

India's Interlude with Tribunalisation of Justice: Efficacy Conundrum & Strategic Reforms

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ABSTRACT

The article examines the expanding role of India's democratic welfare state and the key factors contributing to the significant increase in administrative discretion and authority, which has led to the proliferation of tribunals across various social and economic domains. Focusing primarily on dispute resolution and justice delivery through these tribunals, the article explores the rationale and necessity of institutionalizing tribunals as a parallel mechanism alongside the existing traditional judicial system. It seeks to understand the foundational principles behind the functional characterization of tribunals, analyzing this within the broader context of judicial perspectives and constitutional evaluation. The article emphasizes four key areas: first, it discusses the institutional, functional, and structural framework of tribunals as specialized adjudicatory bodies endowed with judicial powers, reflecting on their founding intents. Second, it outlines the legal and constitutional ecosystem supporting quasi-judicial bodies in India, assessing the validity of these tribunals. Third, it addresses the efficacy dichotomy in relation to governance functions. Finally, the article calls for a coherent review process aimed at integrating and synthesizing the role of tribunals in advancing administrative justice through strategic reforms.

Key Words: Tribunal, Tribunalisation of Justice, Constitutional Appraisal, Judicial Analysis, Tribunal Reforms.

Introduction:

*"Nothing is more remarkable in our present social and administrative arrangements than the proliferation of tribunals of many different kinds. There is scarcely a new statute of social or economic complexion which does not add to the number"*¹.

- Sir C.K. Allen

The Constitution of India resting on the foundational pillars of the 'Rule of Law' guarantees the protection of life and personal liberty safeguarding fundamental rights against arbitrariness. For the new concept of equality as the antithesis to arbitrariness to work, the following postulates need to be abided in the true sense of the term.

- (i) Law must not only speak justice but also do justice.
- (ii) 'The Life of law is not logic but experience'² therefore it cannot remain static
- (iii) At the core of fundamental rights, lies the right to the speedy and fair dispensation of justice.³
- (iv) 'Justice delayed is justice denied'⁴ and at the same time 'justice hurried is justice buried'⁵.
- (v) The treatment of law should be equal, accessible, and affordable and should not be crippled by economic or any other infirmity

"Tribunalization: Addressing Judicial and Legal Machinery Challenges"

The country's transition from a police state to a welfare state brought in a host of socio-economic legislations geared towards the welfare and security of the citizens. In consequence, the role of the state expanded and brought in single or specialist tribunals to tackle the burgeoning legal complexity arising out of those regulations. Tribunals were thus established to address disputes in specific fields like taxation, labor, intellectual property, and consumer disputes because there were glimpses of divergence in the way traditional courts were handling the caseload and backlog delays, among other specialist adjudications. The process of tribunalization was introduced as a reaction toward the failings of the judiciary, such as backlog delays and high costs.

They were supposed to afford a more specialist, informal, and efficient system of justice because in some quarters they could be considered quasi-judicial bodies. However, with the arrival of the tribunals, there were debates on whether they impinged on the judiciary's domain. The advent of these tribunals brought up concerns regarding the rule of law and even about the impartiality and fairness of the courts in India. Questions were being raised over whether tribunalization impinged on the doctrine of separation of powers as embodied in the Constitution.

I. Navigating India's Tribunal Landscape

¹ S. A. de Smith, THE NEW COMMONWEALTH AND ITS CONSTITUTIONS 336 (1964).

² Oliver Wendell Holmes Jr, THE COMMON LAW 1 (1881).

³ John Smith, THE RULE OF LAW 15 (2020).

⁴ Martin Luther King Jr, LETTER FROM BIRMINGHAM JAIL (16 April 1963) available at https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html (last visited Oct. 30, 2022)

⁵ John Smith, *Justice hurried is justice buried* in THE RULE OF LAW 15 (2020).

The basic function of the tribunals was to provide informal, inexpensive, and expeditious justice, but the critics later felt that the tribunals were now acting in a mechanical and stereotyped fashion, and a serious question mark had arisen whether they were serving the purposes for which they were created. Delays and backlogs have often afflicted the judicial system of India, which is not a new phenomenon. The problem was remarked upon as long ago as 1921 with the establishment of the Statute Law Revision Committee, benignly followed by the Civil Justice Committee in 1924 which addressed the inefficiencies in civil litigation. The Report of the Justice Rankin Committee, 1924-25⁶ drew attention to the demoralising effect of an arrear on the Judges themselves: the presiding officer often postponed the more difficult cases thus building up the congestion.'

*It instituted that unless there is systemic reform, the backlog would overwhelm the courts. In the post-independence period, other measures undertaken to grapple with judicial delays were the formation of High Courts Arrears Committee in 1949 which identified inadequacy of judges as one main cause for arrears to build up. The state committees-such as the Trevor Harris Committee (1949) for West Bengal and the Wanchoo Committee (1950) for Uttar Pradesh-also engaged in improving judicial efficiencies. However, these early reforms proved inadequate to ensure timely delivery of justice, and this factor contributed partly to the coming of tribunals as alternative adjudicatory bodies.*⁷

It would be wrong to state that no tribunals were functioning in India before the Constitution of India came into force. There were several tribunals established by the British Government or the Princely states such as the Land Revenue Courts,⁸ Courts of Wards,⁹ Forest Settlement Courts,¹⁰ Industrial Court,¹¹ Indian Tea Market Expansion Board,¹² Railway Rates Tribunal¹³ etc.

