

Tribunalisation of Justice in India: Constitutional Validity, Judicial Review, and the Doctrine of Separation of Powers

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ABSTRACT

Tribunalisation of justice, enacted via the Constitution (Forty-second Amendment) Act, 1976 that introduced Articles 323A and 323B, can be considered one of the most important structural changes in the delivery of justice in India. Envisioned as a way to alleviate congestion of dockets and achieve speedy and specialised adjudication, tribunals have at the same time sparked a constant constitutional debate about their consistency with judicial review and the doctrine of separation of powers that are regarded as elements of the basic structure of the constitution. This paper analyses the constitutional validity of tribunalisation based on the evolution of the relevant jurisprudence from the case of S.P. Sampath Kumar v. Union of India and L. Chandra Kumar v. Union of India to the subsequent series of cases Union of India v. R. Gandhi, Rojer Mathew v. South Indian Bank Ltd., and Madras Bar Association v. Union of India leading up to the recent decision of the Tribunal Reforms Act, 2021. The paper asserts that although the Supreme Court has always held that the constitutionality of setting up tribunals as a complement to High Courts and not as a substitute for High Courts, the frequent executive efforts to exercise control over the appointments and tenure of the tribunals demonstrate an inherent contradiction between efficiency and judicial independence. The paper concludes with a discussion on the National Tribunals Commission.

Keywords: *Tribunalisation, Judicial Review, Separation of Powers, Basic Structure Doctrine, Articles 323A and 323B, Tribunals Reforms Act 2021, National Tribunals Commission, Independence of Judiciary.*

Introduction

The Indian judicial process, faced with an ever-growing problem of backlog of cases and the growing complexities involved in the administration of laws and regulations governing economic activities, has come to increasingly depend upon adjudicatory bodies constituted specifically for hearing such cases and known as tribunals. Tribunalization, thus, denotes the process whereby the adjudicatory powers vested in courts of general jurisdiction are conferred upon statutory bodies that include some persons with relevant professional knowledge along with judges. While the very logic of expedience, specialization and relieving the constitutional courts from this burden can hardly be faulted, its execution in India has constantly run into conflict with two fundamental constitutional principles, namely, the right to judicial review guaranteed by Articles 32, 226 and 227 and the principle of separation of powers, not mentioned in the Constitution but nevertheless implied in its essential structure. [1][2]

This thesis is concerned with the legal interpretation of the constitutional validity of tribunals in India. The thesis analyses the efforts made by the judiciary to strike a balance between the objective of legislation for administrative efficiency and the constitutional requirement for an independent and easily available system of judicial review in the face of several executive endeavors to dominate the system of tribunals.

Historical Evolution of Tribunalisation in India

The constitutional foundation for tribunalization came through the Constitution (Forty-second Amendment) Act, 1976, that incorporated Part XIV-A consisting of Articles 323A and 323B. Under Article 323A, the Parliament had the power to create administrative tribunals for resolving disputes about recruitment and service conditions of people employed in government services, whereas under Article 323B, the relevant legislature had the power to constitute tribunals for other subjects like taxation, land reforms, industrial disputes, and foreign exchange. [3] Subsequently, the Parliament passed the Administrative Tribunals Act, 1985, in pursuance of the powers vested under Article 323A(1), thereby setting up the Central Administrative Tribunal and the respective State Administrative Tribunals. [4] The expressed purpose, as per the Statement of Objects and Reasons, was to alleviate the backlog of cases pending in the High Courts through creation of an alternate forum for resolution of service disputes.

In the decades that followed, the tribunal system found application in many areas: National Green Tribunals for environmental disputes, National Company Law Tribunals and National Company Law Appellate Tribunals for matters relating to corporations and bankruptcy, Income Tax Appellate Tribunals for tax disputes, Securities Appellate Tribunals for securities regulations, Debts Recovery Tribunals for banking recoveries, and many other such instances. While this expansion helped in meeting the requirement for specialization, it also increased the number of locations of conflict in constitutional issues concerning the structural independence of these tribunals from the executive, which often finds itself on the other side of their proceedings.

