

TRIBUNALS AND ITS FUNCTIONING WITH REGARD TO RULE OF LAW: A COMPARATIVE STUDY BETWEEN INDIA AND UNITED KINGDOM

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Abstract: In an administrative age, the functions of government have increased considerably. Administration is the government's primary wing that the people nowadays need in all fields of life. To fulfill such increased administrative functions, the judiciary has also been reposed with increased judicial functions. So, Tribunals have emerged as a new wing of judiciary to combat the increased judicial functions, keeping up in line with the rule of law doctrine. However, since the inception of the tribunals it has been a controversial issue. The Tribunals have been called quasi-judicial body as it possesses some and not all powers of the Court. As was held in *Associated Cement Co. Ltd v P.N. Sharma*³, it is a body that neither is a judicial body nor an administrative body exclusively, but lies between the two. There had been a catena of cases regarding judicial independence and judicial review of the country-the two-tier rule of law doctrine in India. The new rules of 2020, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020, cannot dilute the fundamental issue of judicial independence in the realm of tribunalisation in the country. There has been still a lot of executive dominance over tribunals' functioning, which hampers them from working independently. In light of this situation, the Madras Bar Association has also challenged Tribunals' position and their independence in the country. On the contrary, the position of U.K with the introduction of The Tribunals Courts and Enforcement Act, 2007 position has now been settled in the sense that it could have maintained the sanctity of judicial independence of the Tribunals while deciding the cases in a much speedy manner. The U.K law replaced a disjointed collection of Tribunals and brought them under the umbrella of a single judicial structure. Such a system has contributed to a significant development in amalgamating the whole judicial structure under a roof by maintaining the rule of law. Thus paper, seeks to analyse the position of tribunals in India and U.K and how far they have been successful in upholding the rule of law. A comparative analysis has been sought in the paper between India and U.K to look into whether U.K model of Tribunal justice administration can be use in India for successful functioning of the same.

Keywords: Tribunal, Rule of Law, Quasi-Judicial, Judicial review, administration

INTRODUCTION

"A judge should value independence above gold, not for his or her own benefit, but because it is of the essence of the rule of law."
- Lord Chief Justice Phillips⁴

Indian legal system has been shaped, keeping in mind the socio-economic, cultural, and political context and history of the country. For a stable form of system in a welfare state, the regulation and adjudication process must always be transparent and hassle-free. Such a system must balance the rights of the individual with that of the state. According to Dworkin, "a legal system not only must contain rules but also certain principles,⁵" to have coherence and identity to a legal system. Such principles are rooted in the cultural, historical, and economic background and depend on the country's regime. In light of such, the rule of law is that essential feature not embedded explicitly in the Constitution, yet the legal system strives to uphold the Diceynian doctrine. To ensure such a paramount rule of law, the courts and the Tribunals are the two most important pillars in the Indian legal system. Tribunals in the Indian justice administration are known to be quasi-judicial bodies, comprising of judicial and executive members. The concept of separation of powers somewhere gets over mingled as protection of interest of bureaucracy and judiciary comes into light. And this becomes the central area of concern in maintaining and preserving the rule of law in a democracy where judicial independence, judicial supremacy, separation of powers, and judicial review are the leading proponents of the system.

The last few decades have witnessed a considerable increase in governmental functions and quasi-legislative and quasi-judicial functions. The courts and Parliament keeping in mind welfarism perspective, have introduced the 42nd Amendment through which floodgates of 'tribunalisation' have been opened. The main object of the Amendment was to seek a more expeditious and efficient manner of the justice delivery system and reduce the courts' burden. But this amendment was seen as having a considerable

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³ AIR 1965 SC 1595

⁴Hon'ble Mr. Justice F.M. Ibrahim Kalifulla, 'Rule Of Law & Access To Justice' (Tamil Nadu State Judicial Academy)

