Critical Analysis of the Tribunals Reforms Act, 2021 and its Effectiveness with Focus on Intellectual Property

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Introduction

The establishment of quasi-judicial bodies known as Tribunals in India by the 42nd Amendment Act of 1976 marks an important juncture in the course of justice administration. Tribunals play a pivotal role in the Indian administrative and legal landscape, serving as specialized forums for the adjudication of disputes covering a wide spectrum of subjects.

However, with the increase in dependency of these mechanisms naturally, there is a pile-up of cases that builds up in addition to the growth in complexities. As a result, the efficacy and autonomy of these bodies have come under scrutiny in recent times. The Tribunal Reforms Act, 2021 was introduced in the lower house of the parliament on August 2, 2021, and has been claimed to address the revolving issues regarding the smooth functioning of the Tribunals. But if the so-called claims are true, why did the new bill, now an act draw significant backlash primarily from the Supreme Court?[1]

To provide some background, in 2015, the NDA-led government, hinted at the first signs of reform in the framework of tribunals. Certain challenges were detected due to overlapping functions and delays, hindering the overall objective of expediting access to justice. In 2016, the Supreme Court of India posed certain questions regarding the sphere of Tribunals to be addressed by the Law Commission of India.[2] The 272nd Law commission report (2017) suggested a set of practices in view of refining the Tribunals. The proposed changes received praise but ultimately had surprisingly no tangible effect, leading to its non-implementation.

In 2017, when amendments to the Finance Act, 2017 were made wherein the amendment granted the central government the authority to decide upon terms and conditions of the

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[1] Srishti Ojha, Supreme Court Asks Why Centre Introduced Tribunals Reforms Bill With Provisions Struck Down By Court, Live Law, 16 Aug 2021.
[2] Gujarat Urja Vikas Nigam Ltd V. Essar Power Lad, (2016) 9 Scc 103.

Tribunals including appointments, removal, and term of office along other functions.[3] Successively, the Centre introduced the Tribunal Rules 2020, a set of certain rules to streamline the operations of Tribunals. The aforementioned set of rules was subsequently challenged by the Madras Bar Association (MBA) in the apex court alleging the rules to be in violation of the principle of separation of powers and judicial independence. The Supreme Court while addressing the matter issued multiple directions out of which three are highlighted regarding the streamlining of appointment in Tribunals. At the outset, it was put forward that the minimum age of 50 as a requirement for appointment shall be eliminated, as it was believed to introduce instability and create exclusionary effects during their term of service. Furthermore, the court advised the appointment of advocates with over 10 years of experience in the relevant field as judicial members of the Tribunal. Lastly, The Chairpersons, Vice- Chairpersons, and members will have a five-year term, with reappointment allowed. Vice-Chairpersons, Vice Presidents, and other members will serve until the age of sixty-seven, as opposed to the four-year term.

By-passing all of the above-mentioned recommendations the Centre formulated the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance of 2021. The Madras Bar Association, once again, mounted a challenge against the Ordinance. The centre's move prompted a stern rebuke from the Supreme Court, as it appeared to directly override the judgment of the highest court in the nation. As a result, the following ordinance was struck down by the Supreme Court.[4]

Merely days following the Apex Court's rejection of the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance in 2021, the government swiftly introduced an identical bill in the Lok Sabha, titled the Tribunal Reforms Act, 2021, a move that has stirred debate and heavy scrutiny.

The Search-cum-selection committee's part of the Act has sparked heated debates with questions raised about its underlying motives. The Search-cum-selection committee is a panel of members whose recommendation is taken in the appointment of the chairperson and members of tribunals. The committee consists of the Chief Justice of India or any other Supreme Court judge appointed by the CJI, who shall be chosen as the Chairperson with one casting vote. Followed by, two secretaries nominated by the central government and one Secretary of the Ministry under which the tribunal is constituted (without casting a vote).

[3] The Finance Act, 2017 No. 7 Of 2017.
[4] Madras Bar Association v. Union of India, W.P.(C) No. 000502 of 2021.