Figure 1: Timeline of Constitutional and Judicial Developments in the Tribunalisation of Justice in India (1976-2025)



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Constitutional Framework: Articles 323A and 323B

Articles 323A and 323B, even as these provisions provided for setting up of tribunals by the respective Parliaments and State Legislatures, did at the outset allow for the ouster of the jurisdiction of all courts, including High Courts under Articles 226 and 227, except the Supreme Court under Article 136. The provision of ouster was the primary ground for constitutional attack.

The conflict lies in the very structure of the Articles; while Article 323A(2)(d) and Article 323B(3)(d) envisioned the ouster of the entire jurisdiction of the High Courts with regard to matters referred to the tribunals, the said provisions came up against the doctrine of basic structure laid down in Kesavananda Bharati v. State of Kerala in which judicial review was considered to be an essential part of the Constitution. [5]

The question relating to the constitutionality of the said provision of ouster was raised for the first time in S.P. Sampath Kumar v. Union of India and a Constitution Bench held that while judicial power could be vested in the Administrative Tribunals subject to certain safeguards with regard to the constitution of the Tribunals, the larger question remained unresolved. [6]

Judicial Review as Basic Structure: The Chandra Kumar Doctrine

Finally, the question was settled in L. Chandra Kumar v. Union of India, by a Bench of seven judges of the Supreme Court. According to this ruling, the power of judicial review conferred on the High

Courts under Articles 226 and 227, and on the Supreme Court under Article 32 is an integral and essential element of the basic structure of the Constitution and hence cannot be ousted even through any amendment of the Constitution. Clauses (2)(d) of Article 323A and clauses (3)(d) of Article 323B, insofar as they ousted the jurisdiction of the High Courts and the Supreme Court, were held to be unconstitutional. [7] In this decision, the tribunals created under Articles 323A and 323B were recognized as functioning as courts of first instance in respect of the areas assigned to them, although their decisions will be subject to an inquiry by a Division Bench of the concerned High Court under Articles 226/227 and further appeal to the Supreme Court under Article 136. Tribunals were thereby redefined as playing a supplementary, and not a substitutional, role to the High Courts. [7]

The decision was based on the premise that judicial review performed by the constitutional courts, which are free from executive interference due to their tenure security and constitutionally provided procedures for appointments, is not something that can be equaled by the tribunals, where the appointees may lack similar independence. The doctrine laid down by Chandra Kumar has continued to form the foundation of tribunal law in India. [7][8]

Figure 3: Post-Chandra Kumar Structure of Judicial Superintendence over Tribunals in India

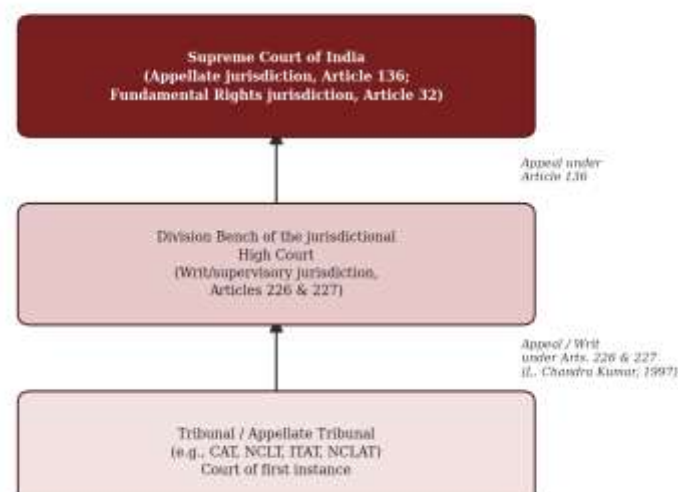


Figure 3: Post-Chandra Kumar Structure of Judicial Superintendence over Tribunals in India
Independence of Tribunals and the Separation of Powers