⁵Sheela Rai, 'India's Tryst With Independent Tribunals And Regulatory Bodies And Role Of The Judiciary' [2013], Vol. 55, No. 2 Journal of the Indian Law Institute , April-June 2013, 215-227

executive domain and control over judiciary. According to the Amendment, Article 323A and 323B were enacted to deal with Administrative Tribunals and other Tribunals, respectively. The issue regarding the jurisdiction of the tribunals was put to rest with the case of L. Chandrakumar. But the post Chandrakumar era⁶, the issue of separation of powers and independence of the judiciary was raised. It was felt that the members of the Tribunals do not hold requisite judicial independence. It can be very well depicted if we take the example of tax matters, which are often complex in nature. To deal with those matters, persons with knowledge and experience can resolve it judicially and also any technical member, who is a Chartered Accountant, is required. Therefore, tax tribunals are established to deal with these tax matters efficiently and cost-effectively, which would otherwise be a cumbersome process if the issue goes to the High Court. There had been many cases starting from L Sampath Kumar v Union of India case in 1997⁷ to the recent Roger Mathew case of 2019. The Apex court had tried to provide a framework of Tribunals in India and their constitutional status with Executive and judiciary. However, the tribunals' position was sought to be reconsidered by the Apex Court in the case of R. Gandhi v Union of India in 2010⁸. The question regarding the extent of powers of the High Court jurisdiction can be transferred to Tribunals was raised. The meaning of “wholesale transfer of powers” added in the Companies Act, 2002 was considered in the sense of separation of powers and judicial independence framework under the Constitution. Primarily, Article 323A of India's Constitution deals with Administrative Tribunals, and Article 323B deals mainly with tribunals established for other purposes or maybe the independent tribunal, which widened Administrative Tribunals' scope.

India has come a long way with globalization, where the legal systems across the jurisdictions have been taken into account for a successful legal development in one's own country. Similarly, the U.K's tribunal justice system has undergone a significant transformation with the Tribunals' Introduction and Enforcement, the courts and Enforcement Acts (2007). This legislation brought a wave of change in the position and relationship between tribunals and courts, and the question of judicial review was also duly addressed. This legislation brought the whole tribunal system under one umbrella with a single judicial structure. The ruling in R.Gandhi had almost settled the position during that time. Still, again in 2019, the Court reiterated the question of the extent to which the objectives of the introduction of Tribunals in the case of Roger Mathews v South Indian Bank⁹ by issuing some guidelines while embracing them as a part of “justice delivery system.” This case brought the rules framed in 2017 regarding the method of appointment, eligibility criteria, and selection process, which had been declared invalid in 2019.

Thus, Part I of the paper will state the growth and history of tribunals through various case laws and analyze India's current situation concerning tribunals in the Indian legal system. Part II of the paper analyses the law existing in the United Kingdom that governs and effectively administers Tribunals' functioning. Part III of the paper tends to make a comparative analysis between the two countries, namely India and U.K in terms of regulation of tribunals and how far the U.K system has been successful in upholding the rule of law. Further, I will delve into whether the U.K can be administered in India to administer tribunals to maintain the rule of law's aesthetic value. Finally, Part IV will conclude the paper by proving some suggestions on making the system more effective in better functioning.

TRIBUNALS IN INDIA: HISTORICAL EVOLUTION

The growth of a welfare state has increased governmental functions towards the people. This radical transformation has not only increased governmental functions but also has overburdened the judiciary. Thus, the courts came under an obligation not only pertaining to legal matters but also to maintain and balance society's interest at large. To sustain such a role, the judiciary and the courts have been striving to strike a balance between judicial activism and judicial independence- the two most important factors to uphold the institution of judiciary in a country. In essence, the “Tribunals” has always been in question as to whether it is a judicial or quasi-judicial body. In terms of its' judicial power, the tribunals have also been vested with some administrative powers as well. If we delve into the history of tribunalisation in India, it is also quite evident that the executive always tried to have a dominant position over these independent tribunals¹⁰.

