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TRIBUNALISATION OF JUSTICE IN INDIA: WHETHER THE INTRODUCTION OF ADMINISTRATIVE AND TECHNICAL MEMBERS STRENGTHENS SPECIALISED ADJUDICATION OR UNDERMINES JUDICIAL INDEPENDENCE AND THE CONSTITUTIONAL GUARANTEE OF FAIR JUSTICE

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I. ABSTRACT

The tribunalisation of justice represents a significant transformation in India's constitutional and adjudicatory framework. Established to reduce the burden on constitutional courts, expedite dispute resolution and introduce specialised expertise, tribunals now exercise jurisdiction over taxation, company law, insolvency, customs, GST, electricity, telecommunications, environmental regulation and service disputes, and frequently function as final fact-finding authorities. Their expansion raises a fundamental constitutional question: does the inclusion of administrative and technical members, under substantial executive control over appointments, tenure and service conditions, strengthen specialised adjudication or compromise judicial independence? The litigation initiated by the Madras Bar Association illustrates this continuing conflict. Decisions such as L. Chandra Kumar v. Union of India, Union of India v. R. Gandhi, Rojer Mathew v. South Indian Bank Ltd. and the successive Madras Bar Association judgments, culminating in the invalidation of key provisions of the Tribunals Reforms Act, 2021 in November 2025, have established constitutional safeguards governing tribunal composition and administration. Parliament has since enacted the Tribunals Reforms Act, 2026, which creates a National Tribunals Commission. This research comparatively examines tribunal systems in the United Kingdom, United States, Germany, France, Canada and Australia, analysing the role of technical and non-judicial members and

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the safeguards that reconcile expertise with impartial adjudication. It argues that technical membership is not inherently incompatible with judicial independence, but administrative experience cannot substitute for judicial competence, nor can expertise justify executive dominance. It critically evaluates the 2026 Act against benchmarks of composition, appointments, technical-member selection, disciplinary oversight, service conditions and budgetary independence, and recommends merit-based appointments, secure tenure, meaningful judicial participation, professional training and independent infrastructure. Tribunalisation strengthens justice only when specialised expertise functions within institutions insulated from executive interference, and its legitimacy must be measured by judicial independence, impartiality and public confidence rather than administrative efficiency alone.

II. KEYWORDS

Tribunalisation of Justice; Judicial Independence; Technical and Administrative Members; National Tribunals Commission; Separation of Powers.

III. INTRODUCTION

A. The Changing Architecture of Justice Delivery in India

The Indian judicial system has traditionally been founded upon the constitutional courts and the subordinate judiciary. However, increasing complexity in taxation, commercial transactions, industrial development, financial regulation and administrative governance created the necessity for specialised adjudicatory institutions.Consequently, Parliament progressively established tribunals to discharge adjudicatory functions in areas requiring specialised knowledge and experience.

The underlying objectives were:

1. Reduction of the burden on constitutional courts.
2. Expeditious disposal of disputes.
3. Development of subject-specific expertise.
4. Simplification of adjudicatory procedures.

5. Greater accessibility to justice.
6. Consistency in specialised decision-making.

The result has been a substantial expansion of tribunal jurisdiction.

Consider the following institutions and their parent enactments:[1]

Field	**Tribunal**
Direct taxation	Income Tax Appellate Tribunal
Customs and indirect taxation	Customs, Excise and Service Tax Appellate Tribunal
GST	GST Appellate Tribunal
Company law	National Company Law Tribunal
Company law appeals	National Company Law Appellate Tribunal
Electricity	Appellate Tribunal for Electricity
Telecommunications	Telecom Disputes Settlement and Appellate Tribunal
Environmental matters	National Green Tribunal
Debt recovery	Debt Recovery Tribunals
Securities regulation	Securities Appellate Tribunal
Service matters	Central Administrative Tribunal

These institutions adjudicate disputes involving substantial financial liabilities, commercial rights, regulatory penalties, governmental decisions and individual legal entitlements. In many instances, tribunals constitute the final fact-finding authorities,

[1] *See* Income-tax Act, 2025, No. 30 of 2025 (India) (ITAT); Customs Act, 1962, § 129, No. 52 of 1962 (India), and Central Excise Act, 1944, § 35B, No. 1 of 1944 (India) (CESTAT); Central Goods and Services Tax Act, 2017, § 109, No. 12 of 2017 (India) (GSTAT); Companies Act, 2013, §§ 408, 410, No. 18 of 2013 (India) (NCLT and NCLAT); Insolvency and Bankruptcy Code, 2016, § 60, No. 31 of 2016 (India); Electricity Act, 2003, § 110, No. 36 of 2003 (India) (APTEL); Telecom Regulatory Authority of India Act, 1997, § 14, No. 24 of 1997 (India) (TDSAT); National Green Tribunal Act, 2010, § 3, No. 19 of 2010 (India); Recovery of Debts and Bankruptcy Act, 1993, § 3, No. 51 of 1993 (India) (DRTs); Securities and Exchange Board of India Act, 1992, § 15K, No. 15 of 1992 (India) (SAT); Administrative Tribunals Act, 1985, § 4, No. 13 of 1985 (India) (CAT).

with further judicial scrutiny by High Courts generally confined to the grounds available under the applicable statutory and constitutional framework.

Consequently, the independence and competence of tribunals directly affect the quality of justice in India. The issue is particularly important because the Government itself is frequently a litigant before these institutions. For example, in direct and indirect taxation matters, the Revenue Department regularly contests the claims of taxpayers. In company law and insolvency matters, the interests of shareholders, creditors, companies, employees and statutory authorities frequently conflict. In such circumstances, the adjudicatory institution must inspire confidence in every litigant, irrespective of whether the opposing party is the Government or a powerful corporate entity.

B. The Fundamental Constitutional Dilemma

The expansion of tribunalisation raises an important question: can adjudication remain genuinely independent when the executive exercises substantial influence over the appointment, tenure, remuneration, service conditions and administrative functioning of tribunal members? The issue becomes particularly significant when retired administrative officers are appointed as technical or administrative members of tribunals adjudicating disputes involving their former departments.

It would be incorrect to presume that every retired government officer is biased. It would be equally unrealistic, however, to disregard the possibility of institutional or apparent bias arising from the structure within which such members function. The constitutional concern is therefore not merely the personal integrity of individual members but the independence of the institution itself.

The central proposition of this paper is that specialised expertise strengthens adjudication only when it operates within an institution that is independent of the executive, impartial towards litigants and accountable to the Constitution.

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C. The Constitutional Significance of Tribunalisation

The Forty-second Constitutional Amendment Act, 1976 introduced Articles 323A and 323B into the Constitution.[2]

Article 323A authorises Parliament to establish administrative tribunals concerning recruitment and conditions of service of persons appointed to public services and posts.[3]

Article 323B provides for tribunals concerning specified matters, including taxation, industrial disputes, land reforms and other enumerated subjects.[4]

However, constitutional recognition of tribunals does not authorise Parliament to eliminate the constitutional jurisdiction of the High Courts and Supreme Court.

In *L. Chandra Kumar v. Union of India*, the Supreme Court held that judicial review under Articles 226 and 227, as well as Article 32, forms part of the basic structure of the Constitution.[5]

Tribunals may supplement constitutional courts but cannot completely replace them. The same commitment to judicial independence led the Supreme Court, in *Supreme Court Advocates-on-Record Association v. Union of India*, to hold that the independence of the judiciary, including the insulation of judicial appointments from executive dominance, forms part of the basic structure.[6] These judgments establish the constitutional boundary within which tribunalisation must operate.

D. Research Problem

The central research problem concerns the relationship between specialised adjudication and judicial independence.

Tribunals were established to provide an effective alternative to ordinary courts. However, their institutional structure frequently places them under substantial executive influence.

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[2] The Constitution (Forty-second Amendment) Act, 1976, No. 59 of 1976 (India).
[3] INDIA CONST. art. 323A.
[4] INDIA CONST. art. 323B.
[5] *L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261, ¶¶ 78–79 (India).
[6] *Sup. Ct. Advocates-on-Record Ass'n v. Union of India*, (2016) 5 S.C.C. 1 (India).

The executive may exercise control over:

1. Appointment of members.
2. Composition of selection committees.
3. Tenure and reappointment.
4. Remuneration and service conditions.
5. Infrastructure and administrative staff.
6. Budgetary allocations.