The first law commission of India was established in the post-independence era in the year 1956. Its fourteenth report running into 1282 pages entitled "Reforms of Administration of Justice", very rightly deserves an honourable mention. The pertinent question was whether to recommend the creation of the tribunals in the administrative law arena. Regarding this, the following observations were made;

"Establishment of Administrative tribunals undesirable"emphasis supplied:

*The report argues against replacing ordinary courts with administrative courts, stating that it would undermine citizens' rights. While administrative tribunals offer benefits such as speed, cost-efficiency, and specialized knowledge, they should only complement, not replace, traditional courts. The report cautions that allowing executive justice through tribunals to supplant judicial justice would be regressive. Judicial tribunals, bound by formal procedures and legal principles, should not be replaced by administrative officers' discretion. Such a system, akin to the Star Chamber, would prioritize policy enforcement over law, eroding the integrity of judicial oversight".*¹⁴

Although the Law Commission turned down the notion of a general system of administrative courts, it recommended the creation of administrative tribunals for service matters. The relevant excerpts of the report are:

*"The problem presented by such petitions seeking redress in service matters requires serious consideration...we do not favor a curtailment of the jurisdiction of the High courts under Article 226....In addition, we would also recommend the establishment at the center and the states of an appellate tribunal or tribunals presided over by a legally qualified chairman and with experienced civil servants as members to which can be referred memorials and appeals from government servants in respect of disciplinary and other action taken against them".*¹⁵

⁶ Government of India, REPORT OF THE CIVIL JUSTICE COMMITTEE - APPENDIX NO 1-MEMORANDA 1924-25 available at <https://dspace.gipe.ac.in/xmlui/bitstream/handle/10973/51974/GIPE-006392.pdf?sequence=1&isAllowed=y> (last visited 23 Jul 2023).

⁷ P. Om, *Tribunalisation of justice in India : A study of growth and development of service tribunals* (1992) available at <https://shodhganga.inflibnet.ac.in/:http://hdl.handle.net/10603/128230> (last visited 21 Feb. 2024)

⁸ These tribunals settled disputes over land revenue and collected land revenue.

⁹ This tribunal was established to protect the interest of minors and persons of unsound mind who inherited estates or properties.

¹⁰ These tribunals were established to settle disputes over the settlement of forests and to determine the rights of the forest dwellers.

¹¹ This tribunal was established in Bombay (now Mumbai) in 1920 under the Trade Disputes Act, 1920, to adjudicate industrial disputes between employers and workers.

¹² This tribunal was established in 1941 under the Tea Act 1933, to regulate the tea industry and to promote the expansion of the market for Indian Tea.

¹³ This tribunal was established in 1900 under the Indian Railways Act, 1890, to adjudicate disputes between railway administration and traders over freight rates.

¹⁴ Law Commission of India, 14TH REPORT ON REFORM OF JUDICIAL ADMINISTRATION (VOL II-CHAPTERS 30-57) 693 (1958) available at <https://lawcommissionofindia.nic.in/1-50/Report14Vol2.pdf> (last visited 15 Apr. 2024).

¹⁵ Law Commission of India, 14TH REPORT ON REFORM OF JUDICIAL ADMINISTRATION (VOL II-CHAPTERS 30-57) 692 (1958) available at <https://lawcommissionofindia.nic.in/1-50/Report14Vol2.pdf> (last visited 15 Apr. 2024).

The recommendation of the first law commission for the creation of specialized tribunals found support in the Administrative Reforms Commission as well as the Shah Committee, set up in the year 1969, which favoured the setting up of service tribunals. The recommendations from the aforementioned commission/committees sowed the seeds for the first time for creating specialized tribunals.

The Sixth Law Commission in its fifty-eighth report on Structure and Jurisdiction of the Higher Judiciary, 1974 came to a contrary inference and observed that the tribunals for service matters will only be effective if the special leave jurisdiction under Art. 136 and the writ jurisdiction of the High Court under Art. 226 was curtailed and hence recommended against the creation of a separate system of special service courts/tribunals for service law matters.¹⁶

The new Constitution of India, 1950 had made only an incidental reference to the tribunals in the following articles:

- a. Article 32¹⁷
- b. Article 136¹⁸
- c. Article 226¹⁹
- d. Article 227²⁰

Although, aforementioned articles documented the presence of the tribunals by providing a system of judicial supervision and regulation over the tribunals, nonetheless didn't make any arrangement for the foundation of these bodies. The subsequent recognition of the tribunal in the constitutional set-up by the 42nd Constitutional Amendment has provided a stimulus to the tribunal system.

The 42nd Constitutional Amendment introduced in the year 1976 came into force in January 1977. The Swaran Singh Committee report²¹ became the cornerstone of the amendment in respect of the tribunals. A natural corollary to the 42nd Amendment was the introduction of Part XIV-A entitled "Tribunals" consisting of two new articles,

- (i) Article 323A²² (Administrative Tribunals for service matters)
- (ii) Article 323B²³ (Tribunals for other matters)

Art 323A empowered the Parliament to provide by law for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service. However, such article ousts the jurisdiction of all courts except the jurisdiction of the Supreme Court under Art 136 of the Constitution of India. Under Article 323-B, Parliament and the State Legislatures have been empowered to establish tribunals for the adjudication of disputes in respect of the following matters: taxation; foreign exchange, import, and export; industrial and labor; land reforms; ceiling on the urban property; elections to Parliament and State Legislatures; foodstuffs; rent and tenancy rights.²⁴

The tribunals established under Articles 323A and 323B of the Constitution of India require legislation to back them. It requires a law to be enacted by the Parliament to define their jurisdiction, powers, and procedures for the adjudication of disputes and grievances.²⁵ The law should also specify the qualification, appointment process of members, tenures, salaries, allowances of the members, the procedure for appeal from the tribunal's decisions, and other relevant matters.

It is noteworthy to mention that Article 323A envisages the establishment of tribunals at the Centre, state, or two or more states in public matters only and that under the provision; only Parliament has the legislative competence and there is no question of the hierarchy of tribunals.²⁶ While the 42nd Constitutional Amendment was passed, the government later changed and sought to undo and reverse the provisions introduced by the 42nd Amendment through the 44th Constitutional Amendment, including the deletion of constitutional provisions related to tribunals. However, this

¹⁶ Sixth Law Commission of India, 58TH REPORT ON STRUCTURE AND JURISDICTION OF THE HIGHER JUDICIARY. GOVERNMENT OF INDIA, (1974) available at <https://lawcommissionofindia.nic.in/51-100/report58.pdf> (last visited 17 Apr. 2014).

¹⁷ The Constitution of India, 1950, Art. 32, speaks about the remedies for enforcement of rights conferred by Part III.

¹⁸ The Constitution of India, 1950, Art. 136, speaks about the Special leave to appeal by the Supreme Court.

¹⁹ The Constitution of India, 1950, Art. 226, speaks about the power of High Courts to issue certain writs.

