

Future of Tribunalisation in India: Between Efficiency and Constitutionality

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Abstract

Tribunals have emerged as an alternative institutional mechanism to traditional courts, aiming to address issues of delay, cost, and procedural complexity. However, the rapid expansion of tribunals in India has sparked critical debates over their constitutional validity and functional independence. This paper explores the evolution of tribunalisation in India, evaluates the constitutional challenges it faces, and critically analyses recent reforms. It further explores whether future tribunalisation can strike a balance between administrative efficiency and constitutional mandates of judicial independence, separation of powers, and access to justice.

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INTRODUCTION

Adjudication of the disputes is one among the important aspects of the welfare state because for the purpose of ensuring the justice to each and every individual in the society, there is need of effective mechanism to settle down the disputes expeditiously¹. The effective adjudication of justice must ensure that the justice is delivered in the speedy manner and also there is expert adjudication of disputes. As the society became complex, the nature of disputes also became complex in nature and over the period of time it was realised that the adjudication of disputes must also be done by expert bodies other than the courts. This led to the establishment of tribunals in the country with the 42nd Amendment which inserted Article 323A and 323B. The name 'Tribunal' originates from 'Tribunes', referring to 'Magistrates of the Classical Roman Republic'.² Tribunal is a court of justice or seat for pronouncing judgment. According to Griffth C.J. "Although the tribunals are not a part of the regular courts, they have the legal authority to speak on behalf of people who have valuable rights, operate in a judicial way, and even take oaths of testimony. Although they are not judicial courts, they are similar to them."³

1 Daniyal Zameer, Roshni Parveen "Administrative Tribunals in India : Balancing Efficiency and Judicial Oversight in Public Law" 12 *IJCRT* 555 (2024)

2 Ibid

3 Huddart Parkar and Co. v. Moorehead (1909) 8 C.L.R 330

In simple terms, a tribunal is a decision-making body established by either the State or the Central government, vested with judicial or quasi-judicial authority. These tribunals are designed to provide a faster, more efficient, and more specialized forum for resolving administrative disputes, thereby reducing the burden on the traditional judiciary and improving access to justice for citizens⁴. The creation of a tribunal system can also alleviate problems for the courts, which can become inundated by judicial review applications within a particular area⁵. Since 1980's there has been mushrooming growth of tribunals across the country with each tribunal functioning according to its parent Act. This led to lack of uniformity in terms of functioning of tribunals and also working conditions of the tribunal members. Thus, in the year 2017 with the passing of Finance Act, 2017 an attempt was made to streamline the functioning of the tribunals across the country. The Act empowered the Central Government to frame rules regarding the same. Resultantly, these rules gave Central Government power to regulate the functioning of tribunals. These rules were challenged before the Supreme Court in *Rojer Mathew* on the ground of excessive delegation of power, endangering independence of judiciary and violation of separation of power. The rules were struck down by the Supreme Court as unconstitutional. The Central Government again framed the Rules in the year 2020 consisting of the very same provisions that were struck down by the Court, thus, again the rules were challenged and the Supreme Court struck down the rules. Subsequently, Tribunal Reform ordinance was passed consisting of almost the same rules and presently, Tribunal Reform Act, 2021 is in force which have exactly the same provisions which have been previously struck down by the Court. Thus, presently, the Act has been challenged before the Court.

Evolution and Objectives of Tribunalisation

The development of tribunals in India originated from the need to establish specialized, efficient, and

⁴ Yuvashree. K, "Justice through Tribunals: Assessing the role, challenges and reforms of India's Tribunal system"

⁵ *International Journal of Advanced Legal Research* (2025)

⁵ Ibid

accessible forums for resolving disputes outside the conventional judiciary. With constitutional support through Articles 323A and 323B, tribunals were officially introduced by the 42nd Constitutional Amendment Act of 1976 to address administrative matters, including service-related and tax disputes. Over the years, institutions such as the Central Administrative Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), and National Green Tribunal (NGT) were set up to handle complex cases that demand subject-specific knowledge. The system has grown significantly, aiming to ease the caseload of traditional courts and expedite justice delivery. However, ongoing debates regarding their independence and the extent of judicial supervision continue to influence their evolution. Recent legislative measures, including the Finance Act of 2017 and the Tribunal Reforms Act of 2021, seek to rationalize the tribunal framework across the nation, though questions remain about whether these reforms are truly transformative or merely superficial.