The problem becomes particularly serious when the executive is itself a litigant before the tribunal.

For instance, in taxation disputes, the Revenue Department is frequently the contesting party. If the tribunal adjudicating those disputes is substantially dependent upon the executive for its institutional existence, the independence of adjudication becomes a legitimate constitutional concern. The issue is not whether retired departmental officers are personally capable of impartial adjudication.

The question is whether the institutional arrangement provides sufficient safeguards against actual or apparent bias. Accordingly, the principal research problem is:

Whether an adjudicatory institution can effectively discharge independent judicial functions when the executive, whose decisions are frequently challenged before it, exercises substantial control over the institution's composition, administration and service conditions.

E. Research Objectives

The objectives of this research are:

1. To examine the historical development of tribunalisation in India.
2. To analyse the constitutional foundation of tribunals under Articles 323A and 323B.
3. To examine the expansion of tribunal jurisdiction over commercial, economic and regulatory disputes.

4. To analyse the constitutional validity of appointing administrative and technical members.
5. To examine whether administrative experience is an adequate substitute for judicial competence.
6. To undertake a comparative examination of tribunal systems in six major jurisdictions.
7. To identify institutional safeguards adopted by other countries for ensuring independent adjudication.
8. To examine the constitutional significance of the repeated litigation initiated by the Madras Bar Association.
9. To evaluate the National Tribunals Commission established under the Tribunals Reforms Act, 2026 against constitutional standards of independence.
10. To recommend reforms concerning recruitment, tenure, training, infrastructure and administrative control.

F. Research Questions

The research addresses the following questions:

1. Is the transfer of substantial judicial jurisdiction to specialised tribunals compatible with the basic structure of the Constitution?
2. Does the appointment of technical and administrative members strengthen specialised adjudication, or does it compromise judicial independence?
3. Do retired administrative officers possess the institutional independence necessary to adjudicate disputes involving their former departments?
4. Should the appointment, tenure and service conditions of tribunal members be administered independently of the sponsoring ministries?
5. Do other developed jurisdictions provide institutional safeguards superior to those prevailing in India?

6. Should technical expertise enter adjudication through permanent technical members, independent expert assessors or expert assistance to judicial members?
7. Does the National Tribunals Commission established under the Tribunals Reforms Act, 2026 satisfy the constitutional standards of independence laid down by the Supreme Court?
8. Does the existing Indian tribunal framework adequately protect the constitutional guarantee of fair and impartial justice?

G. Research Hypothesis

The research proceeds on the following hypothesis:

The inclusion of administrative and technical members in specialised tribunals is not inherently unconstitutional. However, their appointment without adequate safeguards concerning qualifications, judicial training, tenure, selection procedures and institutional independence may undermine the constitutional guarantee of impartial adjudication.

The research further hypothesises that:

1. Technical expertise is desirable where disputes involve specialised knowledge.
2. Administrative experience cannot automatically be equated with judicial competence.
3. Judicial independence requires protection from executive influence, whether actual or reasonably perceived.
4. Secure tenure and independent appointment procedures are essential.
5. A National Tribunals Commission can substantially improve the credibility and efficiency of tribunals only if its composition, appointment process and disciplinary functions are insulated from executive control.

H. Research Methodology

The research adopts doctrinal and comparative legal methodologies.

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1. **Doctrinal Methodology:** The research examines constitutional provisions, parliamentary legislation, Supreme Court judgments, statutory rules, Law Commission reports and relevant institutional publications. Particular emphasis is placed upon:
    - Separation of powers.
    - Independence of judiciary.
    - Natural justice.
    - Judicial review.
    - Institutional bias.
    - Constitutional limitations upon tribunalisation.
2. **Comparative Methodology:** The research examines the tribunal and administrative adjudication systems of:
    - United Kingdom.
    - United States.
    - Germany.
    - France.
    - Canada.
    - Australia.

The comparison focuses on appointments, qualifications, technical membership, tenure, institutional control and judicial review.

3. **Analytical Methodology:** The research distinguishes between two concepts:
    - **Technical expertise:** Subject-specific knowledge required to understand complex disputes.

- **Judicial competence:** The ability to interpret legislation, evaluate evidence, apply constitutional principles and deliver legally sustainable decisions.

The research examines how these two requirements can be reconciled.

4. **Scope and Limitations:** The study primarily concerns central specialised tribunals exercising adjudicatory jurisdiction. Regulatory authorities performing predominantly administrative or policy-making functions are distinguished from tribunals exercising judicial or quasi-judicial powers. The comparative analysis is institutional and does not presume that the constitutional framework of one country can be transplanted mechanically into another.

I. Research Gap

The existing literature on tribunalisation in India has extensively examined the constitutional validity of tribunals, executive control and the qualifications of their members. The Supreme Court's repeated decisions in the Madras Bar Association litigation have contributed substantially to the development of constitutional jurisprudence in this field. However, certain questions require further examination.

1. **Comparative Institutional Analysis:** There is a need to understand how other jurisdictions incorporate technical and non-judicial members while protecting institutional independence.
2. **Distinction Between Expertise and Judicial Competence:** Technical expertise and administrative experience are frequently treated as sufficient qualifications for tribunal membership. However, specialised knowledge does not automatically establish competence in judicial reasoning and statutory interpretation.
3. **Institutional and Apparent Bias:** The existing debate often focuses on the legality of appointments. The broader question of whether an ordinary litigant perceives the institution as independent requires greater attention.

4. **Lack of Uniform Institutional Administration:** Different tribunals operate under different statutes, rules and administrative arrangements. There is a need for a comprehensive institutional framework.
5. **Alternative Methods of Incorporating Expertise:** The question whether technical expertise can be obtained through independent expert assessors or expert assistance to judicial members, rather than through permanent voting members, has not received sufficient comparative attention. Section 12.5 addresses it.

This research seeks to address these gaps.

IV. HISTORICAL DEVELOPMENT OF TRIBUNALISATION IN INDIA

A. The Income Tax Appellate Tribunal: The Beginning

The Income Tax Appellate Tribunal was constituted on 25 January 1941 under Section 5A of the Indian Income-tax Act, 1922.[7]

ITAT describes itself as the oldest tribunal in the country and is often called the "Mother Tribunal". Its establishment followed the work of a Select Committee appointed in November 1938 to consider amendments to the 1922 Act, which recommended an independent appellate authority for disputes arising from decisions of the Appellate Assistant Commissioner. The Tribunal began with six members functioning through three benches.[8]

The establishment of ITAT was significant because it separated assessment from appellate adjudication, and the Tribunal developed into the principal specialised forum for direct taxation disputes. It continued under the Income-tax Act, 1961 and now functions under the Income-tax Act, 2025, which replaced the 1961 Act with effect

[7] Indian Income-tax Act, 1922, § 5A, No. 11 of 1922 (India); Income Tax Appellate Tribunal, *About the Tribunal*, https://itat.gov.in/page/about_tribunal (last visited Nov. 11, 2026).
[8] Income Tax Appellate Tribunal, *supra* note 7.

from 1 April 2026, subject to its savings and transitional provisions. ITAT is also listed in the First Schedule to the Tribunals Reforms Act, 2026.[9]

B. Development of Specialised Adjudication

Specialised appellate mechanisms subsequently developed in different areas of taxation and commercial regulation.

The establishment of the Central Administrative Tribunal under the Administrative Tribunals Act, 1985 represented another important stage.[10]

Thereafter, Parliament established tribunals dealing with company law, debt recovery, electricity, securities, environmental regulation and other specialised subjects.

C. Constitutional Recognition

The Forty-second Amendment introduced Articles 323A and 323B.[11]

These provisions gave constitutional recognition to tribunalisation.

However, the power to establish tribunals does not permit the legislature to undermine the independence of the judiciary or eliminate constitutional judicial review.