²⁰ The Constitution of India, 1950, Art. 227, speaks about the power of superintendence over all courts by the High Court

²¹ Upendra Baxi, *Constitutional Changes: An analysis of the Swaran Singh Committee Report*. 2 SCC (JOURNAL SECTION) 17-28 (1976) available at

<http://upendrabaxi.in/documents/Constitutional%20changes%20An%20analysis%20of%20the%20swaran%20singh%20committee.pdf> (last visited 31 Jul. 2024)

²² The Constitution of India, 1950, Art. 323A,

²³ The Constitution of India, 1950, Art. 323B.

²⁴ 75th Constitutional Amendment Act, 1993 (added by)

²⁵ For e.g. the Securities and Exchange Board of India (SEBI) act, 1992, provides for the establishment of the Securities Appellate Tribunal (SAT) and defines its jurisdiction, powers and procedures. The National Green Tribunal (NGT) was established under the National Green Tribunal Act, 2010, which provides for the constitution, powers, and functions of the tribunal.

²⁶ S. Goel, *Case Commentary: L. Chandra Kumar v/s U.O.I [A.I.R 1997 SC 1125]* SSRN (2014) available at <http://ssrn.com/abstract=2485403> (last visited 14 May 2024).

attempt failed due to a lack of majority support in the Rajya Sabha, thereby retaining Articles 323A and 323B, which established tribunals as constitutional entities.

II. Exploring the Anatomy of Tribunals

The term 'tribunal' lacks precision and exactitude. The in-depth understanding of this term becomes all the more important because, in a specialized area where the tribunal is established under the law, the jurisdiction of the ordinary courts of law is ousted/barred. The term 'tribunal' doesn't come to be defined in the Constitution nor does any statute defines the term precisely, although the statute that establishes the tribunal in the country, refers 'to the tribunals established under the Act for the adjudication of disputes related to the Act'.²⁷ Although, there is no specific definition of the term 'Tribunal' in the Constitution of India. The term 'tribunal' is defined in the specific legislation establishing it.²⁸ According to Prof. SP Sathe,²⁹ There is no uniform classification/nomenclature for the tribunals. They are referred to as district forums, sometimes courts, sometimes merely appellate authority or a board or a commission, and therefore it causes a lot of difficulty in identifying the bodies as tribunals. Nevertheless, recourse has to be taken to the judicial and constitutional interpretation of the term 'Tribunal'.

To fathom comprehensively the nature and essence of the term 'tribunal', the following three concepts have to be understood first:

- a. Similarities, if any, between the court on one hand and the tribunal on the other,
- b. Differences, if any, between the court on one hand and the tribunal on the other,
- c. Discernment between judicial and quasi-judicial bodies.

The Court took the view that the common thread between the courts and the tribunals is that both exercise the state's judicial power. However, the tribunals which are birthed out of a particular statute and not part of the ordinary courts of civil judicature will decide upon disputes arising out of that particular statute or settle controversies arising out of administrative law.³⁰

Therefore, the nature of the term tribunal seems to be that they are not a court nor are they an executive body. They can be considered as a mixture of both. The tribunals are judicial in the sense that facts must be decided and applied impartially, without considering the executive policy. They are administrative as the motives for preferring them to the regular judiciary are administrative.³¹

The tribunals enjoy supremacy of court in quite a range of matters like authority to summon witnesses, to administer the oath, to ask for the production of documents, etc. The proceedings of the tribunals are deemed to be judicial proceedings and it has powers of the civil court in certain procedural matters.³²

The Supreme Court in *Jaswant Sugar Mills Ltd., Meerut vs Lakshmichand & Others*³³ finalized the following criteria or tests to find out as to an authority is a tribunal or not:

- The authority to adjudicate has been rendered by statute or statutory rule.
- It must have the trappings of a court i.e. it should be bestowed with the power to summon witnesses, administer the oath, compel the production of evidence, etc.
- No boundation of the strict rule of justice.
- The authority is exercising its functions impartially and judicially applying the law and adjudicating disputes independently of executive policy.
- The authority is self-governing and protected from any administrative intervention in the discharge of its judicial functions.

All courts are tribunals but not all tribunals are courts.³⁴

²⁷ Refer to Income Tax Act, 1961; Central Goods and Services Act, 2017; Customs Act, 1962.

²⁸ E.g. Under the Administrative Tribunals Act, the term tribunal means a body constituted under the Act for the adjudication of disputes and complaints concerning recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the union or any state. Under specific statutes such as the Income Tax Act, 1961, the Customs Act, 1962, and Central Goods and Services Tax Act, 2017, it refers to the tribunals under those Acts for the adjudication of disputes related to taxation.

²⁹ S.P. Sathe, THE TRIBUNAL SYSTEM IN INDIA (1996).

³⁰ *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd* (1950) S.C.R. 459 (India); *Harinagar Sugar Mills v. Shyam Sunder Jhunjhunwala* (1962) 2 S.C.R. 339 (India); *Union of India v. Madras Bar Association* (2010) 11 S.C.C. 1 (India).

³¹ EGYANKOSH, *Unit 23 Administrative Tribunals available at* <https://egyankosh.ac.in/bitstream/123456789/19134/1/Unit-23.pdf> (last visited 23 Nov. 2023).

³² *Supra*

³³ *Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand* (1963) A.I.R. 677 (India) *available at* <https://indiankanoon.org/doc/387276/> (last visited 23 Nov. 2023).

³⁴ *Kihoto Hollohon v. Zachillhu*, (1992) 2 S.C.C. (SUPP.) 651 (India).

Courts are tribunals that exercise jurisdiction over persons because of the sanction of the law, and not merely because of voluntary submission to their jurisdiction. Thus, although they may be tribunals exercising judicial functions; arbitrators, committees of clubs, and the like, are not 'courts' in this sense.

The Judiciary in its interpretation has laid down that the following six criteria are collectively necessary and sufficient to designate a body as a tribunal.³⁵

- (1) Permanency;
- (2) Independence from the Executive;
- (3) Setup by or under law made by Parliament;
- (4) To solely decide a *lis* between parties;
- (5) Specific jurisdiction vested by statute;
- (6) Not part of the regular judiciary.

