

TRIBUNALISATION OF JUSTICE: A CORPORATE PERSPECTIVE

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ABSTRACT

The word, "tribunal," which has roots in antiquity, has a different interpretation across manuscripts. With the elucidation varying greatly, they all share the same meaning: "a court of justice or judicial assembly." Soon after the number of cases began stacking up, India recognized the necessity to establish alternative dispute resolution institutions that could apply subject-specific knowledge to solve the cases by applying a practical approach rather than a traditional one. Despite not having a legal definition, the term "tribunal" refers to a quasi-judicial institution that offers a platform for quicker conflict resolution by offering expertise in a particular subject matter. The Indian government decided to establish tribunals with subject-matter expertise to speed up case resolution and lighten the load on the courts as the number of cases pending increased at worrisome rates. Over 4.5 crore cases remain pending in courts at all levels of the judiciary as of May 2022. This article aims to delve deeper into analyzing the effects of criminalization in India after its establishment, its advantages along with drawbacks, more concisely from a corporate perspective.

Keywords: Tribunals, Corporate Perspective, Criminalization Reforms, Judicial Review.

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BACKGROUND

The current institutions that we refer to as courts were established solely to adjudicate disputes relating to a variety of matters, both basic and complicated. It is rational to put forward that as urbanization and modernization increase, our nation will continue to advance and its economy will flourish. But as civilization evolved, so did the number of legal issues across different spheres. Gradually, it became challenging for the courts to deal with the enormous number of cases piling up requiring specialized areas of knowledge to adjudicate them since the judges of the ordinary courts are not equipped with solving the cases that require a certain amount of specific knowledge to deliver true justice.

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This is when the government of India understood the urgency of the situation and introduced the 42nd Constitutional Amendment Act of 1976 to set up administrative tribunals in India under Article 323-A and Article 323-B. As per Article 323-A¹ of the Constitution of India, provides for the establishment of only one tribunal for the center and one for each state or two or more states. Article 323-B² on the other hand, talks about creating a hierarchy of tribunals pertaining to different matters. The intention of setting up the tribunals was clear. It was done to:

- Share the burden of the courts to deal with cases that require specific areas of knowledge. This was done so that the case could be understood in its true sense and not be misjudged on the premise of lack of knowledge.
- For providing effective and efficient solutions by expediting decisions to the problems of complex nature since ‘modern-day problems require modern-day solutions.’
- Increase flexibility in solutions and reliefs to litigants.

Despite not being courts, tribunals are still frequently used as a synonym for courts because of their equal level of independence from the executive as the judiciary. The two can easily be distinguished from one another. The former can be referred to as a minor court because it has quasi-judicial functions like resolving conflicts, determining rights and obligations, and making administrative decisions. While the latter is a judicial body that upholds and defends rights, punishes wrongdoing, and decides disputes.

In “*Harinagar Sugar Mills Ltd. V. Shyam Sundar Jhunjhunwala*”³, the Supreme Court concisely explained the difference between the two; a court, in the literal sense, is a tribunal that belongs to the regular hierarchy of civil courts that the state maintains in accordance with its constitution to exercise the state's judicial power. On the other hand, tribunals are groups of individuals who are chosen to resolve disputes that arise under particular special laws. Tribunals are not a part of the regular courts of civil judicature, despite some similarities.⁴

¹ Constitution of India, 1950, art323-A

² Constitution of India, 1950, art323-B

³ *Harinagar Sugar Mills Ltd. V. Shyam Sundar Jhunjhunwala*, (1962) SCR (2) 339

⁴ *Ibid*

IMPACT OF TRIBUNALISATION

Many types of tribunals are set up in India to deal with subject-specific matters that fall under specific heads. For instance, there is the National Green Tribunal (NGT), a statutory body that adjudicates disputes relating to environmental protection, conservation of biodiversity, and other natural resources. Similarly, there are other tribunals set up for dealing with administrative and tax-related disputes like Central Administrative Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Competition Appellate Tribunal (COMPAT), among others.