The Constitution of India does not incorporate a strict separation of powers model such as that of the United States; instead, as seen from *Ram Jawaya Kapur v. State of Punjab*, there is a functional separation of powers between the three branches, with checks and balances on each branch in order to avoid concentration of power in any one of the branches. [9] Later in *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court made it clear that separation of powers is an essential feature of the Constitution, and adjudicating on disputes is a judicial power. [10]

The system of tribunalisation puts a direct strain on this theory because while these tribunals exercise judicial powers, they are normally created, financed, manned, and administered by the executives within the ministries whose decisions they are normally expected to adjudicate. This peculiar situation was resolved comprehensively in *Union of India v. R. Gandhi*, President, Madras Bar Association regarding the formation of the National Company Law Tribunal and National Company Law Appellate Tribunal under the Companies Act. In this case, the Court ruled that if a tribunal replaces a High Court, then it should have members of almost equal stature, jurisdiction and power as those of the High Court, and the technical members must be experts in the subject matter. [11] It was further ruled that the role of the executive through its bureaucracy in the selection and administration of the tribunal members threatens their independence as adjudicators performing judicial functions. [11]

The Recurring Litigation: The Madras Bar Association Series

The jurisprudence of Indian tribunals is marked by the phenomenon of litigation involving reforms of executive rules, invalidated judicially, which reappear in new laws and are subject to further challenges. The MBA cases provide the most prominent examples of this phenomenon. In the first MBA case of *Union of India v. R. Gandhi* (MBA I, 2010), the Court found certain provisions providing for too much control over the National Company Law Tribunal by the executive unconstitutional. In the second MBA case, *Madras Bar Association v. Union of India* (MBA II, 2014), the Court considered the validity of the National Tax Tribunal Act, 2005 and reiterated its stand that adjudicatory powers historically exercised by the High Courts cannot be conferred upon the body largely controlled by the executive without necessary safeguards for independence. [12] A third round came in the case of *Madras Bar Association v. Union of India* (2015) 8 SCC 583, where the Court considered persistent deficiencies in the qualifications and composition of the National Company Law Tribunal. [13]

With the passing of Part XIV of the Finance Act, 2017, which made amendments to the qualifications, appointment and conditions of service of members in nineteen tribunals and enabled the Central Government to make rules regulating these aspects, the debate gained further momentum. In the case of *Rojer Mathew v. South Indian Bank Ltd.*, the Constitution Bench held the constitutional validity of Section 184 of the Finance Act, 2017, but the constitutional validity of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 made thereunder was rejected on the ground that these Rules undermined judicial independence by allowing excessive executive interference in the selection procedure. [14] The question whether Part XIV of the Finance Act, 2017 could have been passed as a "Money Bill" under Article 110 of the Constitution was reserved for a larger Bench. [14]

Unperturbed, the Government went ahead with the notification of the 2020 Rules, but the same was challenged again and has been held unconstitutional in a significant part in *Madras Bar Association v. Union of India*, 2020 SCC OnLine SC 962 (MBA IV), on account of failure to provide judicial preponderance in the Search-cum-Selection Committees and setting the minimum age of recruitment arbitrarily. [15]

Figure 2: Recurring Rounds of Litigation in the Madras Bar Association Series Challenging Executive Control over Tribunals (2010-2025)

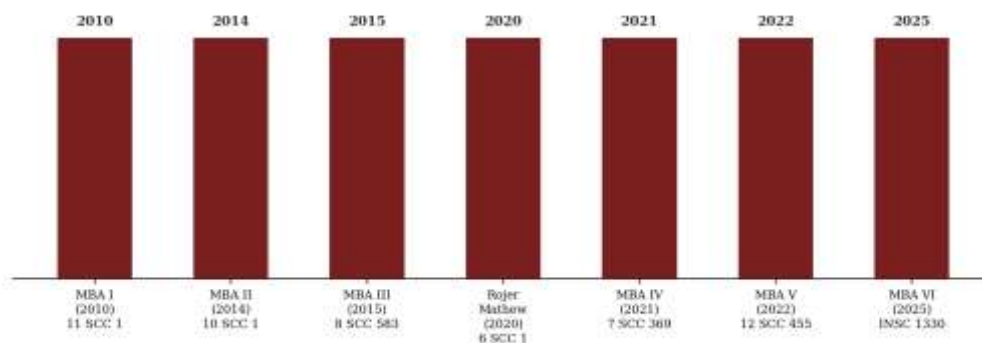


Figure 2: Recurring Rounds of Litigation in the Madras Bar Association Series Challenging Executive Control over Tribunals (2010-2025)