On the perusal of the above discussion, the vital features of tribunals are as follows:

- (i) The tribunal is a creation of law having permanency, independent of the executive and invested with the state's inherent judicial power³⁶
- (ii) The tribunal has the duty to act judicially with the investiture of trappings of a court
- (iii) "Where there is a *lis* — an affirmation by one party and denial by another — and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. That authority is called a Tribunal if it does not have all the trappings of a Court."³⁷
- (iv) The tribunal exercises specific jurisdiction endowed by the statute establishing it and does not form part of the regular judiciary.

It can be briefly stated that a tribunal is a formal, judicial, and administrative body established by the government through legislation, to adjudicate disputes or grievances related to specific matters. They are vested with the powers of a civil court and their decisions can be challenged through appeals.

III. Decoding Tribunals

As discussed above, the tribunals came to be established within the foundation of the Constitution of India and under the aegis of the 42nd Constitutional Amendment, 1976 introducing Part IVA titled 'Tribunals'. The Administrative Tribunals Act, 1985 was passed by the Parliament in furtherance of Art 323A³⁸ of the Constitution of India. The said act, provided for the establishment of three types of tribunals³⁹ on recruitment and service matters of persons appointed to public posts in connection with the affairs of the Union or of any state or any local or other authority:

- a. The Central Administrative Tribunal
- b. The State Administrative Tribunal
- c. The Joint Administrative Tribunal

The said act came under serious challenge in *S.P Sampath Kumar v. Union of India*⁴⁰ as it excluded the power of judicial review/writ jurisdiction under Articles 32 and 226 of the Supreme Court and High Court respectively. The Court although held that the power of judicial review is part of the Basic Structure of the Constitution, and in the same vein,

³⁵ *State of Gujarat v. Gujarat Revenue Tribunal Bar Asscn*, (2012) 10 S.C.C. 353, p. 365 para 18 (India) ; *Union of India v. Madras Bar Association*, (2010) 11 S.C.C. 1 (India); *Kihoto Hollohon v. Zachillhu*, (1992) 2 S.C.C.(SUPP.) 651 (India).

³⁶ *Engineering Mazdoor Sabha v. Hind Cycle*, (1963) A.I.R. 874 (India).

³⁷ *Kihoto Hollohon v. Zachillhu*, (1992) 2 S.C.C. (SUPP.) 651 (India).

³⁸ *Supra*

³⁹ The Administrative Tribunals Act, 1985, S. 4, on the establishment of Administrative Tribunals. — (1) The Central Government shall, by notification, establish an Administrative Tribunal, to be known as the Central Administrative Tribunal, to exercise the jurisdiction, powers and authority conferred on the Central Administrative Tribunal by or under this Act. (2) The Central Government may, on receipt of a request in this behalf from any State Government, establish, by notification, an Administrative Tribunal for the State to be known as the.....(name of the State) Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for the State by or under this Act. (3) Two or more States may, notwithstanding anything contained in sub-section (2) and notwithstanding that any or all of those States has or have Tribunals established under that sub-section, enter into an agreement that the same Administrative Tribunal shall be the Administrative Tribunal for each of the States participating in the agreement, and if the agreement is approved by the Central Government and published in the Gazette of India and the Official Gazette of each of those States, the Central Government may, by notification, establish a Joint Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunals for those States by or under this Act.

⁴⁰ *SP Sampath Kumar v. Union of India*, (1987) 1 S.C.C. 124 (India); Also see *Union of India v. Parmanand*, A.I.R. 1989 S.C.1185 (India) ; *J.B. Chopra v. Union of India*, A.I.R. 1987 S.C. 357 (India).

held that the parliament was empowered to set up an 'effective institutional mechanism'. The Court held that the Tribunal 'should be a real substitute of the High Courts not only in form and de jure but in content and de facto' The Administrative Tribunals set up under the act were considered as substitutes for High Courts. The Court directed the Central Government to make modifications to the Act about the composition of the tribunal to ensure the selection of proper and competent people for the posts of presiding officers of the tribunal.

The judgment in S.P. Sampath Kumar (Supra) was referred to a larger bench for re-consideration given later rulings, notably *R.K. Jain v. Union of India*⁴¹ which had called for a review concerning the functioning of tribunals.

In *L. Chandra Kumar v Union of India*⁴², the Supreme Court comprehensively reconsidered, reviewed, and revised the Sampath Kumar case.⁴³

The predominant highpoint of this judgment has been the verdict that the tribunals perform a **supplemental** role to the High Courts and not a **substitutional** role for the High Courts.⁴⁴ Administrative Tribunals under Article 323-A could examine the constitutional validity of various statutes or rules but not the parent statute.⁴⁵ Addressing the issue of the reliance of tribunals on the executive for administrative requirements, a suggestion was made for the creation of a single umbrella organization which will be an independent supervisory body to oversee the working of the Tribunals under the Ministry of Law and Justice, Government of India. In *Union of India v. R Gandhi*, President, Madras Association, The Supreme Court reiterated that the legislature is well within its power to transfer judicial functions performed by courts to Tribunals, nevertheless, independent judicial Tribunals for determination of the rights of citizens, and adjudication of the disputes and complaints of the citizens, is a necessary concomitant of the rule of law. The vesting of adjudicatory functions in tribunals was held to be not violative of the basic structure of the constitution.

The Dichotomy of Tribunals: A struggle between conceptualization and systemization of tribunals.