The Legislature has brought many amendments from time to time, keeping in view the welfarism perspective and strengthening the judiciary institution by not overburdening the courts. In light of such, the forty-second amendment (42nd Amendment) was introduced in 1976, regarding constitution of special adjudicatory bodies by inserting Articles 323A and 323B respectively, in India's Constitution. Although this amendment sought to establish a different and discriminate adjudicatory forum to deal specifically with those subject matters assigned, there had been a plethora of case laws before the Supreme Court from time to time. The issues were mostly pertaining to the extent of separation of powers between courts and these tribunals and how far these tribunals have successfully upholding judicial independence, more specifically the rule of law and judicial review. The main objective behind establishing such administrative tribunals were speedy-relief and to prevent delay in the disposal of cases. Another reason these tribunals were established was to combat the nature of socio-economic legislation that was introduced, keeping in mind the welfarism perspective of the state. To uphold the rule of law, the fundamental essence of Indian judiciary and the courts in India are trying to enforce the concept through various judgments from time to time. In I.R. Coehlo v State of Tamil Nadu¹¹, the Supreme Court vehemently established the rule of law as the basic structure of the Indian Constitution. Hence, it cannot be abolished or violated by any constitutional amendment. Although there is no specific provision in the constitution that propagates Rule of Law,

⁶ 1997 (2) SCR 1186

⁷ 1987 SCR (3) 233

⁸ [2010] 11 SCC 1

⁹ Civil Appeal No. 8588 of 2019

¹⁰ Bharat Bank Ltd. v Employees AIR 1950 SC 188

¹¹ AIR 2007 SC 861

yet through various articles under the Constitution, it has been asserted that it has to be maintained and preserved by the judiciary¹². The rule of law is believed to be “the heritage of all mankind” as pointed out by Justice Vivian Bose, former Judge, Hon’ble Supreme Court of India¹³. The rationale behind this principle is to uphold and maintain human dignity and human rights. The judicial review and judicial independence are the two most essential criteria of the rule of law. And the justice system of the country is striving to maintain and uphold the rule of law.

In light of the history of tribunalisation in India, S.P. Sampath Kumar v Union of India's decision¹⁴ holds a significant place. The 42nd constitutional amendment was challenged in the light of judicial review power of the tribunals. Further, in L. Chandrakumar v Union of India¹⁵, the position was settled that tribunals could not be considered substitutes of High Court or Supreme Court in terms of judicial review under Article 226 and Article 32, respectively. However, in Madras Bar Association v Union of India¹⁶, this opinion was struck down and a two-tier appellate tribunal system was thought to be revisited. But here, the question of judicial independence arises. Suppose the tribunals are to be vested with the autonomy to decide on any constitutional issue that could arise in lieu of the matter. In that case, they will abrogate the higher judiciary powers granted under Article 32, 226 or 227 of India's Constitution. The idea of “judicial independence” is deeply rooted in the notion of the dispensation of justice¹⁷ and to ensure that the members of the tribunals must be appointed in such a way to balance the security and independence of the tribunal justice administration.

Since the inception of tribunals, there have been many reforms and reports by the Law Commission that sought to reform and revisit the administration of tribunals in line with the rule of law. The 14th Law Commission Report stated that tribunals' system can be supplementary and cannot oust the ordinary courts.¹⁸ Whereas on the other hand, the sixth Law Commission Report¹⁹ suggested giving the powers of appellate and supervisory jurisdiction of High Courts and Supreme Court to prevent the backlog of cases and save time and resources. Further, during the emergency period, the Swaran Singh Committee suggested the reform, and then the 42nd Amendment was introduced. But all such reforms failed to provide clarity in the tribunals' administration and functioning in light with maintaining the rule of law in the justice delivery system. Despite enacting rules in 2020, in light of the 2019 verdict by the Apex Court, the Legislature has failed to note the rising situation that demands immediate attention. Thus, a comparative analysis has been sought in the next part of the paper with the tribunal justice administration with that of U.K. and tries to find out whether that system can be incorporated within India's legal system.

