proposed as a common reform recommendation and has been referenced repeatedly in the Supreme Court's tribunal jurisprudence. This body would serve as a means of providing independent oversight of the appointment process, the stipulation of service conditions, and the administration and financial management of the tribunal. Establishing these functions within an independent institution will provide the necessary level of protection against excessive executive influence upon the tribunals, as well as increase the uniformity with which tribunals are governed.

The second reform measure concerns the provision of longer, more secure terms of office for tribunal members. The continuation of a system characterised by short terms and a desire for reappointment undermines the independence of tribunal members' adjudicatory responsibilities. By providing a fixed, sufficiently long-term office, tribunal members will be able to promote institutional autonomy and enhance the credibility of their decision-making. Relatedly, tribunals should be removed from direct administrative control of the executive ministries. Most tribunals presently operate within departments whose decisions they adjudicate, creating a compelling tension that may raise questions about their impartiality. Transferring administrative supervision by a department to an independent authority will relieve that structural tension.

Other reforms may include uniform legislation governing procedures to be followed before tribunals and stronger mechanisms for judicial review by constitutional courts. Together, these would help assure that “tribunalisation” does not come at the cost of perverse incentives that impede constitutional norms.

## **Conclusion**

To sum up, the establishment of tribunals in India is both an institutional necessity and a constitutional problem. The emergence of tribunals was due to the increasing complexity of governance and the workload for traditional courts. Thus, they were established as a more pragmatic alternative through the introduction of specialised adjudication. In principle, they complement conventional courts and can address complex regulatory disputes that require subject-matter expertise and streamlined processes.

Despite tribunals being created to provide quick and accessible resolution of grievances arising from government actions, structural issues continue to impede their effective functioning. For instance, to the extent that executive influence persists in appointments, tenure, and the financial and administrative control of tribunals, the independence and impartiality of tribunals will always be subject to question. Vulnerability to "executive capture" exists outside of the courts, as long as the tribunal's administrative and financial structures are dependent on the executive branch; therefore, judicial intervention to correct this imbalance has been frequent to re-affirm that judicial functions performed by tribunals must be independently administered, in the same way that judicial functions performed by judges in the courts are independently administered. However, the ongoing constitutional challenges to tribunal legislation demonstrate that tribunals' independence and impartiality remain tenuous.

The key issue is not whether tribunals should be maintained, but how they can be structured within the framework of the Constitution. Reforming statutes related to tribunals in accordance with the independent National Tribunals Commission, sharing the same governance standards, guaranteed terms of office and security of tenure, will ultimately permit tribunals to balance the competing interests of efficiency and independence. Thereby, the ultimate purpose of tribunalisation to enhance the administration of justice in India will be achieved through firmly anchoring the existence of tribunals in the constitutional principles of judicial independence and accountability.