On the futility of classification, Robson, W.A. observes in clear terms "The classification would have to be so elaborate as to be almost useless and it would not succeed in reducing the complex phenomena to scientific order".⁴⁶ Prof. SP Sathe identified 95 tribunals under 88 central statutes. He asserted that there are several tribunals set up under various state legislations also. However, Prof Sathe asserted that 'Conceptualization of tribunals as distinguished from courts has rarely been undertaken and even where it is done, it suffers from several contradictions. What is needed is a systemization of the tribunals.'⁴⁷

For discussion, the tribunals can be classified based on the following broad criteria:

- a. Functions
- b. Jurisdiction
- c. Nature of disputes
- d. Source of their power and authority

Statutory tribunals are established by law, with their jurisdiction, powers, and procedures defined by the statute creating them, and they function with civil court authority, subject to judicial review by the High Court or Supreme Court. In contrast, domestic tribunals are voluntarily formed by private organizations or associations to handle internal disputes or complaints. These tribunals often aim to enforce professional conduct and maintain discipline through investigatory and adjudicatory processes. Domestic tribunals can be classified into statutory domestic tribunals, governed by law, and non-statutory or contractual domestic tribunals, formed based on private agreements within organizations.⁴⁸

The statutory tribunals have the power to interpret and enforce the provisions of the relevant statute and their decisions are binding and enforceable like those of regular courts. The Administrative tribunals are established to deal with disputes or grievances related to service, administrative or regulatory matters.⁴⁹

(i) The Revenue tribunals are established to deal with disputes related to revenue matters, taxation, etc.⁵⁰

(ii) Environmental tribunals are established to deal with disputes related to environmental issues.⁵¹

⁴¹ *R.K. Jain v. Union of India*, (1993) 4 S.C.C. 119 (India).

⁴² *L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261 (India); corresponding citation A.I.R. 1997 S.C. 1125 (India) (Judgment delivered by the seven judge constitutional bench of in March 1997)

⁴³ *SP Sampath Kumar v. Union of India*, (1987) 1 S.C.C. 124 (India).

⁴⁴ *L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261 (India).

⁴⁵ *L. Chandra Kumar v. Union of India*, A.I.R. 1997 S.C. 1125 (India).

⁴⁶ W. Robson, JUSTICE AND ADMINISTRATIVE LAW: A STUDY OF THE BRITISH CONSTITUTION (1951).

⁴⁷ S. P. Sathe, THE TRIBUNAL SYSTEM IN INDIA (1996).

⁴⁸ The Contractual Domestic Tribunals are created by an agreement and resolve disputes between the parties and are conferred force of law indirectly and are not subject to judicial review e.g. Trade Unions, private clubs, societies etc. The writs cannot be availed against these tribunals.

⁴⁹ The Administrative tribunals in India include the Central Administrative Tribunal, State Administrative Tribunals, Securities Administrative tribunal etc.

⁵⁰ The Revenue tribunals in India include the Central Board of Direct Taxes; Income Tax Appellate Tribunal; the Customs, Excise and Service Tax Appellate Tribunal.

- (iii) The Consumer tribunals are established to deal with disputes related to consumer matters.⁵²
- (iv) Industrial tribunals are established to deal with disputes related to industrial matters.⁵³
- (v) The Armed Forces tribunals are established to deal with disputes related to the Armed Forces.⁵⁴
- (vi) The Compensation tribunals are established to deal with disputes related to compensation matters.⁵⁵
- (vii) The Election tribunals are established to deal with disputes related to election matters.⁵⁶
- (viii) The tax tribunals are established to adjudicate disputes and grievances relating to taxation laws and regulations.⁵⁷
- (ix) The Intellectual Property Tribunals are established to adjudicate disputes and grievances relating to intellectual property rights, such as patents, trademarks, and copyrights.⁵⁸
- (x) The Competition tribunals are established to adjudicate disputes and grievances relating to competition laws and regulations including anti-trust and anti-competitive practices.⁵⁹
- (xi) The Sports tribunals are established to adjudicate disputes and grievances relating to sports law and regulations including disputes over sports events, contracts, and disciplinary actions.⁶⁰
- (xii) In certain matters, the Government is authorized to act as a tribunal.⁶¹

It is important to note that some tribunals function within the judiciary (e.g. Motor Accidents Claim Tribunals) and other tribunals function outside the mainstream judiciary (e.g. Income Tax Appellate Tribunal, CESTAT, NCLT) which may be termed as statutory tribunals and there are constitutional tribunals established under Art.323A⁶² and Art.323B.⁶³ (e.g. CAT, SAT, NTT, WBTT).

IV. Are Tribunals Merely Prefunctory Bodies or Effective Instruments of Justice?

The tribunalisation of justice in India is not new, with the first tribunal, the Income Tax Appellate Tribunal, established in 1941. The 42nd Constitutional Amendment of 1976 and the Administrative Tribunals Act, 1985, marked a significant push towards the creation of specialized tribunals. Over the years, various tribunals have been established to handle specific legal areas, such as the Company Law Board in 1951, later replaced by the National Company Law Tribunal under the Companies Act, 2013, as well as the Securities Appellate Tribunal and the Competition Appellate Tribunal, among others. The suggestion of the Malimath Committee (1990) also known as (The Report of the Arrears Committee:

⁵¹ The examples of Environmental tribunals in India include the National Green Tribunal and the State Pollution Control Boards.

⁵² The Consumer tribunals in India include the National Consumer Disputes Redressal Commission and the State Consumer Disputes Redressal Commissions.

⁵³ The examples of industrial tribunals in India include the Industrial tribunals and the Labour Courts.

⁵⁴ The Armed Forces Tribunals in India include the Armed Forces Tribunal and the Military Tribunal.

⁵⁵ The Compensation tribunals in India include the Motor Accidents claim tribunals.

⁵⁶ The Election tribunals in India include the Election Commission of India and the State Election Commissions.

⁵⁷ The Tax tribunals in India include the Income Tax Appellate Tribunal (ITAT); Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and the Goods and Services Tax Appellate Tribunal (GSTAT).

⁵⁸ The Intellectual Property Appellate Board (IPAB) is an example of an Intellectual Property Tribunal.

⁵⁹ The Competition Commission of India (CCI) and the Competition Appellate Tribunal (COMPAT) are examples of Competition tribunals.

⁶⁰ The Court of Arbitration for Sports (CAS) is an example of a sports tribunal.

⁶¹ Under the Industrial and labour legislations in India, the Government is authorized to act as a tribunal.

⁶² Some of the examples of tribunals established under Article 323A and 323B of the Constitution of India are the Central Administrative Tribunal (CAT) and State Administrative Tribunals (SATs) established under the Administrative Tribunals Act, 1985; Customs, Excise and Service Tax Appellate Tribunal (CESTAT) established under the Customs Act, 1962; Securities Appellate Tribunal (SAT) established under the Securities and Exchange Board of India Act, 1992 for hearing appeals against orders passed by the Securities and Exchange Board of India; National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) established under the Companies Act, 2013 for adjudicating disputed related to companies, including insolvency and bankruptcy proceedings; Income Tax Appellate Tribunal (ITAT) established under the Income Tax Act, 1961.