ADMINISTRATION OF TRIBUNALS IN UNITED KINGDOM

There has always been a significant link between democracy and judicial independence. However, the question arises of how far judicial autonomy is necessary for the rule of law? In the United Kingdom, they follow legislative supremacy, unlike India. It can be seen most of the governments have been successful in upholding the doctrine of rule of law without any judicial interference. But the role of judiciary in any judicial supremacy regimes has always been different in a regime like India. The Tribunals in the United Kingdom had also gone through a radical transformation. The Leggatt Committee Report²⁰ brought fresh air by imparting judicial independence and impartiality in the Tribunals' functioning and administration. In the U.K, comparative new legislation was framed for the administration and functioning of tribunals in the Tribunals, Courts, and Enforcement Act (hereafter referred to as TECA), 2007²¹. This legislation has brought under the fragmented and dismantled tribunal system under one purview of a single tribunal jurisdiction. However, although there has been an independent body to regulate the Tribunals' functioning, the question arises as to what is the relationship between Tribunals and regular Courts. The tribunals in the United Kingdom had been established to view proportionate dispute resolution in achieving justice. Before enactment of TECA, the courts can quickly intervene into tribunals' decisions, which led to a catena of cases questioning the tribunals' purview and jurisdiction. In the name of Rule of Law, the court often interferes with the tribunals' jurisdiction, but the new law has incorporated some salient features that keep a check and balance. The main issue that mostly arises is judicial independence in the tribunals. The tribunals' functioning has been divided into tier systems mainly, the First-tier Tribunal, Upper Tribunal, Court of Appeal, and Administrative Court. These separate bodies have been further divided into chambers. The First-Tier Tribunal is bestowed with the power to review its own decisions, mentioned under section 9 of TECA²².

¹² ADM Jabalpur v Shivkant Shukla AIR 1976 SC 1207

¹³ A.V Chandrashekhara judge, ‘Role of Courts In Upholding The Rule Of Law’

¹⁴ 1987 SCR (3) 233

¹⁵ 1997 (2) SCR 1186

¹⁶ (2014) 10 SCC 1

¹⁷ Anusha Ramesh, ‘Tribunalisation of India's Competition Regime’, [2016] 9 NUJS Law Review 259.

¹⁸ Law Commission of India, 14th Report titled ‘Reform of Judicial Administration’, available at <https://lawcommissionofindia.nic.in/1-50/report14vol1.pdf> (Last Accessed: 10th January, 2021)

¹⁹ Law Commission of India, 58th Report titled, ‘Structure and Jurisdiction of the Higher Judiciary’, 1974 available at <https://lawcommissionofindia.nic.in/reports/Report272.pdf> (Last Accessed: 10h January 2021)

²⁰ Gavin Drewry, ‘The Judicialisation of ‘Administrative’ Tribunals In The UK: From Hewart to Leggatt, Transylvanian’ [2009] Review of Administrative Sciences, 47

²¹ The jurisdiction of the tribunals system created by the TCEA extends principally to England and Wales, but there is UK-wide jurisdiction in relation to certain subject areas (e.g. asylum and immigration, and tax) that are “reserved” under the terms of the devolution settlement.

²² Review of decision of First-tier Tribunal, TECA 2007

Under section 11 of TECA²³, the Upper Tribunal has been bestowed with the power to hear an appeal against the decision of the First Tier Tribunal. Under section 13²⁴, the appeal against Upper Tribunal's decision will lie in the Court of Appeal. This system is very akin to that of the hierarchy of courts in India as to subordinate courts, High Courts, and Supreme Court. Moreover, the provision under section 3(5) gives the power to the Upper Tribunal as the "Superior Court of Record" to oversee the judicial functioning of the First-Tier Tribunal²⁵. In light of this, the issue of judicial review was raised. In a landmark case of R (Cart) v Upper Tribunal²⁶, it was opined that judicial review could only be excluded by "clear and explicit words". Another pertinent question rose as to what amount of independent scrutiny is required by the rule of law outside the tribunal structure²⁷? This was asserted in R v Cripps²⁸, where it was held that the Upper Tribunal position as court of record or the highest court is similar to that of high Court. It does not take away the High Court's power but works independently of its function of judicial review as a different body established under a different structure. And to attain the judicial review principle, they have to maintain and uphold the rule of law's doctrine. In light of this, how much amount of intervention will happen by the Court remains an issue. The question of judicial review principle will only arise against the decision of Upper Tribunal if that case has "some important point of principle or practice" or judicial review is necessary only "in the light of some compelling reasons."²⁹ This approach successfully meet the criteria of the rule of law and the principle of judicial review and help in the process of proportionate dispute resolution mechanism. This framework may uphold the rule of law by independent tribunals, a long time issue between regular courts and those tribunals. The judicial review position has been very well cleared that it is only available while challenging the legality of decisions. Still, it must be proportionate with the lines and ambit of the rule of law. This also puts forth another aspect: it preserves the sanctity of maintaining the fundamental objective for which tribunals were established as the cost-effectiveness mechanism since it restricted the right to appeal criteria to only specific grounds.