Tribunals have become a vital part of the contemporary justice delivery framework. They operate as a hybrid mechanism, blending both judicial and administrative roles. In the Indian context, their constitutional foundation lies in Articles 323A and 323B. As administrative responsibilities expand and the traditional courts become increasingly overloaded, tribunals have gained prominence as an effective means to adjudicate specialized matters. Their establishment is driven by several key factors, including:

Enhancing Judicial Efficiency and Reducing Caseload

India's judicial system faces a massive backlog, with millions of cases pending across various courts. Tribunals alleviate this pressure by handling specific types of disputes, thus easing the load on conventional courts and enabling quicker resolutions through simplified processes.

Specialised Adjudication

Disputes in areas such as taxation, environmental law, and corporate regulations often involve technical complexities. Tribunals are typically composed of subject matter experts, facilitating

better comprehension of intricate legal and regulatory frameworks and leading to more informed decisions.

Greater Accessibility and Procedural Flexibility

Tribunals are structured to be more user-friendly than traditional courts. They operate with less rigid procedures, involve lower litigation expenses, and offer flexibility in rules of procedure and evidence, making them more approachable for the general public.

Speedy Justice

A key objective of tribunals is to provide swift adjudication. Unlike regular courts bound by exhaustive procedural laws, tribunals follow streamlined processes and often function under stricter timelines, promoting quicker justice delivery.

Judicial Pronouncements and Constitutional Concerns

The Constitution distributes governmental powers among three distinct branches—legislative, executive, and judicial—each with its own roles and responsibilities, working individually to achieve the objectives outlined in the Preamble. Conventionally, the law is made by the Legislature, implemented by the Executive, and interpreted and adjudicated by the Judiciary⁶. The role of the judiciary and specifically, the Supreme Court has been immense in shaping the development and evolution of tribunals. From defining the term “tribunal” to advocating for its reform in order to ensure its independence the judiciary has played a proactive role. The Supreme Court in *Durga Shankar Mehta v Raghuraj Singh*⁷, the Supreme Court defined Tribunal in the following words:

“Tribunal” as used in Article 136 does not imply the same as “Court,” but it encompasses all adjudicating bodies as long as they are established by the state and have judicial authority as opposed to executive or administrative duties.”

6 Omdutt, “Role of Judiciary in the Democratic System of India (Judicial Activism under the Supreme Court of India)”, *Golden Research Thoughts*, Volume 2, Issue. 3, 1(Sept 2012)

7 AIR 1954 SC 520

In *Bharat Bank Ltd. v Employees*⁸, the Supreme Court observed that “Tribunals are not full-fledged courts, even though they have many of the characteristics of a court and perform quasi-judicial functions.”

In the *Harinagar Sugar Mills case*⁹ J, Hidayatullah, J.; while referring to the above observation of Mahajan.J. with approval, further clarified that it is inevitable that a public agency—in this case, the Central Government—will act as an in Tribunal rather than an Executive body when it exercises the State’s judicial power to decide on the rights of the parties in civil matters when there is a dispute between the contesting parties.

While the courts have always encouraged the establishment of tribunals, they have also emphasised the significance of power of judicial review over tribunal decisions. In *S.P. Sampath Kumar v Union of India*¹⁰, the Supreme Court upheld the constitutional validity of the Administrative Tribunals Act, 1985 and recognized tribunals as effective substitutes for High Courts in service matters. The Court held that tribunals can replace High Courts for specific matters (such as service disputes), but only if they provide a mechanism as effective and efficacious as the High Courts. It emphasized that judicial review is a basic feature of the Constitution, and any alternative forum must preserve this function. The Court directed the restructuring of tribunals to ensure their independence, particularly by strengthening the role and security of judicial members.

In *L. Chandra Kumar v Union of India*¹¹, Whether tribunals could act as the final adjudicatory authority, excluding High Court jurisdiction under Articles 226/227. *Overruled Sampath Kumar* to the extent that it allowed tribunals to replace High Courts. Held that tribunal decisions are subject to judicial review by High Courts under Articles 226/227. Asserted that judicial review by High Courts and Supreme Court is part of the basic structure, and cannot be excluded. This judgment re-established the primacy of constitutional courts, ensuring that tribunals function under judicial supervision, not as substitutes.

8 AIR 1950 SC 188

9 AIR, 1961 S.C. 1669

10 AIR 1987 SC 416

11 AIR 1997 SC 1125



Further, the judiciary has been instrumental in maintaining a balance between executive control and judicial autonomy in the operation of tribunals in India. Acknowledging that tribunals, despite their quasi-judicial nature, often function under executive oversight, the courts have regularly stepped in to safeguard their independence. Through various rulings, like *Union of India v R. Gandhi*¹², *Madras Bar Association v Union of India*¹³, *Roger Mathew v South Indian Bank Ltd* and others¹⁴, *Madras Bar Association v Union of India*¹⁵ the judiciary has emphasized that key aspects such as the appointment and composition of tribunal members must remain free from executive influence, thereby ensuring that tribunals operate with impartiality and autonomy.