D. L. Chandra Kumar v. Union of India

This judgment constitutes the constitutional foundation of the modern tribunal system.[12]

In *S.P. Sampath Kumar v. Union of India*, a Constitution Bench had upheld the Administrative Tribunals Act, 1985, which excluded the jurisdiction of the High Courts in service matters, on the premise that the Central Administrative Tribunal would operate as an effective institutional substitute for the High Courts.[13] A seven-judge Bench in *L. Chandra Kumar* rejected that premise. It held that the power of

[9] Income-tax Act, 2025, No. 30 of 2025, § 1(3) (India); Income-tax Act, 1961, No. 43 of 1961 (India) (repealed 2026); Tribunals Reforms Act, 2026, No. 17 of 2026, sch. I (India).
[10] Administrative Tribunals Act, 1985, No. 13 of 1985 (India).
[11] INDIA CONST. arts. 323A–323B.
[12] *L. Chandra Kumar*, *supra* note 5.
[13] *S.P. Sampath Kumar v. Union of India*, (1987) 1 S.C.C. 124 (India).

judicial review vested in the High Courts under Articles 226 and 227 and in the Supreme Court under Article 32 is part of the basic structure, and it declared Article 323A(2)(d), Article 323B(3)(d) and Section 28 of the Administrative Tribunals Act, 1985 unconstitutional to the extent that they excluded that jurisdiction.[14]

The Court held that tribunals may function as courts of first instance in their specialised fields, but that every tribunal decision is subject to scrutiny by a Division Bench of the jurisdictional High Court, and that no appeal lies directly to the Supreme Court under Article 136.[15] Invoking the doctrine of prospective overruling, the Court applied this scheme only to decisions rendered after its judgment, so as not to unsettle earlier tribunal decisions.[16]

The judgment thus established an enduring distinction: tribunals may supplement the constitutional judiciary, but they cannot supplant it. That distinction informs both the basic structure inquiry in RQ1 and the independence concerns examined in Sections 12 and 13.

V. THE MADRAS BAR ASSOCIATION LITIGATION: THE STRUGGLE FOR TRIBUNAL INDEPENDENCE

The repeated constitutional challenges initiated by the Madras Bar Association represent one of the most significant developments in Indian constitutional jurisprudence. The litigation demonstrates that tribunal independence is not merely a question of administrative convenience.

It is a question of constitutional governance.

A. Union of India v. R. Gandhi (2010)

The Supreme Court examined the constitutional validity of the National Company Law Tribunal and National Company Law Appellate Tribunal framework.[17] The Court recognised Parliament's power to transfer judicial functions to specialised

[14] *L. Chandra Kumar*, *supra* note 5, ¶¶ 78–79, 100.
[15] *Id.* ¶¶ 92–93.
[16] *Id.* ¶ 95.
[17] *Union of India v. R. Gandhi*, (2010) 11 S.C.C. 1 (India) (considering Parts IB and IC of the Companies Act, 1956, No. 1 of 1956 (India)).

tribunals. However, the transfer must comply with constitutional requirements. The judgment made an important distinction between judicial members and technical members. The Court recognised that technical members may be necessary where specialised knowledge is genuinely required. However, where jurisdiction is transferred merely to reduce the burden on courts, technical members are not automatically necessary.

The judgment also emphasised:

1. Appropriate qualifications.
2. Security of tenure.
3. Judicial participation in selection.
4. Institutional independence.
5. Administrative support through the Ministry of Law and Justice.

The judgment establishes that the composition of a tribunal must correspond to the nature of its jurisdiction.

B. Madras Bar Association v. Union of India (2014)

This judgment concerned the constitutional validity of the National Tax Tribunal Act, 2005.[18] The proposed National Tax Tribunal was intended to assume substantial jurisdiction previously exercised by High Courts in taxation matters. The Supreme Court struck down the Act. The decision recognised that transferring substantial jurisdiction of constitutional courts to a tribunal cannot be permitted where the institutional arrangement compromises judicial independence and the constitutional structure. The judgment is particularly significant for taxation jurisprudence. Taxation disputes are not merely matters of accounting or financial expertise.

They frequently involve:

1. Constitutional interpretation.

[18] *Madras Bar Ass'n v. Union of India*, (2014) 10 S.C.C. 1 (India); National Tax Tribunal Act, 2005, No. 49 of 2005 (India).

2. Statutory construction.
3. Principles of natural justice.
4. Jurisdictional questions.
5. Interpretation of delegated legislation.
6. Substantial questions of law.

A specialised tribunal cannot become a constitutional substitute for the High Courts.

C. Madras Bar Association v. Union of India (2015)

The Supreme Court examined the composition and functioning of the proposed NCLT and NCLAT.[19] The Court reiterated the necessity of judicial independence and appropriate qualifications. It emphasised that the appointment of technical members must be justified by the nature of the jurisdiction. The decision also addressed selection procedures, tenure and service conditions.

D. Finance Act, 2017

The Finance Act, 2017 amended the statutory framework governing several tribunals.[20] The amendments sought to rationalise appointments, qualifications and service conditions. However, substantial concerns arose concerning:

1. Executive dominance in selection committees.
2. Short tenure of members.
3. Reappointment.
4. Service conditions.
5. Administrative control.

The controversy demonstrated that tribunal administration could not be treated as a purely executive function.

[19] *Madras Bar Ass'n v. Union of India*, (2015) 8 S.C.C. 583 (India).
[20] The Finance Act, 2017, No. 7 of 2017 (India).

E. Rojer Mathew v. South Indian Bank Ltd. (2019)

The Supreme Court examined the constitutional issues arising from the Finance Act, 2017 and the rules governing tribunals.[21] The judgment raised questions concerning the use of a Money Bill to enact provisions having significant consequences for the tribunal system. It also examined the continuing failure to implement the institutional reforms contemplated in earlier judicial decisions.

Particularly significant was the discussion concerning the necessity of placing tribunals under a single nodal ministry, preferably the Ministry of Law and Justice, until a wholly independent administrative body could be established.

The judgment also provides important material for the proposal of a National Tribunals Commission.

F. Madras Bar Association v. Union of India (2020)

On 27 November 2020, a three-judge Bench speaking through L. Nageswara Rao J. upheld the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020, subject to substantial modifications.[22] The Court directed the Union of India to constitute an independent National Tribunals Commission to supervise appointments to, and the functioning of, tribunals. As an interim measure, it directed that a separate tribunals wing be established in the Ministry of Finance to meet the requirements of tribunals until the Commission was constituted.[23]

The Court also restructured the Search-cum-Selection Committees. It made the Chief Justice of India or his nominee the Chairperson with a casting vote, and it denied the Secretary of the sponsoring ministry a vote. It required the Committees to recommend one name for each post, with one further name on a waiting list, and it fixed a five-year tenure, subject to an age limit of seventy years for Chairpersons and sixty-seven years for Members.[24] This judgment converted the long-standing proposal for an

[21] *Rojer Mathew v. S. Indian Bank Ltd.*, (2020) 6 S.C.C. 1 (India).
[22] *Madras Bar Ass'n v. Union of India*, (2021) 7 S.C.C. 369, ¶ 53 (India) (decided Nov. 27, 2020), *also reported in* 2020 SCC OnLine SC 962.
[23] *Id.* ¶ 53.
[24] *Id.* ¶ 53.

independent supervisory body into a judicial mandate, and that mandate is the institutional benchmark against which this paper evaluates current reform.

G. Madras Bar Association v. Union of India (2021)

The Supreme Court examined the constitutional validity of Sections 12 and 13 of the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, which amended the related provisions of the Finance Act, 2017.[25]

The Supreme Court delivered the judgment on 14 July 2021 in Writ Petition (Civil) No. 502 of 2021.

The Court considered issues concerning:

- Minimum age for appointment.
- Tenure.
- Selection committees.
- Executive influence.
- Independence of tribunal members.

The Court reiterated that the appointment process must respect judicial independence and the principles established in earlier decisions. The Court also examined the constitutional objection to the short tenure prescribed for members. The decision is especially important because it demonstrates that the executive cannot circumvent previously declared constitutional principles merely by introducing another statutory or ordinance-based framework.

H. The Tribunals Reforms Act, 2021, Its Invalidation and the Tribunals Reforms Act, 2026

Parliament replaced the Ordinance with the Tribunals Reforms Act, 2021. Sections 3, 5 and 7 of that Act reproduced the minimum age of fifty years for appointment, the

[25] *Madras Bar Ass'n v. Union of India*, (2022) 12 S.C.C. 455 (India) (decided July 14, 2021).

two-name panel, the non-binding timeline for government action and the four-year tenure that the Court had invalidated in 2021.[26]

On 19 November 2025, in *Madras Bar Association v. Union of India*, a Bench of B.R. Gavai C.J. and K. Vinod Chandran J. struck down those provisions.[27] The Court held that Parliament may remove the basis of a judgment but cannot restate or repackage an invalidated provision. By reproducing provisions earlier struck down, the 2021 Act "consciously defies" the law declared and amounts to a legislative override that violates the separation of powers and judicial independence.[28] The Court declined the Union's request for a reference to a larger Bench.