POSITION OF INDIA AND U.K WITH REGARD TO TRIBUNALS AND RULE OF LAW

The Supreme Court has always exercised the power of checks and balances upon the courts and the tribunals. The courts and tribunals both have been entrusted with judicial functions that are different from executive roles. In India, many independent tribunals have been established to deal with specific subject matters. For example, the Income Tax Tribunal, the National Green Tribunal, and the railway claim tribunal deals with particular subject matters. In the contrary, to the U.K. tribunal system, it is grouped and organized into Chambers and a President heads each chamber³⁰. This shows that the country has a distinct administrative structure separated from that of regular courts and has its administrative structure specifically mentioned under TECA. But there has been no such complete independence to the tribunals in India. There have been issues regarding the courts' interference, which hinders the tribunals from maintaining judicial independence and upholding rule of law. In India, the National Green Tribunal (hereinafter referred to as NGT) has been established under the NGT Act. Since the inception of the Act, the controversy exists with the Tribunals' operation and functioning independently. It was established to deal specifically with environmental matters by a body of experts to provide environmental justice. But the question revolves around the appointment of the members and the judicial independence of the body. Tribunals also include non-judicial members. The vision of the law minister back in 2001 was to establish a central tribunal system and an independent supervisory body to oversee the administration and functioning of all the tribunals³¹. But the system proves that the objectives are not fulfilled as in recent times, the Supreme Court and High Court have been overloaded with pending litigations. In 2014, the Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill were introduced to bring uniformity in the system. But the legislation lapsed, and in 2017 it was enacted and included in the Finance Act 2017 under Part XIV section 158-184 read with schedules 8 and 9 of the Act³². Moreover, the 2017 Law Commission Report shows the amount of pendency of cases in the tribunal as in-

- 1) Central Administrative Tribunals- 44,333
- 2) Railway Claims Tribunal- 45,604
- 3) Debt Recovery Tribunal- 78118
- 4) Customs, Excise and Service Tax Appeal Tribunal- 90,592
- 5) Income Tax Appellate Tribunal- 91, 538³³

²³ Right to appeal to Upper Tribunal, TECA 2007

²⁴ Right to appeal to Court of Appeal etc., TECA 2007

²⁵ Mark Elliott and Robert Thomas, 'Tribunal Justice And Proportionate Dispute Resolution' [2012] Vol. 71, No. 2 The Cambridge Law Journal 297-324

²⁶ [2011] UKSC 28

²⁷ *Ibid*

²⁸ [1984] Q.B. 68

²⁹ R. Nobles and D. Schiff, M.L.R. 65 'The Right to Appeal and Workable Systems of Justice' 676

³⁰ Structure of the Courts and the Tribunal System <https://www.judiciary.uk/about-the-judiciary/the-justice-system/court-structure/> (Last Accessed: 9th January, 2021)

³¹ Rahul Unnikrishnan, 'Whether tribunal Independence' *The Hindu* (2nd March 2020) <https://www.thehindu.com/opinion/lead/whithertribunal> (Last Accessed: 2nd January, 2021)