But after all the laborious work that went into making these tribunals successful, did we achieve the purpose for which they were set up?

Tribunalisation has brought a more specialized perspective of dealing with cases to provide faster and more efficient justice. But the manner of its independent working and the appointment of its members created many doubts. Since they share similar powers to that of a high court in certain matters, questions were raised about whether judicially-functioning courts can be replaced by quasi-judicial tribunals, which do not follow defined court procedures.

In the case of *“Roger Mathew Vs. South Indian Bank Ltd. And Ors.”*⁵, Section 184 of the Finance Act, 2017 was constitutionally challenged before the court. According to the Part XIV of the Finance Act, 2017, the government has arbitrary powers to manipulate the working of tribunals in matters like the mode of appointment of its members, conditions of service, security of tenure, etc. This will seriously jeopardize the tribunals' ability to render decisions independently when the government is a party to the dispute.

To find a permanent solution to this issue, these specific rules were again changed in 2020 where a 5-member committee shall be appointed with the chief justice and his nominee having a casting vote. It was also directed that advocates who hold 10 years of experience can be appointed as judicial members of the tribunals and their retirement age was set at 67 years.⁶

⁵ *Roger Mathew Vs. South Indian Bank Ltd. And Ors.* [2019] CA [8588 of 2019]

⁶ Prof GB Reddy, Baglekar Akash Kumar 'Administration of Justice from tribunalisation to trivialisation', (*Bar and Bench*, 7 June 2021) <<https://www.barandbench.com/columns/administration-of-justice-from-tribunalization-to-trivialization>> accessed 10 June 2023

CORPORATE FRAME OF REFERENCE

Tribunalisation has been welcomed from the corporate stance and is generally considered to be a positive development since it offers a specialized platform for addressing issues regarding, corporation law, intellectual property rights, and taxation, among other things. The usage of tribunals has assisted in lightening the load on traditional courts and has also facilitated the growth of legal competence in particular fields. The tribunal assigned to deal with issues of corporate nature is the National Company Law Tribunal (NCLT) and appeals from which go to the National Company Law Appellate Tribunal (NCLAT). The NCLT was founded under Section 408 of the Companies Act of 2013, with effect as of June 1, 2016, since all tribunals are established under different statutes. It can be seen that with time, the working of the tribunals has evolved and has significantly contributed towards eliminating any scope of overlapping or conflicting judgments and it also aids in faster resolution of disputes. However, given that these tribunals are frequently in the hands of the executive part of the government, there have been questions regarding their independence and accountability.⁷⁸

Judicial review was kept outside of the purview of criminalization as per Article 323-A and Article 323-B of the constitution of India introduced under the 42nd constitutional amendment act of 1976. The tribunals were not subjected to any judicial supervision and hence, they had at times proved to be very erratic and biased in their judgments. The same issue was raised before the court in the case of “*L Chandra Kumar V. The Union of India*”. In this case, the court went on to say that

“Judicial review is part of the basic structure of the Constitution and the power of judicial review of High Court and Supreme Court under Art. 226 and Art. 32 ensures the independence of the Judiciary. The ‘exclusion of jurisdiction’ clause in all the legislations which have been enacted under the scope of Article 323A and Article 323 B was struck down. The superintendence power of High Courts over lower courts within their jurisdiction was held as part of the basic structure. With respect to tribunals it was held that they will ensure speedy justice and they will act as courts of first instance with respect to areas of law for which they have been established. The reason given, behind the judgment was that the constitutional

⁷ Nithya S Nair, ‘Tribunalisation of Justice in India – A challenge to the judicial system or not’ (2019) JETIR <<https://www.jetir.org/papers/JETIR1908980.pdf>> accessed on 11 June 2023