Lastly, the sitting or outgoing Chairperson shall be a retired Supreme Court judge or a retired Chief Justice of the High Court.

By a mere look at the process, one can clearly interpret imbalance and oddity in the constituency of the members due to the notion that tribunal is considered as a quasi-judicial bodies established by law.[5]

Does the Tribunals Reform Act of 2021 uphold the fundamental principles of democracy?

Since the emergence of the tribunal system, accusations have been raised concerning the questions whether the creation of tribunals is an evasive path for the executive to encroach into the sacred functions of the judiciary.

Search-cum-selection committee or another puppet body?

The introduction of search-cum-selection-committee showcased an effort to ensure fairness and transparency in the appointment of the members for the tribunals but the parasites of its implementation are hidden behind the depicted green lushes of the provisions.

Tribunal being a quasi-judicial body is still viewed as an alternate to traditional courts therefore the exclusion of executive from the functions of the judiciary applies to the context of tribunals as well. The clear lack of judicial dominance in the composition of the search-cum-selection-committee violates the long-established doctrine of separation and can be seen as an attempt at overriding the judicial function[6].

The current composition of the search-cum-selection-committee places excessive interference of the executive in the functioning of judiciary. Moreover, the presence of the secretary to the government under which the tribunals has been constituted makes it further more detrimental towards the independence of the judiciary[7].

The discretion of the executive to determine the terms and conditions including salaries, allowances amongst others conditions of the members within the tribunals and of the judicial members threatens the individual independence. The attainment of individual independence comes with security of various aspects particularly tenure, procedure for renewal and other monetary terms of the members. There is a need for the limiting these terms from variance

[5] Report No. 272 – Assessment of Statutory Frameworks of Tribunals in India, Law Commission of India, October 2017.
[6] Rojer Mathew v. South Indian Bank Ltd (2020) 6 SCC 1.
[7] Id.

after the appointment of the member neither to his/her advantage nor disadvantage. Protection against external influences and pressures is of the essentiality in ensuring individual and institutional independence thus protecting from a tainted approach[8].

The inclusion of the Secretary belonging to the ministry or department under which the tribunal has been constituted in the selection committee depicts a lack of independence. The tribunals are hugely rely on their respective ministries for funding, infrastructure and other requirements. The practice of incorporating such members to the selection committee will continue to denote lack of independence unless reforms are instituted as practiced in the United Kingdom or as suggested in the L. Chandra Kumar case (1997)[9].

Section 3(7) of the Act has come under intense scrutiny due to more reasons than one. The section enumerates the function of the search-cum-selection-committee to recommend a panel of two names for the post of chairman or member and the Central government shall take a decision on the recommendation made by the committee.

In 2018, the Income Tax Appellate Tribunal (ITAT) had released advertisement for the vacancy of 37 posts in the ITAT. The SCSC had recommended the names of 41 candidates to the Appointment Committee of the Cabinet (ACC) which contained of 28 candidates from the main list and 13 more included in the waiting list. On 11-9-2021, the ACC approved the appointment of 13 persons and later on 9 candidates more were appointed. Subsequently, the Department of Legal Affairs had issued letters of appointment to the selected candidates. A peculiar point in the process which is, amongst the 22 appointments made by the ACC, 13 persons were candidates recommended from the main list whilst 9 other candidates were chosen from the waiting list leaving out the 15 other candidates present in the main list. Moreover, the selection made by the ACC were on the basis of a discreet report that hadn't been presented before the SCSC. Upon scrutiny of the report by the bench, it was found that each candidate's names were accompanied by a column indicated as "IB Report" alongside two other columns worded "Remarks" and "Feedback." The material or reasoning on which the "Feedback" have been provided is neither clear nor indicated in the report either, leaving room for arbitrariness and doubt. The learned Amicus Curiae, Mr Arvind Datar, contended that the waiting list shall only be in action once the choices in the main list have been completely exhausted. Mr.K.K. Venugopal, the attorney-general, sought the assistance of Section 3(7) of the Act which stipulates the recommendation of 2 names for each post,

[8] Madras Bar Assn. v. Union of India (2022) 12 SCC 455.
[9] Union of India v. R. Gandhi (2010) 11 SCC 1.

expressing that the following actions were implemented in pursuance of the same. Thus, evidently highlighting the concern regarding section 3(7) of the Act[10].