The Tribunal Reforms Ordinance/Act, 2021 and Its Constitutional Fate

The Central Government in April 2021 brought into force the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, later converted into the Tribunals Reforms Act, 2021, by which certain Appellate Tribunals have been done away with, their work being taken over by High Courts and where minimum age, tenure and membership of Search-cum-Selection Committee had been prescribed in terms akin to those declared void. In the matter of *Madras Bar Association v. Union of India*, (2021) 7 SCC 369, a three-Judge Bench by a majority held the minimum age of fifty years and four-year tenure prescribed for members of Tribunals as being arbitrary and violative of Article 14 and thus making it impossible for competent persons to be appointed on account of which tribunals cannot function as an alternative to High Courts. [16] It was clarified that the procedure of re-appointment has to be new and open selection and the norms established in previous MBA cases and *Rojer Mathew*. [16]

The story was repeated in *Madras Bar Association v. Union of India*, (2022) 12 SCC 455, where the Court once again looked into the manner in which the previous directions had been implemented, and reiterated that five years' tenure, tenure up to sixty-five/seventy years depending upon the tribunal, and majority of judges in the Search-cum-Selection Committee were the constitutional minimum guarantees. [17] Even more surprisingly, when Parliament enacted the Tribunals Reforms Act, 2021 on substantially similar lines as those that had been held unconstitutional in the Ordinance, the case came back to the Supreme Court. In its judgment delivered on 19 November 2025, the Court in *Madras Bar Association v. Union of India*, 2025 INSC 1330 held that Sections 3(1), 3(7), 5 and 7 of the Tribunals Reforms Act, 2021 amounted to legislative override of judicial precedent under Article 141, without remedying the earlier constitutional violations, and struck them down as violative of the separation of powers, judicial independence and Article 14. [18] The Court ordered the Government of India to form a National Tribunals Commission within four months for appointment, conditions of service, infrastructure and administration of tribunals in a structured and insulated way. [18]

Doctrine of Separation of Powers: A Structural Analysis

The continuing litigation set out above shows that there is a structural, rather than sporadic, conflict between tribunalisation and separation of powers. Three key themes can be identified. The first is that adjudication of disputes entailing determination of rights and duties is essentially a judicial activity; and when Parliament delegates such activities to tribunals which are staffed and controlled in a substantive manner by the executive, then there is the danger of such adjudications becoming a part of administration in violation of the checks-and-balances principle recognized in *Ram Jawaya Kapur and Indira Nehru Gandhi v. Raj Narain*. [9][10] Secondly, judicial independence does not merely mean a mere formal appointment; it includes the security of tenure, freedom from removal by the executive, and the insulating of salaries and administration from the control of the minister responsible for sponsoring the tribunal, a theme that runs continuously from *R. Gandhi* to the 2025 case. [11][18] Finally, the outer limit of constitutional law in the form of the basic structure doctrine, as established in *Kesavananda Bharati and Minerva Mills Ltd. v. Union of India*, is one which a constitutional amendment or a statute cannot trespass beyond. [5][19]

The approach of the Court in *Swiss Ribbons Pvt. Ltd. v. Union of India*, which upholds the constitutional validity of the Insolvency and Bankruptcy Code, 2016 and the tribunal system set up under it, is an example of the balancing test – the Court accepted the legislative scheme of special adjudicatory bodies but insisted on strict adherence to the requirements of qualification and independence set out in *R. Gandhi*. [20] It is evident, therefore, that the Indian courts do not consider tribunalization per se unconstitutional; rather, the constitutional validity depends on the independence of the tribunal from the executive.