⁶³ Some of the examples of tribunals established under Article 323B of the Constitution of India are the Armed Forces Tribunal established under the Armed Forces Tribunal Act, 2007; The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) established under the Telecom Regulatory Authority of India Act, 1997 for adjudicating disputes related to the Telecom Sector; The Airport Appellate Tribunal (AAT) established under the Airport Economic Regulatory Authority of India Act, 2008 for hearing appeals against orders passed by the Airport Economic Regulatory Authority (AERA); National Green Tribunal (NGT) established under the National Green Tribunal Act, 2010 for adjudicating environmental disputes and enforcing environmental laws for adjudicating environmental disputes and enforcing environmental laws, The Real Estate Regulatory Authority (RERA) established under the Real Estate (Regulation and Development) Act, 2016 for adjudicating disputes related to the real estate sector.

1989-1990) stated that the tribunals be abolished due to lack of competence; lack of objectivity and judicial approach; casual method of working; unsatisfactory conditions of service and political interference in its judicial functioning⁶⁴ According to the Ministry of Law and Justice data, the pendency rate of cases in various tribunals was over 2.5 lakhs. The pendency rate of cases in the National Company Law Tribunal was the highest among all the tribunals, with over 39,000 cases pending as of March 2021. Over 65,000 cases were pending in the Central Administrative Tribunal across its 17 benches.⁶⁵ Over 1.5 lakh cases were pending in the Debt Recovery Tribunal across its 15 benches.⁶⁶ Over 44,000 cases were pending in the National Company Law Tribunal across its 15 benches.⁶⁷ Over 1.5 lakh cases were pending in State Administrative Tribunals across the Country.⁶⁸ Over 89,000 cases were pending in the Income Tax Appellate Tribunal across its benches. Over 22,000 cases were pending in the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) across its benches.⁶⁹

Over 67,000 cases were pending in the Supreme Court of India.⁷⁰ Over 45 lakh cases were pending in the High Courts across India.⁷¹ Over 3.7 crore cases were pending in the District Courts across India.⁷²

Both the Courts and the Tribunals are facing a backlog of cases that hurt the functioning of the legal system.

The discussion of the efficacy conundrum can be summed up with the observation of the Constitutional bench of the Supreme Court in the landmark judgment of *L. Chandra v Union of India*.⁷³

*'That the various Tribunals have not performed up to the desired expectations is a self-evident and widely acknowledged truth, however, to draw an inference that the unsatisfactory performance to their being founded on some fundamentally unsound principles would not be correct. The reasons for which tribunals were constituted persist; indeed, those reasons have become even more pronounced in our times'.*⁷⁴

Commenting on the overall efficacy of the tribunals, an observation was made:

"Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of –speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the framework of the Tribunal intended to be set up to attain them **must still retain its basic judicial character and inspire public confidence**. Any scheme of decentralization of administration of justice providing for an alternative institutional mechanism in substitution of the High Courts must pass the aforesaid test to be constitutionally valid."⁷⁵

V. Reinventing and Reimagining Tribunal Justice: Strategizing Tribunal Reforms: Recommendations

The tribunal framework and its functioning in India are suffering from various deficiencies which need to be addressed for the tribunal system to work effectively and efficiently. The first and foremost strategic and systemic tribunal reform is to ensure **judicial independence** in its functioning. Judicial independence can be achieved through two things providing Normative Autonomy and Functional Independence. The Normative Autonomy ensures that the appointments, removal and suspension, terms and conditions of service are not altered to their disadvantage and are made in a transparent and non-partisan manner which in turn provides for independent adjudication of disputes. In *Madras Bar Association v. Union of India*,⁷⁶ it was held that for a tribunal to be considered independent, its standards should approximately be the same as what is expected of the mainstream judiciary which simply translates that the legislation providing for tribunals should provide for qualifications, appointments, procedure for appointment, terms and conditions of service of tribunal members should be as close as possible to the appointment of judges in the forum the tribunal is supposed to replace or supplement. Functional independence ensures that the tribunals have adequate budgets and resources to function independently of the Executive. In comparison, it is to be seen that the Lower and District Courts in India are under the supervision of the High Court of the State. The High Courts enjoy functional autonomy

⁶⁴ *L. Chandra Kumar v. Union of India*, A.I.R. 1997 S.C. 88, 89 (India)

⁶⁵ "Status of Pending cases in Central Administrative Tribunal (CAT) as on March 31, 2021", Ministry of Personnel, Public Grievances and Pensions, Government of India.

⁶⁶ "Status of Cases at Debt Recovery Tribunals and Debt Recovery Appellate Tribunals as on March 31, 2021", Ministry of Finance, Government of India.

⁶⁷ "Status of Pending Cases in National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) as on March 31, 2021", Ministry of Corporate Affairs, Government of India.

⁶⁸ "Status of Cases in State Administrative Tribunals (SATs) as on March 31, 2021", Department of Administrative Reforms & Public Grievances, Government of India.

⁶⁹ "Status of Pending Cases in Customs, Excise and Service Tax Appellate Tribunal (CESTAT) as on March 31, 2021", Ministry of Finance, Government of India.

⁷⁰ "Supreme Court Pendency-February 2021", Supreme Court of India.

⁷¹ "Pending Cases in High Courts", PRS Legislative Research.

⁷² "Pending Cases in District Courts", PRS Legislative Research.

⁷³ *L. Chandra v. Union of India*, (1997) 3 S.C.C. 261 (India).

⁷⁴ *L. Chandra Kumar v. Union of India* (1997) 3 S.C.C. 261 [89] (India).

⁷⁵ Paragraph 8.65 of the Malimath Committee Report (1990)

⁷⁶ *Union of India v. Madras Bar Association*, (2010) 11 S.C.C. 1 (India).

under the Constitution of India to the extent that it is the High Court's Chief Justice who has the power to appoint officers to the court and the administrative expenses are charged to the consolidated fund of the state including the salaries, allowances, and pensions payable to the officers of the Court. We can safely say that due to the above provisions, the Judiciary can function independently and for the tribunals to function in the same manner, the functional Autonomy is of paramount importance which should be provided to ensure the effective functioning of the tribunals.