Further, the recent reforms which aimed to streamline the tribunal system have raised major constitutional concerns. In March 2017, the Finance Act, 2017 re-organized the tribunal system by merging tribunals based on functional similarity, thus, reducing the total number of Tribunals from 26 to 19. It also delegated powers to the central government to make Rules to provide for the qualifications, appointments, term of office, salaries and allowances, removal, and other conditions of service for chairpersons and members of these tribunals. In November 2019, the Supreme Court struck down the 2017 Rules. The Court stated that the Rules did not meet the requirements laid down in earlier judgements mandating judicial independence. The Court instructed the central government to revise the Rules, highlighting two major concerns: (i) brief tenures that hinder the development of adjudicatory expertise, thereby affecting the effectiveness of tribunals, and (ii) the absence of judicial majority in selection committees, which directly violates the principle of separation of powers. In February 2020, the government introduced new Rules, which were once again contested before the Supreme Court due to their failure to align with the principles previously established by the Court. The Court recommended several amendments to these Rules, including

extending the term of office to five years with the possibility of reappointment (subject to an upper age limit), and permitting advocates with ten years of experience to be eligible for appointment as judicial members. Despite these suggestions, the government went ahead and enacted Tribunal Reform Act, 2021. The Tribunal Reforms Act, 2021 was introduced to abolish certain tribunals and transfer their responsibilities to existing judicial bodies like the High Courts. The primary aim of the Act was to ensure faster and more efficient adjudication, as data from the previous three years indicated that tribunals were unable to deliver effectively. Despite its stated objectives, the Act has faced considerable criticism, particularly for undermining the principle of separation of powers. This is because it permits the Central Government to take decisions based on the recommendations of the search-cum-selection committee, thereby raising concerns about judicial independence. Presently, the Act is challenged before the Supreme Court on the grounds of violating constitutional principles such as Independence of Judiciary, Doctrine of separation of power. Thus, the future of tribunals as an effective dispute resolution mechanism isn't uncertain as till the time the legislature does not incorporate these constitutional principles in the legislations, the battle between the judiciary and the executive will continue.

Efficiency vs Constitutionality: The Dilemma

The core dilemma lies in reconciling the goals of procedural efficiency with the constitutional principles of separation of powers and judicial independence. While tribunals may ease the burden on courts, they cannot function as parallel hierarchies devoid of safeguards. Executive dominance in appointments and administration poses risks to impartial adjudication. Any compromise on the independence of tribunals threatens the fabric of constitutional justice.

The tribunals face following challenges in their efficient functioning:

Independence of tribunals

Concerns regarding the independence of tribunals remain significant. A number of tribunals operate

12 (2010) 11 SCC 1

13 AIR 2010 SC 429

14 AIR 2019 SC 1514

15 AIR 2020 SC 917

under the direct administrative control of the same ministries whose decisions they are tasked with reviewing, raising serious doubts about their impartiality and violating the principle of separation of powers. The executive often plays a dominant role in the appointment of tribunal members, casting doubts on the transparency and fairness of the selection process. In many instances, tribunal members lack secure tenure and clearly defined service conditions, which compromises their autonomy and functional effectiveness. The current Tribunal Reforms Act, 2021 further reinforces executive control by granting the Central Government authority to appoint members, frame rules for their appointment, and regulate their terms of service. Additionally, tribunals rely heavily on their parent ministries for financial and infrastructural support, which may further impact their independence.

Appointments by the Government

All legislations that establish tribunals in India, including the recently enacted Tribunal Reforms Act, 2021, grant the government the authority to appoint tribunal members and formulate rules governing their service conditions. This concentration of power negatively impacts the efficient and impartial functioning of tribunals.

Vacancy in the tribunals

The judiciary is presently grappling with a shortage of judges, leading to a mounting backlog and significant delays in the delivery of justice. Tribunals, established to provide specialized and expedited adjudication, are facing a similar crisis due to severe understaffing. This shortage critically hampers the overall efficiency and functioning of the justice system. Urgent and concrete steps are needed by the authorities to resolve the issue of vacant posts in tribunals to ensure timely and effective justice. Notably, since 2017, no appointments have been made in several tribunals due to ongoing legal disputes.

No uniformity in Procedural Rules

Tribunals in India operate under varying procedural frameworks, as each is governed by the specific

legislation that created it. This results in a lack of uniformity across different tribunals, leading to confusion and inconsistency in the adjudicatory process. The absence of standardized procedures and clear guidelines often contributes to arbitrary or uneven decision-making.