It directed that the principles of the 2020 and 2021 judgments would govern appointments, qualifications, tenure and service conditions until Parliament enacted a compliant law, and it granted the Union four months to establish a National Tribunals Commission. It also protected appointments whose selection had been completed before the 2021 Act came into force, which remain governed by the parent statutes and the earlier judgments.[29]

Parliament responded with the Tribunals Reforms Act, 2026, which received Presidential assent on 13 August 2026, came into force on 25 August 2026 and repealed the 2021 Act.[30] The 2026 Act establishes a National Tribunals Commission, restores a five-year tenure, adopts the model of one name per vacancy with a waiting list and makes the three-month timeline for appointment mandatory.[31] Section 14 examines whether it satisfies the Court's standards.

I. The Constitutional Significance

The repeated litigation reveals a continuing institutional conflict. The judiciary has repeatedly declared that tribunals must possess independence comparable to the

[26] Tribunals Reforms Act, 2021, No. 33 of 2021, §§ 3, 5, 7 (India) (repealed 2026); Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, No. 1 of 2021 (India) (replaced 2021).
[27] *Madras Bar Ass'n v. Union of India*, 2025 INSC 1330, 2025 SCC OnLine SC 2498 (India) (W.P.(C) No. 1018 of 2021, decided Nov. 19, 2025).
[28] *Id.* ¶¶ 116, 139–142.
[29] *Id.*.
[30] Tribunals Reforms Act, 2026, No. 17 of 2026, § 24 (India); Ministry of Law & Justice, Notification S.O. 4713(E) (Aug. 25, 2026) (India).
[31] Tribunals Reforms Act, 2026, §§ 3, 13, 14(8), 17.

judicial functions they perform. Yet successive legislative and administrative measures have generated fresh constitutional challenges. The larger concern is not simply whether an individual rule is valid. It is whether the executive recognises that tribunal independence is an essential constitutional requirement rather than an administrative concession.

VI. 10. COMPARATIVE STUDY OF TRIBUNAL SYSTEMS IN OTHER COUNTRIES

The international comparison is particularly important because it demonstrates that the presence of technical members is not, by itself, inconsistent with judicial independence. The decisive consideration is the institutional framework within which such members function.

A. United Kingdom

1. **Historical Background:** The United Kingdom has a long tradition of specialised administrative adjudication. The General Commissioners of Income Tax originated under the Duties on Income Act 1799, which empowered them to assess the tax and to hear appeals. They ceased to exist in 2009, when their appellate jurisdiction passed to the First-tier Tribunal.[32] The modern tribunal system was substantially reorganised following Sir Andrew Leggatt's report, *Tribunals for Users: One System, One Service*.[33] The Tribunals, Courts and Enforcement Act, 2007 subsequently established the modern First-tier Tribunal and Upper Tribunal structure.[34]
2. **Composition:** The UK tribunal system recognises different categories of members:
    - Legally qualified judges.
    - Specialist members.

[32] Duties on Income Act 1799, 39 Geo. 3 c. 13 (Gr. Brit.); Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, SI 2009/56 (U.K.).
[33] SIR ANDREW LEGGATT, TRIBUNALS FOR USERS: ONE SYSTEM, ONE SERVICE (2001).
[34] Tribunals, Courts and Enforcement Act 2007, c. 15 (U.K.).

- Non-legal members possessing relevant expertise.

Depending upon the jurisdiction, tribunals may include medical, financial, technical or professional members. For example, specialist expertise may be particularly valuable in medical, employment and taxation disputes.

3. **Independence:** The UK system secures independence through the Senior President of Tribunals, who leads the tribunal judiciary; through the statutory guarantee of continued judicial independence, which extends to tribunal judges; and through structured appointment procedures administered by the Judicial Appointments Commission.[35] Section 2 of the Tribunals, Courts and Enforcement Act, 2007 requires attention to accessibility, fairness, efficiency and subject-specific expertise.[36] The legislation also provides an institutional leadership structure for tribunals.
4. **Relevance to India:** The UK model establishes that technical members can contribute to adjudication without undermining independence. However, their contribution is supported by a structured judicial institution. India should not merely imitate the presence of specialist members. It must also examine the institutional safeguards accompanying their appointment. The lesson from the UK is that expertise must operate within an independent tribunal judiciary.

B. United States of America

1. **Constitutional Framework:** The United States follows a different model. Article III of the US Constitution vests federal judicial power in constitutionally established courts.[37] Alongside these courts, administrative agencies exercise adjudicatory functions under statutory authority. Administrative Law Judges (ALJs) conduct hearings in several specialised areas.

[35] Tribunals, Courts and Enforcement Act 2007, c. 15, §§ 1–2 (U.K.); Constitutional Reform Act 2005, c. 4, §§ 3, 61 (U.K.).
[36] Tribunals, Courts and Enforcement Act 2007, c. 15, § 2 (U.K.).
[37] U.S. CONST. art. III.

2. **Administrative Law Judges:** ALJs perform adjudicatory functions in areas including:
    - Social security.
    - Employment.
    - Securities regulation.
    - Regulatory enforcement.

    Their appointment and functioning are governed by statutory provisions, particularly the Administrative Procedure Act.[38] Under federal statute, agencies appoint ALJs as necessary for proceedings governed by the relevant provisions.[39] The law also provides for case assignment and restrictions on inconsistent duties. These officers should not be equated mechanically with technical members of Indian tribunals. They operate within a distinct constitutional and administrative framework.
3. **SEC v. Jarkesy (2024):** The US Supreme Court examined the constitutional limits of administrative adjudication in proceedings involving civil penalties for securities fraud.[40] The Court held that the Seventh Amendment jury-trial right applied to the particular action involved.[41] The judgment demonstrates that administrative convenience cannot automatically displace constitutional guarantees.
4. **Relevance to India:** The American experience demonstrates that administrative adjudication must remain within constitutional boundaries. The mere creation of an administrative adjudicatory mechanism does not justify removing every dispute from ordinary judicial processes. The rights involved and the nature of the proceedings remain important considerations.

[38] Administrative Procedure Act, 5 U.S.C. §§ 551–559.
[39] 5 U.S.C. § 3105.
[40] *SEC v. Jarkesy*, 603 U.S. 109 (2024).
[41] U.S. CONST. amend. VII.

C. Germany

1. **Administrative Judiciary:** Germany has a well-developed system of specialised administrative courts. The principal structure consists of:

   - Administrative Courts.
   - Higher Administrative Courts.
   - Federal Administrative Court.

   These courts adjudicate disputes between individuals and public authorities. Germany does not, however, assign tax disputes to the general administrative courts. Tax jurisdiction is exercised by independent fiscal courts, separate from the administrative authorities, comprising the Finanzgerichte in the Länder and the Bundesfinanzhof at the federal level.[42] The fiscal courts, rather than the general administrative courts, are therefore the true comparator for ITAT and CESTAT. Their senates combine professional judges with honorary judges, who participate in the hearing and the decision with equal rights.[43]

2. **Composition:** German administrative courts principally function through professional judges. However, the law also provides for honorary judges. Under Sections 19 onwards of the German Code of Administrative Court Procedure, honorary judges participate in hearings and decision-making with equal rights in the relevant proceedings.[44] Their appointment is governed by statutory qualifications and procedures. This is an important distinction. Honorary judges are not simply departmental officers appointed by the executive to adjudicate disputes involving their former departments. The closest German analogue to Indian technical membership is the Federal Patent Court (Bundespatentgericht). Its judges

[42] Finanzgerichtsordnung [FGO] [Code of Fiscal Court Procedure], §§ 1–2 (Ger.); Grundgesetz [GG] [Basic Law], art. 95(1) (Ger.).
[43] FGO §§ 5(3), 16.
[44] Verwaltungsgerichtsordnung [VwGO] [Code of Administrative Court Procedure], §§ 19–34 (Ger.).

must be either legally qualified members or members expert in a branch of technology, and both categories are appointed for life by the Federal President.[45] Technical members are full judges rather than advisers, and in nullity proceedings they sit in panels of two legal and three technical members.[46] Their independence rests on life tenure and judicial status, not on the absence of technical expertise.