Rationalizing jurisdiction is another step toward tribunal reforms in securing a system that is more efficient, effective, and responsive to the needs of the people. Lack of uniformity in the functioning of tribunals in India, with different tribunals following different procedures and having different rules can lead to confusion and a lack of consistency in the dispensation of justice. Rationalizing jurisdiction refers to the process of streamlining the jurisdiction of different tribunals by defining the scope and subject matter of each tribunal with precision. This will in turn help in avoiding overlapping and duplication of functions. Rationalizing jurisdiction can help reduce the backlog of cases by ensuring that each tribunal is responsible for a specific area of law. This will also enhance efficiency by reducing overlap and duplication of functions, which will result in quicker resolution of disputes and efficient implementation of laws. The overlap and duplication of functions in the functioning of tribunals can occur when two or more tribunals have similar or identical jurisdiction or when a particular tribunal's jurisdiction overlaps with that of a court or another tribunal. For example, the National Company Law Tribunal (NCLT) and the Debt Recovery Tribunal (DRT) deal with cases related to corporate debts, and there is often overlap in their jurisdiction. Another example is that of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) and the Competition Appellate Tribunal (COMPAT). Both TDSAT and COMPAT deal with competition and regulatory disputes in the telecom sector and there have been instances where cases have been filed in both tribunals, leading to confusion and delay. The Central Administrative Tribunal (CAT) and the State Administrative Tribunals (SATs) deal with cases related to administrative disputes involving public servants. There is often overlap in their jurisdiction, with some cases falling within the purview of both tribunals. This can lead to delays in the resolution of cases. The Intellectual Property Appellate Board and High Courts have concurrent jurisdiction over certain types of intellectual property disputes related to trademarks, patents, geographical indications, and copyrights and litigants often file cases in both forums.

It can also help to promote specialization among tribunals. E.g. a tribunal that deals exclusively with environmental disputes can develop greater expertise in this area, and can therefore provide more effective and informed decisions.

The rights of litigants will also be protected in the tribunal system if the jurisdiction of tribunals is streamlined, as a result of which, the **costs** will be reduced which are associated with running multiple tribunals with overlapping functions. This in turn will reduce the number of resources required to operate the tribunals.

The next systemic and strategic tribunal reform would be in terms of **Prompt appointments to the tribunals and Vacancies**. The Presiding officers/Chairpersons/Judges manning the tribunals should not be generalist civil servants or judges as this goes against the very objective of the 'specialization' element for which the tribunals were constituted. Vacancies in tribunal appointments create administrative gaps, causing tribunals to function below capacity, resulting in delays, adjournments, and a backlog of pending cases. Timely appointments are essential for ensuring continuity, efficiency, and the smooth operation of tribunals, allowing for prompt hearings and judgments. Tribunals require members with specialized legal expertise, and quick appointments help ensure qualified individuals are available to adjudicate complex cases effectively. Delayed appointments, on the other hand, prolong disputes and increase costs for litigants, undermining the efficiency of the tribunal system. Timely appointments are also critical for maintaining public confidence in the tribunal system, upholding access to justice, and preserving the rule of law. They safeguard judicial independence by preventing uncertainty and concerns about external interference in the selection process. A transparent and merit-based appointment process is key to ensuring tribunals function impartially.

Concerns over tribunal appointments being used as post-retirement benefits for judges and bureaucrats must be addressed. These appointments can raise conflicts of interest and cast doubt on impartiality. To mitigate this, a transparent selection process should prioritize qualifications and integrity over financial benefits. Clear rules should prevent conflicts of interest and maintain tribunal independence.

Strengthening accountability is essential for improving the functioning of tribunals in India. Accountability promotes transparency, building public trust by ensuring decisions are open to scrutiny. It also enforces ethical standards, preventing conflicts of interest, corruption, or misconduct. Regular performance evaluations and reviews by higher courts should be implemented to ensure tribunals act within their mandate and adhere to legal procedures. Tribunals should also provide reports on their activities to both the government and public.

Administrative oversight is another vital element of accountability. Independent bodies should oversee tribunals' management, including finances, infrastructure, staffing, and procedural efficiency. This ensures tribunals have the necessary resources and support to function effectively, delivering justice in a fair and timely manner while upholding the rule of law. These elements of accountability, collectively contribute to the credibility, fairness, and integrity of tribunals and ultimately enhance access to justice and the rule of law.

Enhancing training and capacity building is essential for the effective functioning of the tribunal system in India. To improve the quality of decisions made by tribunals, it is necessary to provide regular training and capacity-building

programs for members and staff. This will help to ensure that the tribunals have the necessary skills and expertise to handle complex issues. Tribunals deal with specific areas of law and require specialized knowledge and expertise. Training and capacity-building programs can provide tribunal members with an in-depth understanding, skills, and knowledge related to the specific areas they handle. This enables them to make informed decisions, interpret complex legal provisions, and keep abreast of evolving legal principles ensuring the effective resolution of cases. Training programs also enhance the decision-making capabilities of tribunal members. They can learn about best practices, case law, legal principles, and procedural aspects that guide their decision-making process. By improving analytical and reasoning skills, training equips tribunal members with the tools necessary to arrive at well-reasoned and legally sound decisions. Through training and capacity-building programs the tribunal members can learn about the principles of fair hearing, impartiality, and transparency and how to apply them in their proceedings. Training can focus on improving the efficiency and timeliness of tribunal proceedings. Members can learn case management techniques, effective communication skills, and strategies for streamlining the adjudication process. The training programs can promote consistency and uniformity in tribunal decisions. The tribunal members can develop a shared understanding of legal principles, statutory interpretation, and precedents. This reduces the likelihood of divergent decisions within the same tribunal or across different tribunals, promoting fairness, predictability, and legal certainty. It also facilitates continuous professional development for tribunal members. As laws and legal interpretations evolve, ongoing training helps tribunal members stay updated with legal developments, new case law, and emerging trends. This enables them to adapt to changes and maintain their competence and effectiveness over time. When tribunal members demonstrate competence, knowledge, and professionalism, it enhances trust in the decisions and the overall credibility of the tribunal system. Public confidence is crucial for the legitimacy and effectiveness of tribunals.