⁸ Prof GB Reddy, Baglekar Akash Kumar ‘Administration of Justice from tribunalisation to trivialisation’, (*Bar and Bench*, 7 June 2021) <<https://www.barandbench.com/columns/administration-of-justice-from-tribunalization-to-trivialization>> accessed on 11 June 2023

provision ensures the independence of only superior judiciary and not of tribunals. Therefore, the tribunals can never be a perfect substitute for superior courts and hence the power of judicial review of High Court and Supreme Court can never be excluded.”⁹

NCLT AND ITS RELEVANCE

The National Company Law Tribunal (NCLT) is primarily known as an independent forum with expertise in handling corporate-related issues. It is a quasi-judicial organization created in accordance with the Companies Act of 2013, and it has been given jurisdiction over specific issues, including accusations of oppression and corporate mismanagement, firm winding up, and insolvency resolution processes.

After being established, the NCLT absorbed a sizable number of cases that were previously handled by the courts using the conventional procedure, which caused frequent delays and inconsistent implementation of the law. One of the major benefits of the NCLT is that it gives litigants a venue where their cases can be decided by technical members who are chosen from individuals with special expertise or real-world experience in corporate law, finance, and economics without them having to deal with the hassle of adhering to the onerous procedure established by regular courts. They undoubtedly have a better chance of receiving a judgment from a tribunal that has been reached after a technical and practical analysis of the case by individuals with specialized competence in dealing with corporate matters.

Even though the NCLT has authority over corporate affairs, there have been many cases in the past where the Supreme Court had to step in to confirm a firm stance of the tribunals and the courts in situations when there is a conflict between the two because of overlapping jurisdictions. In one such recent case of *“Shashi Prakash Khemka V. NEPC Micon & Others”*¹⁰, the Supreme Court while deciding whether an issue relating to the transfer of shares should be adjudicated by Civil Courts or by the Company Law Board, held that *“the matters in which power has been conferred on the National Company Law Tribunal, the jurisdiction of the Civil Courts is completely barred. In the said case, it was alleged that the dispute that was in question was the title of shares and therefore the Civil Courts should have the power to adjudicate the matter. The Court, while, setting aside the judgment given by the Madras High*

⁹‘Tribunalisation of Justice in India’ (*Defactolaw*, 14 July 2021)

<<https://www.defactolaw.in/post/tribunalization-of-justice-in-india>> accessed on 11 June 2023

¹⁰ *Shashi Prakash Khemka V. NEPC Micon & Others* [2019] CA [1965-1966 of 2014]

Court observed that relegating the parties to the civil suit would not be an appropriate remedy since Section 430 of the Companies Act, 2013 ("Act") is widely worded."¹¹

Moreover, the Code of Civil Procedure (CPC), 1908 abolishes the jurisdiction of the civil courts where it is mandated by an act. Section 9 of the CPC, 1908 mentions *"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."*¹²

In another case, *"SAS Hospitality Pvt. Ltd. V. Surya Constructions Pvt. Ltd."*,¹³ the Delhi High Court was required to make a decision regarding the question of the National Company Law Tribunal's (NCLT) and Civil Court's respective jurisdictions. In this case, the issue was related to the allotment of shares and after careful observation of all the facts, the validity of Section 9 CPC, 1908 was upheld once more. It was very plainly stated by the High Court that

*"These powers of NCLT are extremely broad and are more than what a Civil Court can do. Even if in the present case, the Court grants the reliefs sought by the Plaintiff, after a full trial, the effective orders in respect of regulating the company, and administering the affairs of the company, cannot be passed in these proceedings. Such orders can only be passed by the NCLT, which has exclusive jurisdiction to deal with the affairs of the company. Moreover, the powers of the NCLT are broader and wider than what can be exercised by this Court in the exercise of civil jurisdiction under Section 9 CPC. The NCLT is a specialized Tribunal constituted for the purpose of speedier and effective regulation of the affairs of the companies."*¹⁴