3. **Independence:** The German model emphasises professional judicial adjudication, structured judicial institutions and statutory independence. Specialisation is achieved through professional judges, specialised jurisdictions and, in patent matters, technical judges with full judicial status, rather than through dependence upon retired administrative officers. Article 97 of the Basic Law secures the independence of all such judges.[47]

4. **Relevance to India:** Germany demonstrates that technical knowledge need not be introduced through members drawn from the administration. Where technical judges are used, as in the Federal Patent Court, they enjoy the same tenure and status as legally qualified judges. A professional judicial institution can acquire specialisation through experience, training and subject-specific assignments. Where non-professional members participate, their role must be governed by clear statutory safeguards. The German Code of Administrative Court Procedure is particularly relevant because it recognises the participation of honorary judges in adjudication.[48]

D. France

1. **The Administrative Judiciary:** France follows a distinctive model in which administrative justice operates separately from the ordinary judicial hierarchy. The principal institutions are:

[45] Patentgesetz [PatG] [Patent Act], § 65(2)–(3) (Ger.).
[46] PatG § 67(2).
[47] GG art. 97.
[48] VwGO, *supra* note 44.

- Administrative Tribunals.
- Administrative Courts of Appeal.
- Conseil d'État.

The Conseil d'État functions as the highest administrative court.[49]

2. **Composition and Recruitment:** French administrative judges constitute a specialised professional judicial cadre. Members of the administrative tribunals and administrative courts of appeal are magistrates whose status is governed by the Code of Administrative Justice, and they are recruited principally through competitive examinations and develop their careers within the administrative judiciary.[50] They adjudicate disputes concerning governmental action, including taxation, public administration, environmental regulation and individual rights.
3. **Independence:** The French model emphasises the professional identity and institutional independence of administrative judges. Their irremovability is guaranteed by statute, and a dedicated council of the administrative judiciary, the Conseil supérieur des tribunaux administratifs et cours administratives d'appel, is consulted on their careers and exercises disciplinary power over them.[51] The judges are not simply retired departmental officers appointed to decide disputes involving their former departments. Their judicial responsibilities form part of a specialised institutional career.
4. **Relevance to India:** France offers an important alternative to the Indian model. Instead of relying extensively upon retired administrators, India could develop a specialised professional adjudicatory cadre. The French

[49] Code de justice administrative [C.J.A.] [Code of Administrative Justice] art. L. 111-1 (Fr.).
[50] C.J.A. arts. L. 231-1, L. 233-2; Conseil d'État, *Les missions de magistrat et de magistrate*, https://www.conseil-etat.fr/pages/nous-rejoindre/les-metiers-de-juge-et-de-conseil-juridique/les-missions-de-magistrat-et-de-magistrate (last visited Nov. 11, 2026).
[51] C.J.A. arts. L. 231-3, L. 232-1 et seq.

experience demonstrates that administrative specialisation and judicial independence can coexist.

E. Canada

1. **Administrative Tribunal Structure:** Canada has a mixed system comprising constitutional courts, federal courts, provincial courts and specialised administrative tribunals. The Tax Court of Canada is a specialised judicial institution dealing with taxation disputes.[52] Other administrative tribunals deal with employment, human rights, social security and regulatory matters.

2. **Tribunal Independence:** The degree of independence required by Canadian administrative tribunals depends upon their statutory framework and the nature of their functions. In *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, the Supreme Court of Canada recognised that administrative tribunal independence is generally governed by the enabling legislation, subject to constitutional requirements.[53]

3. **Relevance to India:** Canada demonstrates that not every administrative tribunal must possess the same institutional status as a constitutional court. However, the statutory framework must be examined carefully. The greater the judicial character of the functions performed, the greater the importance of appropriate independence safeguards.

F. Australia

1. **Administrative Review Tribunal:** Australia provides a particularly relevant modern example. The Administrative Review Tribunal Act, 2024 established the Administrative Review Tribunal (ART), replacing the former Administrative Appeals Tribunal.[54] The ART provides

[52] Tax Court of Canada Act, R.S.C. 1985, c. T-2 (Can.).
[53] *Ocean Port Hotel Ltd. v. British Columbia (Gen. Manager, Liquor Control & Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781 (Can.).
[54] Administrative Review Tribunal Act 2024 (Cth) (Austl.).

independent review of decisions taken by Australian Government departments and agencies. Its jurisdiction covers several areas, including migration, taxation, business regulation, social security and veterans' affairs.

2. **Composition:** The Tribunal consists of the President, Deputy Presidents, senior members and general members. The President must be a judge of the Federal Court of Australia. Deputy Presidents are of two kinds: Judicial Deputy Presidents, who are judges of the Federal Court or of Division 1 of the Federal Circuit and Family Court of Australia, and Non-Judicial Deputy Presidents, who must have been enrolled as legal practitioners for at least ten years. Senior and general members may be appointed for relevant professional expertise.[55]
3. **Appointment Safeguards:** The Australian framework makes every member, including the President, eligible for appointment only after a publicly advertised, merit-based assessment by a panel established under the Act, against selection criteria prescribed by regulation. The process includes interviews and referee reports before a candidate is assessed as suitable.[56]
4. **Relevance to India:** Australia demonstrates that specialised members can be incorporated into an independent administrative review institution. The emphasis is upon transparent recruitment, institutional credibility and public confidence. The Indian system could adopt similar safeguards while ensuring meaningful judicial participation.

[55] Administrative Review Tribunal Act 2024 (Cth) ss 205–208 (Austl.).
[56] Administrative Review Tribunal Act 2024 (Cth) ss 205(2)(b), 207(2)(b), 208(2)(b), 209 (Austl.); Administrative Review Tribunal Regulations 2024 (Cth) ss 14–18 (Austl.); Att'y-Gen.'s Dep't, *Overview: Administrative Review Tribunal Legislation*, https://www.ag.gov.au/legal-system/new-system-federal-administrative-review/overview-administrative-review-tribunal-legislation (last visited Nov. 11, 2026).

VII. COMPARATIVE ANALYSIS: INDIA AND OTHER JURISDICTIONS

The comparative study may be summarised as follows:

Country	**Tribunal model**	**Role of non-judicial/technical members**	**Principal safeguard**
India	Specialised statutory tribunals; National Tribunals Commission under the 2026 Act	Significant use of technical and administrative members	Constitutional judicial review; Tribunals Reforms Act, 2026 (executive role in appointments and discipline remains contested)
UK	Integrated tribunal judiciary	Specialist and non-legal members	Independent judicial leadership
USA	Administrative agency adjudication	Administrative Law Judges and specialised adjudicators	Administrative Procedure Act and constitutional limitations
Germany	Administrative, fiscal and patent courts	Honorary judges; technical judges with life tenure in the Federal Patent Court	Professional judiciary, life tenure and statutory safeguards
France	Separate administrative judiciary	Professional administrative judges	Specialised judicial career
Canada	Courts and administrative tribunals	Varies according to statute	Statutory and constitutional independence

Australia	Administrative Review Tribunal	Specialist and general members	Merit-based appointment and statutory safeguards

A. Principal Conclusions from the Comparison

Three conclusions emerge.

1. First: Technical members are not an exclusively Indian phenomenon. Several jurisdictions recognise the value of specialised knowledge.
2. Second: There is no universal international requirement that every specialised tribunal must contain technical members. France demonstrates that specialisation can be achieved entirely through a professional judicial cadre. Germany relies chiefly on professional judges in its administrative and fiscal courts, but where technical expertise is indispensable, as in patent litigation, it uses technical judges with life tenure and full judicial status. The German lesson is therefore not the absence of technical members but their complete judicial independence.
3. Third: The institutional framework is more important than the designation of members. The UK and Australia demonstrate structured arrangements for specialist participation. Germany and France demonstrate the value of professional administrative judiciaries. The United States and Canada illustrate the constitutional and statutory limits upon administrative adjudication. Therefore, the Indian debate should not be restricted to whether technical members should exist. The more important inquiry is whether their appointment and functioning are compatible with judicial independence.

VIII. ADMINISTRATIVE AND TECHNICAL MEMBERS: SPECIALISED EXPERTISE OR INSTITUTIONAL BIAS?

This is the central analytical issue of the paper. The answer cannot be an unqualified rejection of technical membership, because specialised adjudication frequently

requires knowledge that a conventional legal education alone may not provide. Technical knowledge cannot, however, become a substitute for judicial competence.

A. The Justification for Technical Members

Consider the following examples.