A constitutionally coherent future for tribunalisation in India requires following:

Need for establishing Single Nodal Agency

In India, several Supreme Court judgments, Law Commission reports, expert committee recommendations, legal practitioners, and international models have emphasized the need for a centralized authority to regulate and monitor the functioning of tribunals. In the *L. Chandra Kumar* judgment (1997), the Supreme Court identified the absence of such a coordinating body as a significant flaw in the tribunal system. The Court criticized the practice of placing tribunals under the control of ministries that may themselves be litigants and highlighted the inconsistencies between laws governing Central and State tribunals. To remedy these issues, the Court proposed the creation of a central supervisory agency—either within the Ministry of Law or as an independent institution—and also considered the feasibility of establishing separate oversight bodies for Central and State tribunals if required.

Need to appoint the members of tribunals by open advertisement method or by the All-India Entrance Examination for tribunal conducted by the Selection Committees of the Board

To ensure the independence of central tribunals, it is essential to reform the appointment process by limiting executive involvement. Introducing an All-India Entrance Examination or a system of open advertisements for tribunal appointments would promote transparency and merit-based selection. A National Tribunal Commission (NTC) should be entrusted with forming subject-specific Selection Committees to conduct interviews and manage the recruitment process. These reforms would help streamline regular appointments and ensure that competent and qualified individuals are selected. The Selection Committees should be empowered

to determine key aspects such as the number of examinations, syllabus content, and scheduling. The syllabus must be customized according to the expertise required for each tribunal. Furthermore, eligibility norms should include an age bracket of 35 to 50 years for candidates aspiring to serve as members of central tribunals.

Need to provide uniform provisions on the removal grounds for removing the members of tribunals across the central tribunals

To maintain uniformity and uphold the independence of central tribunals, it is essential to establish consistent grounds for the removal of tribunal members across all governing laws. The National Tribunal Commission (NTC) should be vested with the authority to carry out removals through a clearly defined, standardized process. Recommended grounds for removal include insolvency, conviction for crimes involving moral turpitude, mental or physical incapacity, holding financial or other interests that could compromise impartiality, and misuse of position against the public interest. Standardizing service conditions and removal procedures would help ensure the effective and fair functioning of central tribunals.

Need to provide Independence to the Members of Tribunals

The Indian Constitution is built on strong foundational principles such as the separation of powers, democratic governance, fundamental rights safeguarding citizens from State actions, the rule of law, and constitutional supremacy. These values can only be effectively preserved through an independent judiciary—a principle the Constitution clearly endorses. Since tribunals serve as judicial bodies or extensions of the judiciary, they too must reflect and uphold judicial independence. To achieve this, members of tribunals should be granted secure tenure, comparable to that enjoyed by judges of the Supreme Court and High Courts.

Need to provide Training to all newly appointed Members of the Tribunal

It is crucial that tribunals provide comprehensive training to all newly appointed members to prepare

them to carry out their roles and responsibilities competently and efficiently.

Need to fill the vacancy in the tribunals

The functioning of tribunals is severely affected by the large number of unfilled positions, highlighting the urgent need for timely appointments. Promptly addressing these vacancies is vital to maintain the efficiency and effectiveness of the tribunal system. In *Madras Bar Association v. Union of India* (2020), the Supreme Court underscored the importance of accelerating the selection and appointment process to ensure timely justice. The Court directed the Central Government to make appointments within three months of receiving recommendations from the Search-cum-Selection Committee.

CONCLUSION

Although administrative tribunals have transformed dispute resolution by making it more accessible, quicker, and frequently more specialized, it is important to acknowledge their structural and functional shortcomings. The effort to transform tribunals into truly effective instruments of justice is still ongoing. To ensure their credibility, it is crucial to free tribunals from executive influence and safeguard judicial independence. Providing tribunal members with job security, competitive salaries, and suitable service conditions is vital for ensuring their confidence during service. However, a large number of unfilled positions for Members and Chairpersons, along with persistent delays in appointments, have greatly hampered the functioning of tribunals. Although the judiciary initially supported the growth of the tribunal system, this support now seems to be diminishing, as both the High Courts and the Supreme Court increasingly express dissatisfaction with executive interference that has severely compromised the tribunals' efficiency. It is pertinent to understand that the judiciary alone cannot transform and revolutionize the working of tribunals, it needs cooperation from the legislature as well. The legislature is time and again passing the same laws which have been repeatedly struck down by the supreme court and is giving the deaf

ears to the decisions of the court. There is a pertinent and urgent need for the legislature to understand that independence of judiciary and separation of powers are the constitutional principles which if compromised would endanger our constitutional principles and setup.