RECENT DEVELOPMENTS

Over the past few years, there have been many changes made in the model of criminalization in the country to achieve better results and eliminate shortcomings. There were many drawbacks to the existing system of criminalization in India and many suggestions were given

¹¹ Prithviraj Senhil Nathan, 'India: Civil Court Vs NCLT In Adjudicating The Company Law Matters: The Debate Continues' (*Mondaq*, 22 August 2019) <<https://www.mondaq.com/india/shareholders/839106/civil-court-vs-nclt-in-adjudicating-the-company-law-matters-the-debate-continues>> accessed on 12 June 2023

¹² Code of Civil Procedure, 1908, s9

¹³ *SAS Hospitality Pvt. Ltd. V. Surya Constructions Pvt. Ltd.* (2018)

¹⁴ Prithviraj Senhil Nathan, 'India: Civil Court Vs NCLT In Adjudicating The Company Law Matters: The Debate Continues' (*Mondaq*, 22 August 2019) <<https://www.mondaq.com/india/shareholders/839106/civil-court-vs-nclt-in-adjudicating-the-company-law-matters-the-debate-continues>> accessed on 12 June 2023

to tackle the same. The following points reflect the problems in the existing system that required correction

- Union government had more control over the appointment and removal procedures of the members of the tribunals
- The executive exercised more control over the tribunals than the judiciary
- The tenure of the members of the tribunals was only 3 years, among others.

In an attempt to find a solution to the above-mentioned problems, the Tribunals Reforms Bill, 2021 was introduced in Lok Sabha by the Finance Minister, Ms. Nirmala Sitharaman, on August 02, 2021. The bill was passed in both houses and became the Tribunals Reforms Act, 2021 by August 09.¹⁵ The Bill replaces the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 which was quashed by the Supreme Court.

The key changes that were introduced by the act are as follows

- The Chairperson and Members of the Tribunals will be appointed by the central government on the recommendation of a Search-cum-Selection Committee. The Committee will consist of (i) the Chief Justice of India, or a Supreme Court Judge nominated by him, as the Chairperson (with casting vote), (ii) two Secretaries nominated by the central government, (iii) the sitting or outgoing Chairperson, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court, and (iv) the Secretary of the Ministry under which the Tribunal is constituted (with no voting right).¹⁶
- The Bill provides for a four-year term of office (subject to the upper age limit of 70 years for the Chairperson, and 67 years for members). Further, it specifies a minimum age requirement of 50 years for the appointment of a chairperson or a member.¹⁷
- The main objective of introducing this bill was to tackle the problem of lagged disputes, inefficiency in the working of the tribunals, and insufficiency of staff, among others.

¹⁵'The Tribunals Reforms Bill, 2021' < <https://prsindia.org/billtrack/the-tribunals-reforms-bill-2021> > accessed on 13 June 2023

¹⁶ *Ibid*

¹⁷ *Ibid*

CONCLUSION

In many cases, tribunals have served as the judiciary's skeleton. It has evolved into a platform for handling situations that call for the adjudicators' specialized attention. In many ways, the goal of creating a tribunal has been accomplished, yet there is still room for improvement. For instance, the number of ongoing cases at the NCLT is alarmingly high and steadily increasing. According to the NCLT's most recent report, there were more than 21,200 still pending cases as of January 31, 2023.¹⁸ These figures cast doubt on whether the goal of establishing these tribunals is being accomplished or not. Therefore, it is apparent from the analysis above that, if the tribunals function effectively, we can beat these figures and set a new record for a swift resolution of cases.



¹⁸ PTI, 'More than 21,200 cases were pending before NCLT till January-end: Govt ' *Indiatimes* (India, 14 March 2023) <<https://legal.economictimes.indiatimes.com/news/industry/more-than-21200-cases-were-pending-before-nclt-till-january-end-govt/98617972>> accessed on 13 June 2023