1. **Income Tax:** Complex accounting, transfer pricing, international taxation, valuation and financial transactions may require specialised knowledge.
2. **Customs and GST:** Classification, valuation, rules of origin, input tax credit, technical descriptions of goods and complex commercial arrangements may require subject-specific understanding.
3. **Electricity:** Tariff determination, generation, transmission and distribution require technical expertise.
4. **Telecommunications:** Spectrum allocation, network interconnection and technical regulatory disputes require engineering and industry knowledge.
5. **Environmental matters:** Scientific assessment and ecological questions may require specialised expertise.

In these situations, technical members can substantially improve the quality of adjudication.

B. The Problem of Administrative Members

The difficulty arises when administrative experience is treated as a substitute for judicial competence. A retired departmental officer may possess considerable professional knowledge, but the functions of an administrator and an adjudicator are fundamentally different. An administrator ordinarily implements governmental policy and statutory responsibilities, whereas an adjudicator must independently determine whether the exercise of statutory power was legally correct. The distinction is particularly important where the former department appears as a litigant, and the

Supreme Court has accordingly held that technical members are justified only where the nature of the jurisdiction genuinely requires specialised knowledge.[57]

A person who has spent several decades within a particular administrative structure may have developed institutional familiarity with its functioning. That experience can be valuable, but the appointment process must ensure that institutional familiarity does not become institutional dependence. The necessary safeguards include transparent selection, appropriate legal qualifications, judicial training, conflict-of-interest declarations, secure tenure and independent administrative support, together with judicial participation on benches deciding important questions of law. The Law Commission of India reached a similar conclusion, recommending that technical members be appointed only where expert knowledge is genuinely required.[58]

C. Actual Bias and Apparent Bias

The rule against bias, a core component of natural justice, requires that adjudication be free from actual bias and from circumstances that create a reasonable apprehension of bias. In *Manak Lal v. Dr. Prem Chand Singhvi*, the Supreme Court held that the test is not whether bias in fact affected the decision but whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him.[59] In *A.K. Kraipak v. Union of India*, the Court extended the rule to bodies exercising administrative and quasi-judicial functions, asking whether there was reasonable ground for believing that the decision-maker was likely to have been biased, judged by human probabilities and the ordinary course of human conduct.[60] *Ranjit Thakur v. Union of India* framed the test as whether a reasonable person, in possession of the relevant information, would have thought bias likely.[61]

These authorities concern individual adjudicators, and they do not by themselves establish a separate doctrine of institutional bias. Their logic nonetheless extends to structural arrangements. If a reasonable litigant may apprehend bias from an

[57] *R. Gandhi*, *supra* note 17.
[58] LAW COMM'N OF INDIA, REP. NO. 272, ASSESSMENT OF STATUTORY FRAMEWORKS OF TRIBUNALS IN INDIA 94–100 (2017).
[59] *Manak Lal v. Dr. Prem Chand Singhvi*, A.I.R. 1957 S.C. 425, 1957 S.C.R. 575, 580–81 (India).
[60] *A.K. Kraipak v. Union of India*, (1969) 2 S.C.C. 262, ¶ 15 (India).
[61] *Ranjit Thakur v. Union of India*, (1987) 4 S.C.C. 611, ¶¶ 15–16 (India).

adjudicator's prior association with a party, the same apprehension can arise where a tribunal member is drawn from the litigating department, depends on that department for reappointment, service conditions or infrastructure, or is selected by a committee on which it votes. The Supreme Court applied this reasoning in the *R. Gandhi* and *Madras Bar Association* line of cases when it invalidated executive-dominated selection committees and short, renewable tenures because such structures erode public confidence in impartial adjudication.[62]

The UK Leggatt Report likewise emphasised that tribunals must be, and must be seen to be, independent of the departments whose decisions they review.[63] An ordinary litigant must have confidence that the dispute will be decided according to law and evidence rather than the institutional preferences of the authority appearing against him.

D. Expertise Cannot Replace Judicial Competence

Judicial adjudication requires the interpretation of statutory provisions, the appreciation of evidence, the application of constitutional principles and binding precedent, the recognition of jurisdictional error, fidelity to natural justice and the drafting of reasoned orders. These competencies cannot be presumed merely because a person has substantial administrative experience. Equally, judicial members may require technical assistance in specialised matters. The appropriate institutional model must therefore combine both forms of expertise without subordinating judicial independence, and Section 12.5 considers how that combination may be achieved.

E. Alternative Models: Expert Assessors and Expert Assistance

Technical expertise may enter adjudication through three routes: permanent technical members who vote on the outcome, lay or specialist members who sit alongside professional judges, and expert assessors or advisers who assist a judicial bench without voting. Comparative practice illustrates each. The German Federal Patent

[62] *R. Gandhi*, *supra* note 17; *Madras Bar Ass'n* (2020), *supra* note 22, ¶ 53; *Madras Bar Ass'n* (2021), *supra* note 25.
[63] LEGGATT, *supra* note 33.

Court uses permanent technical judges with life tenure, while German administrative and fiscal courts add honorary judges who sit with equal voting rights.[64]

The United Kingdom places specialist non-legal members on First-tier Tribunal panels under judicial leadership, and Australia appoints senior and general members for their professional expertise through merit-based selection.[65] Indian law already recognises the advisory model: in patent proceedings, a court may appoint an independent scientific adviser to assist it, or to inquire and report on questions of fact or opinion not involving the interpretation of law.[66]

The choice between these models should follow defined criteria. Permanent technical members are justified where technical questions arise in most cases, go to the merits rather than to the evidence, and require continuous engagement, as in electricity tariff regulation or environmental adjudication.

Assessors or advisers are preferable where technical questions are episodic or span many disciplines, where the pool of available experts overlaps substantially with the litigating department, or where disputes turn principally on questions of law, as in much tax and service litigation. Whichever model is adopted, two conditions are essential. Technical members must enjoy the same tenure and independence as judicial members, and any advice given to a bench must be disclosed to the parties for comment, so that expertise does not become an undisclosed basis of decision.

IX. THE PROBLEM OF TRIBUNAL INDEPENDENCE IN INDIA

A. Executive Control

The principal institutional difficulty is the substantial role exercised by the executive in the administration of tribunals. The executive may influence appointments, tenure, remuneration, infrastructure and budgetary arrangements, and this creates a structural concern because the Government is frequently a litigant before the same tribunals.

[64] PatG § 65(2)–(3); VwGO, *supra* note 44, § 19; FGO § 16.
[65] Tribunals, Courts and Enforcement Act 2007, c. 15, § 4, sch. 2 (U.K.); Administrative Review Tribunal Act 2024 (Cth) s 208 (Austl.).
[66] The Patents Act, 1970, § 115, No. 39 of 1970 (India).

In *L. Chandra Kumar*, the Supreme Court recommended that, until a wholly independent agency was established, all tribunals should be placed under a single nodal ministry, which should appropriately be the Ministry of Law.[67] The Law Commission later endorsed a single nodal agency under the Ministry of Law and Justice.[68] In 2020, however, the Court directed, as an interim measure, that a separate tribunals wing be created in the Ministry of Finance until the National Tribunals Commission was constituted.[69] That direction sought speed and uniformity in administrative decision-making; it did not identify the Ministry of Finance as the appropriate permanent home for tribunals. Because that Ministry is itself the principal litigant before ITAT and CESTAT, this paper maintains that the Ministry of Law and Justice, which the Court preferred in *L. Chandra Kumar* and *Rojer Mathew*, remains the more appropriate nodal ministry pending the full transfer of administrative functions to the Commission.[70]

B. Short Tenure

Short tenure creates institutional insecurity. A member approaching the end of a limited appointment may remain concerned about reappointment or extension, and the problem lies less in actual interference than in the possibility of executive influence, which can itself undermine the perception of independence.

The Supreme Court has repeatedly rejected four-year terms for this reason, and the Tribunals Reforms Act, 2026 now provides a five-year tenure, subject to age limits of seventy years for Chairpersons and sixty-seven years for Members, with eligibility for reappointment.[71] Eligibility for reappointment, however, preserves an incentive that only transparent and objective reappointment criteria can neutralise.