³² Rahul Unnikrishnan, 'Decoding the Tribunal Judgment Rahul Unnikrishnan' *Bar and Bench* (17th Dec 2019), <https://www.barandbench.com/columns/column-decoding-the-tribunal> (Last Accessed: 2nd January 2021)

³³ 272nd Law Commission of India Report on "Assessment of Statutory Frameworks of Tribunals in India" Available at <https://lawcommissionofindia.nic.in/reports/Report272.pdf> (Last Accessed: 5th January 2021)

With such a massive backlog of cases in the year 2017, although the Parliament tried to bring a wave of change through the Finance Act, it was challenged in *Roger Mathews v South Indian Bank Ltd*³⁴. This Act and Part XIV were explicitly challenged in the light as it amended 26 central enactments that deal with specific and different administrative tribunals³⁵. It was criticized for the Executive's overarching role and to maintain the balance between judicial independence and looking into the administration and functioning of the Tribunals.

One of the significant lacunae that these Tribunals suffered is the inclusion of members as it contains more executive members than the judicial expertise. However, it is termed as a judicial body. This makes the nature of the Tribunals a more political rather than being a judicial or quasi-judicial body. In light of such, the issue of judicial independence comes into light. Often, the Selection Committee predominantly consists of Executive members, and conflict arises as challenges in such Tribunals are done against such bodies' decision.

Moreover, the removal of tribunal members rests with the Executive, unlike the process that is being followed to remove the High Court and Supreme Court judges. In such a procedure for removal, the Executive may grasp a chance to remove any member if the tribunals opined anything against them. This may create chaos and question the integrity and competence of the members. The mandatory process of judicial inquiry be followed across all the tribunals. That must not be any discretion in the hands of Executive to uphold the Rule of Law through their decisions.

Another pertinent issue faced by the NGT continuously since its inception is the lack of expert members to deal with the problems. Amidst other Tribunals, NGT is an essential tribunal that deals with environmental matters and clearances and environment impact assessment issues. The vacancies and non-appointment of expert judicial members in the Tribunal are the main reason for such lacunae in the justice delivery system. Moreover, the appointment is made by the ministry. Any decision against it or any policies may bear a high cost on the tribunal members, which hinders the tribunals' independent working. And since judicial independence is one of the main pillars of the rule of law in the justice delivery system, the tribunals in certain times have been failing in upholding the rule of law at certain times.

In 2020, another attempt was made by the Parliament to remove the existing defect. It introduced the Appellate Tribunal and Other Authorities (Qualifications, Experience, and Other Conditions of Service of Members) Rules 2020. However, a look at the provisions suggests that executive dominance is still prevailing over the country, thus threatening the separation of powers and judicial independence and further diluting the rule of law. The Court decided on the constitutionality of the Finance Act, 2017 in 2019 and stated that the appointment, removal procedure in the said legislation is not valid. There must be a selection committee that shall comprise the High Court's justice and chief justice of India. But a recent challenge in *Madras Bar Association v Union of India*³⁶, 2020 points out that the 2019 judgment has not been followed correctly in terms of the Constitution and appointment of members in the selection committee.

The U.K model of tribunal justice administration follows a single authority to oversee the tribunals' administration and functioning. However, in India, different Tribunals operate under various executive authorities. For example, the Income Tax Appellate Tribunal operates under the Ministry of law and Justice, whereas other tax tribunals like CESTAT operate under the Ministry of Finance³⁷. In light of that, the Court in 2019 verdict also suggested that India's tribunals be taken under a single umbrella, viz under the Ministry of Law and Justice. But the new 2020 rules is lacking as there is no such provision that gives the effect of the same.

The appeal provisions in England and Wales have been settled with the introduction of TECA. The appeal against the decision will lie in the Upper Tribunal and not directly to the Court of Appeal. But in India, some statutes have mentioned that appeals against the Tribunal's findings will directly go to the Supreme Court from NGT, NCDRC etc.³⁸ In *Gujarat Urja Vikas Nigam Ltd v Essar Power Limited*, the Supreme Court opined that direct appeal to Supreme Court results in denial of access to High Courts and thereby becoming a substitute for them in turn, lead to congestion of docket in the Supreme Court³⁹. This inconsistent position of appeal in India's tribunal justice system also hampers India's tribunals' judicial independence and independent working, thus bypassing the doctrine of the rule of law.