Critical Analysis: Structural Deficiencies and Their Consequences

The continuous chain of judicial decisions spanning four decades shows inherent shortcomings of the executive system in failing to comply and litigate against the same. Firstly, the lack of an independent body for administration of tribunals makes each of the ministries responsible for administering the respective tribunals under them, thereby aggravating the conflict of interest situation that the judiciary has pointed out multiple times. [11][18] Secondly, persistent vacancy in tribunal membership, which was raised as an issue by the Supreme Court of India when there were close to two hundred vacancies in fifteen tribunals at the time of litigation in 2021, undermines the basic rationale of efficiency that led to tribunals in the first place. [16] Thirdly, short term appointments through executive rules deter qualified individuals from joining the panels, causing deterioration in the quality of justice, which was mentioned by the Malimath Committee in the discussion of arrears and subsequently brought up in the 272nd report of the Law Commission of India. [21][22]

Though essential to maintain the independence of the judiciary, the doctrine of judicial supremacy in the process of appointment has also faced criticism for reducing the responsibility of the legislature as well as interfering in the realm of the executive, which is supposed to frame the terms of service according to the constitution. The conflict between the legitimate policy-making powers of the legislature and the minimum requirements of independence set by the judiciary has been the core issue of the litigations. [23][24]

A Brief Comparative Note

There are other jurisdictions which provide good comparative examples. In the case of the UK, the Tribunals, Courts and Enforcement Act 2007 provided a dual tier tribunal structure run by the judiciary wherein the appointments were made by the independent Judicial Appointments Commission. Thus, in

the institutional structure in the UK, there is a clear division between the administration of tribunals and the respective sponsoring departments. The Australian Administrative Appeals Tribunal is another example which functions with the same statutory tenure protection and centralized system of appointments. It is the Indian problem of design and not the doctrine that comes into question here. [11][18]

Towards a National Tribunals Commission: Recommendations

Based on the directives laid down in *Madras Bar Association v. Union of India*, 2025 INSC 1330, the steps which need to be taken in order to come up with a lasting solution are: [18]

- Setting up of an independent National Tribunals Commission through statute, presided over by a sitting or former Supreme Court Judge to handle issues related to appointments, transfer, discipline, budgets and infrastructure in all tribunals, in place of administrative control based on ministries.
- Search-cum-Selection Committees for each tribunal must have judicial preponderance, with the Chief Justice of India or a Judge designated by him playing a key role in line with the provisions in *R. Gandhi* and the *MBA* series of cases.
- Statutory provision for minimum tenure and retirement age of the members of tribunals, exempt from any amendment by delegation, in order to attract and retain competent people.
- Filling of vacancies within a prescribed time period from the date of recommendations with automatic escalation process in case of executive inaction.
- Judicial or parliamentary oversight of the performance of the National Tribunals Commission so that centralised administration may not itself become a tool of executive influence.

Conclusion

The tribunalisation of justice in India is illustrative of a persistent constitutional dialogue between the drive towards greater administrative efficiency on the part of the legislature and executive and the judiciary's commitment to ensuring that adjudicatory bodies retain their institutional independence, which is considered an essential part of the basic structure of the constitution. From *L. Chandra Kumar's* declaration of judicial review being non-ouster to the *R. Gandhi* series of cases which require that the tribunals enjoy structural independence to the 2025 decision declaring the *Tribunals Reforms Act, 2021* invalid and requiring a National Tribunals Commission, the Supreme Court has stood its ground and protected the independence of tribunals from any interference by the executive. [7][11][18] However, the almost periodic recurrence of litigation regarding the same issue over more than four decades suggests that pronouncements of principle alone will not ensure the maintenance of the institutional independence of tribunals; rather, what is needed is an enduring administrative framework for tribunals along with unwavering legislative and executive commitment to implementing and not evading the constitutional minimum as declared by the courts.

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