[67] *L. Chandra Kumar*, *supra* note 5, ¶¶ 97–98.
[68] LAW COMM'N OF INDIA, REP. NO. 272, *supra* note 58.
[69] *Madras Bar Ass'n* (2020), *supra* note 22, ¶ 53.
[70] *Rojer Mathew*, *supra* note 21.
[71] Tribunals Reforms Act, 2026, No. 17 of 2026, § 17 (India); *Madras Bar Ass'n* (2020), *supra* note 22, ¶ 53.

C. Selection Committees

The composition of Search-cum-Selection Committees is crucial. If the executive commands a majority, the selection process lacks the necessary institutional independence, and judicial participation must therefore be meaningful rather than formal. Under the 2026 Act, the Committees are chaired by the Chairperson or a Judicial Member of the Commission, who holds a casting vote. They also include a Technical Member of the Commission and a Secretary to the Government of India, while the expert members and the Member Secretary have no vote.[72] Appointments should rest on competence, integrity, judicial temperament and subject-specific qualifications.

D. Infrastructure and Administrative Dependence

Independence requires more than statutory declarations. Tribunals need independent premises, adequate courtrooms and libraries, qualified registry personnel, research and digital infrastructure, independent budgetary arrangements and appropriate residential facilities for members, and the Bar must also be provided with proper facilities. Administrative dependence is already visible: DAKSH found that eighty-eight per cent of NCLT staff were engaged on temporary contracts.[73] A tribunal without adequate infrastructure cannot deliver speedy justice.

E. Pendency and Vacancies

DAKSH's *The State of Tribunals Report in India, 2025*, released on 25 September 2025, provides important empirical evidence.[74]

The report examined ten major commercial tribunals, including NCLT, NCLAT, DRT, DRAT, ITAT, CESTAT, APTEL, SAT and GSTAT. It identified more than 3.5 lakh pending cases involving over ₹24.7 lakh crore, approximately 7.48% of India's GDP for 2024–25, before roughly 350 tribunal members.[75]

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[72] Tribunals Reforms Act, 2026, § 13.
[73] DAKSH, THE STATE OF TRIBUNALS REPORT IN INDIA, 2025 (Sept. 25, 2025), https://www.dakshindia.org/?p=34710.
[74] *Id.*.
[75] *Id.*.

The report also identified vacancies, infrastructure deficiencies, administrative weaknesses and procedural inconsistencies.

These findings demonstrate that tribunalisation alone does not guarantee speedy justice. The institutional capacity of tribunals is equally important.

X. THE NATIONAL TRIBUNALS COMMISSION: FROM JUDICIAL MANDATE TO STATUTORY INSTITUTION

The idea of an independent body to administer tribunals runs through the Supreme Court's jurisprudence. *L. Chandra Kumar* contemplated a wholly independent supervisory agency,[76] *Rojer Mathew* examined the need for such a mechanism,[77] the 2020 *Madras Bar Association* judgment issued a mandamus to create a National Tribunals Commission,[78] and the 2025 judgment fixed a four-month deadline.[79] The Tribunals Reforms Act, 2026 has now created the Commission. The relevant question is therefore no longer whether India needs a Commission, but whether the Commission Parliament has created satisfies the constitutional standards the Court has laid down.

A. The Statutory Framework

The Commission consists of a Chairperson, who must be a former Judge of the Supreme Court or a former Chief Justice of a High Court, two Judicial Members and two Technical Members with at least twenty-five years of special knowledge and experience in fields such as public administration, finance, law, accountancy, banking, management or technology.[80] It conducts selections for the sixteen tribunals listed in the First Schedule through Search-cum-Selection Committees, reviews their performance, oversees inquiries into complaints against their members and maintains

[76] *L. Chandra Kumar*, *supra* note 5, ¶ 97.
[77] *Rojer Mathew*, *supra* note 21.
[78] *Madras Bar Ass'n* (2020), *supra* note 22, ¶ 53.
[79] *Madras Bar Ass'n* (2025), *supra* note 27.
[80] Tribunals Reforms Act, 2026, § 3(3)–(4).

a National Tribunals Data Grid.[81] Qualifications and service conditions are prescribed by rules, which the Ministry of Law and Justice notified on 30 September 2026.[82]

B. Evaluation Against Constitutional Benchmarks

Measured against the benchmarks developed in this paper, the Act is a substantial but incomplete advance. Its composition secures a judicial majority, since three of the five members hold or have held judicial office. Its appointment process, however, retains a significant executive role: the Central Government appoints all members, and it must consult the Chief Justice of India only for the Chairperson and the Judicial Members, not for the Technical Members.[83] Because a Technical Member of the Commission and a Government Secretary vote on every Search-cum-Selection Committee, the executive retains influence over tribunal appointments through two channels.[84]

Disciplinary oversight raises a similar concern. A complaint against a tribunal member is first examined in a preliminary inquiry by the ministry that administers the tribunal, and only a complaint that the ministry refers reaches the Commission.[85] The sponsoring ministry, which is often the principal litigant, thus controls the gateway to scrutiny. The Act does secure uniform service conditions through common rules, a five-year tenure and a mandatory three-month appointment timeline.[86] The Commission's functions do not, however, extend to the administration, infrastructure or budgets of tribunals, which remain with the sponsoring ministries, so the structural dependence identified in Section 13 persists.

These assessments rest on the statutory text and on early commentary. The Act and its rules have not yet been tested before the Supreme Court, and their operation in

[81] *Id.* § 4, sch. I.
[82] *Id.* §§ 14(1), 20; National Tribunals Commission and Qualification, Selection, and Conditions of Service of Chairperson and Members of Tribunals Rules, 2026, G.S.R. 856(E) (Sept. 30, 2026) (India).
[83] Tribunals Reforms Act, 2026, § 5(1).
[84] *Id.* § 13; Jai Raina, *Does the Tribunals Reforms Act, 2026 Meet the Standard Set by the Supreme Court?*, BAR & BENCH (2026), https://www.barandbench.com/law-firms/view-point/does-the-tribunals-reforms-act-2026-meet-the-standard-set-by-the-supreme-court.
[85] Tribunals Reforms Act, 2026, § 16(2).
[86] *Id.* §§ 14(8), 17.

practice will determine whether the Commission delivers the independence the Court has required.

C. Administrative Support Pending Full Independence

Until the Commission assumes responsibility for the administration of tribunals, administrative support should be separated from the departments whose decisions tribunals review. Tax tribunals should not depend administratively on the Ministry of Finance, electricity tribunals on the Ministry of Power, or telecommunications tribunals on the Ministry of Communications. The 2020 direction for a tribunals wing within the Ministry of Finance was an interim measure, and for the reasons given in Section 13.1, the Ministry of Law and Justice is the more appropriate interim home. This does not mean that the Ministry of Law and Justice should control judicial decisions. The objective is to separate administrative support from the executive department that litigates before the tribunal.

XI. SUGGESTIONS AND RECOMMENDATIONS

The following institutional reforms are recommended:

1. **Strengthen the National Tribunals Commission:** Parliament should amend the Tribunals Reforms Act, 2026 to require consultation with the Chief Justice of India for every member of the Commission, to remove the sponsoring ministry's role in the preliminary screening of complaints, and to confer on the Commission responsibility for tribunal infrastructure and budgets. These amendments would give full effect to the Supreme Court's requirement of independence from executive control.
2. **Separate Judicial and Technical Qualifications:** Judicial and technical members should be selected according to distinct qualification requirements. Judicial members should possess substantial legal experience. Technical members should demonstrate relevant professional expertise. Administrative experience alone should not automatically qualify a person for every technical position.

3. **Appointment of Technical Members Should Be Jurisdiction-Specific:** The necessity of technical members should be examined tribunal-wise. For example:
    - ITAT may benefit from accounting and financial expertise.
    - CESTAT may benefit from technical and industrial expertise.
    - APTEL requires electrical and regulatory expertise.
    - NGT requires environmental and scientific expertise.

    However, a tribunal dealing primarily with questions of statutory interpretation may not require technical members in every matter.
4. **Ensure Judicial Participation:** Where a tribunal exercises jurisdiction transferred from constitutional courts, judicial participation should ordinarily be ensured. Benches deciding substantial questions of law, constitutional issues or complex questions of statutory interpretation should be presided over by judicial members. Technical members should contribute their specialised expertise.
5. **Provide Longer and Secure Tenure:** The five-year tenure now provided by the Tribunals Reforms Act, 2026 should be preserved, and reappointment should be governed by objective and transparent criteria. The possibility of a longer tenure, including a ten-year institutional appointment model, may be examined. However, it must be reconciled with age limits, retirement provisions and the constitutional requirements governing judicial appointments.
6. **Independent Recruitment:** The selection process should be merit-based and transparent. Candidates should be evaluated on:
    - Legal competence.
    - Technical expertise.
    - Integrity.
    - Judicial temperament.