CONCLUSION AND SUGGESTIONS

In a democratic system, where Constitution is regarded as the law of the land, the Constitution has to maintain the individual's interest in a welfare state. For this purpose, an efficacious mechanism is required for the adjudication of disputes so that the individual's interest and rights are maintained by protecting the sanctity of a welfare state. In *Cart*, Lord Brown said: "The rule of law is weakened, not strengthened if a disproportionate part of the courts' resources is devoted to finding a very occasional grain of wheat on a threshing floor full of chaff"⁴⁰. In a society where the rule of law is one of the essential criteria in the justice delivery system and administration, judicial review and judicial independence are the two subsets of the rule of law. These two are the fundamental and most important aspects of the system that values the rule of law. The relationship between regular courts and tribunals has been a thorny issue in judicial intervention over the tribunals. The new legislation that governs the U.K Tribunal justice

³⁴ 2018 SCC OnLine SC 500

³⁵ *Supra* Note 32

³⁶ Writ Petition (C) No.804 of 2020

³⁷ Arijeet Ghosh, Diksha Sanyal, Raunaq Chandrashekar, Reshma Sekhar, 'Reforming the Tribunals Framework in India: An Interim Report', (2018, Vidhi Centre for Legal Policy)

³⁸ *Union of India v Shri Kant Sharma* (AIR 2015 SC 2465)

³⁹ *Supra* Note 14

⁴⁰ Sir Andrew Leggatt, 'Tribunals for Users: One Service, One System' (London 2001) Available at <https://webarchive.nationalarchives.gov.uk/+http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm> Last Accessed (10th January, 2021)

administration has considered three aspects: the practical reality of the relationship between courts and tribunals, the role of doctrine in administrative law, and the rule of law⁴¹. The misconception that the rule of law's main criteria regarding tribunals is that it requires continuous oversight of the working and functioning by a regular court. Instead, it is successfully upheld when any independent judicial body oversees its functioning. But, the lacunae in India's Tribunal system have not been resolved for years. Despite several attempts being made by the Supreme Court to effectively and efficaciously settle the tribunals' operation, some issues still exist and hamper the tribunals' functioning. The 74th Parliamentary committee Report, the 272nd Law Commission Report, and the Supreme Court's recent guidelines in 2019 in Roger Mathews case has failed to bring the tribunals in India in a settled position.

In contrast, the U.K. has already come up with constructive legislation for the Tribunal justice administration's concrete functioning. Thus, to strengthen the tribunal justice administration and ensure that the decisions must comply with the rule of law, few necessary alterations must be made in the 2020 regulations with respect to appointment, removal, and mode of operation. Moreover, it must be looked into that the appointment of members be made to keep in mind the independence of the judiciary, so as to lessen the executive control in the appointment process to maintain independence, the open-advertisement method can be adopted, or maybe any uniform entrance test can be held depending upon the vacancies. The eligibility criteria must be appropriately mentioned, so that the Selection committee appoints an equal number of judicial and technical members. In such a case, the eligibility criteria must be uniform across India to avoid any appointment inconsistencies and not question their competency after the appointment. Each subject matter and areas of similar nature can be clubbed together. Each tribunal with a distinct area of operation based on subject matters be made different from each other. And in case of an appeal, like in U.K the Indian Supreme Court must not be burdened with petty matters every time, which can otherwise be solved by Tribunals. Only a "substantial question of law" must involve the High Court for appeal; otherwise, the Tribunal's order can be considered as final to clear the backlog of cases, pending litigations and increased burden on the higher judiciary. Thus, to sum up, "no branch should be allowed to aggrandize itself at the expense of another."⁴² This could give a broader approach to India's justice system.