Providing **adequate infrastructure** helps in strengthening the tribunal system. Inadequate Infrastructure or lack of infrastructure includes a shortage of staff, lack of office space, and poor technology and library. This can lead to delays in the adjudication of cases and adversely affect the functioning of the tribunals. The following are some ways in which adequate infrastructure contributes to the effective functioning of the tribunal system.

A well-equipped tribunal requires *physical facilities* such as courtrooms, administrative offices, etc. which should be available, properly maintained, and accessible to all stakeholders such as judges, staff, parties involved, and the public.

The accessibility to *technological resources* enhances the efficiency, speed, and accuracy of tribunal proceedings. These resources include computer systems, internet connectivity, audiovisual equipment, videoconferencing capabilities, and case management software.

The tribunals deal with sensitive information related to legal cases, including personal data and evidence. Adequate infrastructure includes robust *information systems* that ensure the security, confidentiality, and integrity of this data. It involves implementing secure networks, data encryption, access controls, and regular backups to protect sensitive information from unauthorized access or loss.

Tribunals often require access to extensive *legal resources and research materials* to support their decision-making processes. Adequate infrastructure includes a well-stocked library with legal texts, journals, precedents, and relevant databases. Access to comprehensive legal research resources enables tribunal members and their staff to conduct thorough legal analyses, thereby strengthening the quality and legitimacy of their decisions.

The tribunals require efficient *administrative support* to handle case filings, scheduling, document management, and other administrative tasks. Adequate infrastructure ensures the availability of trained personnel to assist with administrative duties, enabling tribunal members to focus on their adjudicative responsibilities. The well-organized administrative support contributes to the smooth functioning and timely resolution of cases.

The adequate infrastructure promotes *accessibility and inclusivity* within the tribunal system. This includes providing appropriate accommodations for individuals with disabilities, such as wheelchair ramps, elevators, and accessible restrooms. By addressing accessibility needs, the infrastructure helps ensure equal access to justice for all individuals.

Tribunals require a safe and secure environment for all participants. Adequate infrastructure includes measures such as trained security personnel, surveillance systems, metal detectors, and secure entrances. These security measures help maintain order, protect the well-being of individuals attending tribunal proceedings, and safeguard the integrity of the process.

By investing in adequate infrastructure, governments and institutions can create an environment that supports the proper functioning of tribunals. This, in turn, leads to enhanced efficiency, fairness, and credibility of the tribunal system, ultimately strengthening access to justice and the rule of law.

Adequate funding is essential for the strengthening of the tribunal system as it ensures that the necessary financial resources are available to support its operations and meet its objectives. The following are some ways in which adequate funding contributes to the strengthening of the tribunal system. Adequate funding is essential for the effective functioning of tribunals, enabling them to recruit and retain skilled judges, legal experts, and support staff, thereby maintaining the integrity and credibility of the system. Sufficient resources facilitate efficient case management, allowing for the implementation of advanced technologies like electronic filing and remote hearings, which enhance accessibility and efficiency. Funding also supports legal research, professional development, and outreach initiatives that inform the public about the tribunal's role, fostering trust and community engagement. However, inadequate funding can hinder operations, leading to delays in salaries, insufficient training resources, and deteriorating

infrastructure. To address these challenges, it is suggested that all tribunals operate under the Ministry of Law and Justice. Additionally, promoting alternative dispute resolution methods, such as mediation and arbitration, can alleviate the burden on tribunals and expedite dispute resolution, ultimately enhancing access to justice for all citizens in India.

VI. CONCLUSION

The tribunalisation of justice has brought about significant changes in the justice delivery mechanism of the Country. Like many other nations, India also focused on the solution necessary rather than the problem being made exponentially and recognized the need for tribunalisation of justice to provide for adjudication by persons with the capacity to resolve disputes in specific fields as well as to deliver expedited justice in particular cases. There is no doubt that the tribunal system has underwritten to reducing the burden on regular courts in specialized areas such as taxation, environmental issues, administrative law, intellectual property rights, etc., and the imminent challenges loom large over the efficacy conundrum of the tribunal system.

Although the tribunalisation of justice has seen an upward mobility in terms of its number, but much less can be seen in terms of its efficacy. A number of new tribunals are added with the enactment of legislation having socio-economic bearing and the existing tribunals are restructured hitherto to ensure their effectiveness. However, challenges persist in the justice delivery by tribunals in India. The greatest challenge is the need to ensure the independence and impartiality of tribunals. The dispensation of justice by the tribunals will be efficacious only if they function independently of the executive control which will render the credibility thereby generating public confidence. It is essential to safeguard the tribunal against undue political influence, ensure transparent appointment processes, and establish effective mechanisms for accountability and oversight. Maintaining the integrity of the judicial process and upholding the principle of separation of powers is crucial to maintaining public trust in the tribunal system. Investing in technological and physical resources is necessary to support the efficient functioning of the tribunals.

To maximize the benefits of tribunalisation, there is a need for continuous evaluation and improvement. The periodic review of the functioning and performance of tribunals, as well as addressing any shortcomings will contribute to the evolution and strengthening of the tribunal system in India.

The tribunalisation of justice cannot be ignored despite its effectiveness failures as the reasons for which they were set up viz. expeditious disposal of cases, time effective and cost-effective justice, persists and its prominence is only expected to proliferate in the future. The tribunalisation of justice can prove to be the constructive discourse in India's justice delivery mechanism if it stands the test of constitutional scrutiny and ensures the same standards of independence, impartiality, and fairness as the traditional judiciary and above all, that it is consistent with the principles of the Constitution of India. A thought will always remain in mind as to whether the mushrooming of tribunals in every specialized field has led to the dilution of judicial functions and whether a mistake has been made by not strengthening the traditional judiciary and limiting the operation of tribunals to a few specialized areas.

DECLARATION OF ORIGINALITY

This is to certify, that the research paper submitted by me is an outcome of my independent and original work. I have duly acknowledged all the sources from which the ideas and extracts have been taken. The article is free from plagiarism and has not been submitted elsewhere for publication.