- Professional independence.
- Ability to deliver reasoned decisions.

6. **Establish an Indian Tribunal Service:** India should examine the feasibility of establishing a specialised Indian Tribunal Service. Eligible candidates could include:
    - Advocates.
    - Chartered accountants.
    - Company secretaries.
    - Engineers.
    - Economists.
    - Academics.
    - Other qualified professionals.
    - The service should not become another executive-controlled cadre. Its recruitment, career progression and disciplinary arrangements must preserve adjudicatory independence.
7. **Mandatory Judicial Training:** Technical and administrative members should undergo compulsory training concerning:
    - Constitutional law.
    - Administrative law.
    - Principles of natural justice.
    - Evidence appreciation.
    - Statutory interpretation.
    - Judicial precedents.
    - Reasoned order-writing.
    - Conflict-of-interest principles.

8. **Independent Infrastructure:** A common tribunal complex may be established in major cities to accommodate central tribunals. It should include:
    - Proper courtrooms.
    - Bar rooms.
    - Libraries.
    - Research facilities.
    - Conference rooms.
    - Digital hearing facilities.
    - Administrative offices.
    - Residential facilities for members.
9. **Independent Budgetary Arrangements:** Tribunals should receive dedicated budgetary allocations. Their infrastructure and functioning should not depend upon discretionary financial approvals from sponsoring departments whose decisions they adjudicate.
10. **Judicial Impact Assessment:** Before transferring jurisdiction from constitutional courts to tribunals, Parliament should undertake a judicial impact assessment. It should examine:
    - Existing judicial pendency.
    - Expected tribunal workload.
    - Availability of qualified members.
    - Infrastructure requirements.
    - Financial implications.
    - Accessibility.
    - Appellate remedies.

11. **Periodic Institutional Audits:** The performance of tribunals should be assessed through:
    - Pendency.
    - Disposal rates.
    - Vacancies.
    - Average disposal time.
    - Quality of reasoned orders.
    - Accessibility.
    - Infrastructure.
    - Litigant satisfaction.

    Performance assessment must not become a mechanism for influencing judicial outcomes.
12. **Strengthening the Bar:** The Bar is an essential stakeholder in tribunal administration. Proper bar rooms, libraries, digital facilities and opportunities for consultation concerning procedural reforms should be provided.

An independent and competent Bar strengthens the quality of adjudication.

XII. FINDINGS

The research establishes the following findings; each linked to the research question it answers.

1. **Finding 1: Tribunalisation is constitutionally permissible within limits (RQ1):** The transfer of substantial jurisdiction to tribunals is compatible with the basic structure only if High Court review under Articles 226 and 227 is preserved, as *L. Chandra Kumar* requires, and only if tribunals that replace courts possess comparable independence, as the 2014 *Madras Bar Association* judgment held in striking down the National Tax Tribunal Act, 2005.

2. **Finding 2: Technical membership is not inherently unconstitutional (RQ2):** Technical expertise can substantially improve adjudication in specialised disputes, provided that technical members enjoy the same independence as judicial members.
3. **Finding 3: Administrative experience is not equivalent to judicial competence (RQ3):** The ability to administer a department does not establish the ability to adjudicate disputes involving that department. Without structural safeguards, retired officers lack the institutional independence such adjudication requires.
4. **Finding 4: Institutional independence is more important than individual designation (RQ4):** The independence of tribunals depends upon their appointment procedures, tenure, administrative arrangements and service conditions, which should therefore be administered independently of the sponsoring ministries.
5. **Finding 5: Executive control creates institutional risks (RQ8):** Where the Government is a litigant, excessive executive influence over the tribunal can undermine public confidence.
6. **Finding 6: Several comparator jurisdictions offer stronger safeguards (RQ5):** The UK and Australia subject specialist members to independent judicial leadership and merit-based selection, France relies on a professional judicial cadre with statutory irremovability, and Germany confers life tenure on technical judges. The United States and Canada illustrate the constitutional and statutory limits upon administrative adjudication.
7. **Finding 7: Tribunalisation has not automatically reduced pendency:** Vacancies, infrastructure deficiencies and administrative weaknesses continue to affect tribunal functioning.
8. **Finding 8: The National Tribunals Commission is necessary but not yet sufficient (RQ7):** The Tribunals Reforms Act, 2026 creates the Commission that the Supreme Court mandated, but executive influence over technical-member

appointments, complaint screening and tribunal administration means that it only partly satisfies the constitutional standards of independence.

9. **Finding 9: The Bar is an essential stakeholder:** Tribunals must be accessible and professionally equipped.
10. **Finding 10: Public confidence is indispensable (RQ8):** A tribunal must be independent in reality and must also appear independent to the ordinary litigant.
11. **Finding 11: Expertise can enter through more than one route (RQ6):** Permanent technical members are justified where technical questions recur and go to the merits, while expert assessors or advisers are preferable where such questions are episodic or the pool of experts overlaps with the litigating department.

XIII. CONCLUSION

Tribunalisation of justice is neither inherently undesirable nor constitutionally impermissible. In an increasingly complex economy, specialised adjudication has become an institutional necessity. Taxation, customs, GST, company law, insolvency, electricity, telecommunications and environmental regulation involve disputes requiring specialised knowledge. It would therefore be inappropriate to suggest that every dispute must necessarily be adjudicated by an ordinary civil court. However, specialisation cannot become a justification for compromising judicial independence.

The fundamental constitutional distinction is between expertise and independence. Expertise improves adjudicatory quality. Independence ensures adjudicatory legitimacy. Both are indispensable. The comparative examination demonstrates that different jurisdictions have adopted different approaches. The United Kingdom incorporates specialist members within an integrated tribunal judiciary.

Australia emphasises merit-based appointments and institutional safeguards. Germany and France demonstrate the value of professional administrative judiciaries. The United States maintains constitutional limitations upon administrative adjudication. Canada recognises the importance of statutory and constitutional

independence. These experiences demonstrate that there is no universally accepted model of tribunal composition.

Nevertheless, impartiality, independence and institutional credibility remain indispensable requirements of every legitimate adjudicatory system. The Indian experience, particularly the repeated constitutional litigation initiated by the Madras Bar Association, reveals a continuing institutional difficulty. The problem is not the absence of judicial pronouncements. The problem is the recurring difficulty in translating those pronouncements into a stable and independent institutional framework. The Supreme Court has repeatedly emphasised secure tenure, appropriate qualifications, judicial participation and institutional independence.

The continued controversies concerning tribunal administration demonstrate the necessity of comprehensive reform, which the Tribunals Reforms Act, 2026 has begun but not completed. An ordinary litigant approaching a tribunal should not have to question whether the adjudicator is institutionally dependent upon the authority whose decision is being challenged. The litigant must have confidence that the dispute will be decided exclusively on the basis of law, evidence and judicial reasoning.

That confidence is the foundation of the rule of law. The National Tribunals Commission created by the Tribunals Reforms Act, 2026 is an important step. A Commission fully insulated from the executive, together with independent recruitment, secure tenure, appropriate technical participation, professional training and independent infrastructure, is not merely an administrative reform. It is a constitutional necessity.

India's aspiration to become a developed nation cannot be achieved merely through economic growth, regulatory expansion or technological advancement. A developed economy requires a credible and independent system of dispute resolution. Investors, taxpayers, companies, professionals and ordinary citizens must have confidence that their legal rights will receive impartial adjudication. Tribunals occupy a particularly important position because they adjudicate disputes concerning the commercial and economic arteries of the country. Their independence is therefore not merely a concern of the legal profession. It is a concern of constitutional governance, economic

confidence and access to justice. The ultimate test of tribunalisation is not the number of tribunals established, the number of members appointed or the number of cases disposed of.

The real test is whether an ordinary litigant, standing before a tribunal against the Government or a powerful corporate entity, has an equal and reasonable expectation of receiving justice. A tribunal must not merely possess the power to decide disputes. It must possess the institutional independence, professional competence and public credibility necessary to inspire confidence in its decisions. Specialisation without independence is administration masquerading as adjudication; independence without competence is justice without effectiveness. India's tribunal system must achieve both.

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