REFERENCES

1. 272nd Law Commission of India Report on "Assessment of Statutory Frameworks of Tribunals in India, Available at: <https://lawcommissionofindia.nic.in/reports/Report272.pdf> (Last Accessed: 5th January 2021).
2. A.V Chandrashekhar judge, 'Role of Courts In Upholding The Rule Of Law'.
3. Arijeet Ghosh, Diksha Sanyal, Raunaq Chandrashekar, Reshma Sekhar, 'Reforming the Tribunals Framework in India: An Interim Report', (2018, Vidhi Centre for Legal Policy).
4. Arun Roy V and Vishnu Jerome, 'Administrative Tribunals in India - A Welcome Departure from Orthodox ' (2000) 12 Student Advoc 60.
5. Arvind P Datar, 'The Tribunalisation of Justice in India' (2006) Acta Juridica 288.
6. Bhadra Sinha, 'Judicial independence diluted — Madras Bar Assn challenges Modi govt rules for tribunal posts' THE PRINT, [2020] Available at: <https://theprint.in/judiciary/judicial-independence-diluted-madras-bar-assn-challenges-modi-govt-rules-for-tribunal-posts/487742/> Last Accessed: 11th January, 2021.
7. Dr. Anant Kalse, 'Administrative Tribunal and Classification of Administrative Action, A Brief Overview', Maharashtra Branch Vidhan Bhavan, [2016].
8. Gautam Swarup, 'Indiscriminate Tribunalisation and The Exclusive Judicial Domain: An Analysis of the 42nd Amendment in The Light of Decisions of The Supreme Court', National Law School of India Review [2012] Vol. 23 97-119.
9. Hon'ble Mr. Justice F.M. Ibrahim Kalifulla, 'Rule of Law & Access to Justice' (Tamil Nadu State Judicial Academy).
10. Mark Elliott and Robert Thomas, 'Tribunal Justice and Proportionate Dispute Resolution' [2012] Vol. 71, No. 2 The Cambridge Law Journal 297-324.
11. P. Leelakrishnan, 'Reviewing Decisions of Administrative Tribunal: Paternalistic Approach of The Indian Supreme Court and Need for Institutional Reforms', Journal of the Indian Law Institute [2012] Vol. 54, No., 1-26.
12. Pratik Datta, 'Towards a Tribunal Services Agency' (2015) 8 NUJS L Rev 181.
13. Rahul Unnikrishnan, 'Decoding the Tribunal Judgment' BAR AND BENCH [2020], Available at: <https://www.barandbench.com/columns/column-decoding-the-tribunal-judgment>, Last Accessed: 11th January, 2021.
14. Ramesh, 'Tribunalisation of India's Competition Regime', [2016] 9 NUJS Law Review 259.
15. Raunaq Chandrasekhar, 'To reform India's tribunals, the government must uphold judicial independence', [2018], Available at: <https://scroll.in/article/884663/to-reform-indias-tribunals-the-government-must-uphold-judicial-independence> Last Accessed: 11th January, 2021.
16. Sheela Rai, 'India's Tryst with Independent Tribunals and Regulatory Bodies and Role of The Judiciary', Journal of the Indian Law Institute [2013] Vol. 55, No. 2, 215-227.
17. T. C. A. Anant and Jaivir Singh, 'Structuring Regulation: Constitutional and Legal Frame in India,' Economic and Political Weekly [2006] 41 No. 2 121-127.
18. The Hindu, 'Safeguarding the autonomy of tribunals', Available at: <https://www.hindustantimes.com/analysis/safeguarding-the-autonomy-of-tribunals/story-sTaztHIM2iZBhyaUTowxVM.html> Last Accessed: 11th January, 2021.
19. Tribunals are here to stay, but with improvements, Indian Business Law Journal [2019], Available at: <https://law.asia/tribunals-stay-with-improvements/> (Last Accessed: 11th January, 2021).

⁴¹ *Supra* Note 25

⁴² M. Elizabeth Magill, 'Beyond Powers and Branches in Separation of Powers Law', The University of Pennsylvania Law Review [2001], Vol. 150 603-660