Section 3(8) of the Act in brief provides that no appointment of the SCSC shall be invalid merely due to the absence of any member in the SCSC. The gist behind the creation of such committee was to ensure balance of powers between the two distinct parts of the government, tribunals being a quasi-judicial body. This much needed balance and the several provisions established in view of such equilibrium within the act itself is simply made futile with the existence of this sole sub-section since anyone appointment could me made regardless of the number of members that are present or absent in the SCSC[11].

The Act further stipulates a four-year term of office, with an upper age limit of 70 years for the chairperson and 67 years for members. Additionally, it imposes a minimum age requirement of 50 years for appointment as chairman or member, the same conditions as stipulated in the previously struck down Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance of 2021.

The eligibility criteria and the security of tenure are the driving factors in the assurance of independence of judiciary. The minimum age requirement of 50 years is not only arbitrary but also draws no real benefits as to why such excessive conditions are in place. The constitution allows for the appointment of an advocate with an experience of more than 10 years as a High Court Judge or even to the highest judicial authority in the country, the Supreme Court. Consequently, the conditions only hinder young competent advocates from entering the institution and discourages the older qualified advocates aged 50 years and above due to bleakness and uncertainty regarding reappointment. Hence, the following conditions are held to be unconstitutional as independence of judiciary can only be promised when the functionaries are granted fair and reasonable conditions of service[12].

Justice Hemant Gupta in the same matter differed from the above reasoning provided by the two other judges, Justice L. Nageswara Rao and Justice Ravindra Bhatt. Justice Hemant Gupta dissenting stated, although the constitution permits for the appointment of an advocate having above 10 years of experience to the post of a judge, the Memorandum of procedure released in 2017 by the collegium for the same and as confirmed by the Supreme Court

[10] Advocate Associa tion, Bengaluru v. Anoop Kumar Mendiratta and Another (2022) 12 SCC 802
[11] Navdeep Singh, Tribunals Reforms Act: The Good, the Bad and the Ugly, Bar and Bench, 22 Aug 2021, 1:42 pm, https://www.barandbench.com/columns/litigation-columns/tribunals-reforms-act-the-good-the-bad-and-the-ugly
[12] Madras Bar Association v UOI (2021) 7 SCC 369

prescribes a minimum age requirement of 45 years to the post of judge of the High Court. Therefore, an advocate appointed as a judge can have a maximum tenure of 17 years as a judge in the High Court and 3 years in the Supreme Court if selected. On the other hand, a member appointed at the age of 50 years shall also have a tenure of 17 years with the opportunity to be appointed as chairman. The doubts raised regarding reappointment contains no substantial support as a member who fulfils his duty legally and efficiently need not be anxious regarding reappointment, as this process is overseen by the SCSC[13].

Despite the fault of overriding the Supreme Court's orders, upon closer examination, the following provision does not appear to pose significant issues. The reduction of tenure to 4 years as opposed to 5 years does not pose any major ill-effects. The argument concerning the following provision revolves around the notion of creating instability, may not be entirely accurate. For instance, in many cases, lower court judges are transferred to the High Court at the age of 60, with only three years remaining in their service. However, these judges are often able to effectively delegate their responsibilities without the short tenure being a hindrance. Furthermore, the practice of instituting a four-year tenure is a common practice in other democracies, such as the USA[14].

Section 3(7) of the Act pertains to the recommendations provided by the SCSC to the Central Government. The section denotes recommendation of two names for the post of a chairman or member respectively and the central government shall render a decision on the basis of the recommendation preferably within three months from the date of such recommendation. The term ‘preferably’ indicates a discretionary choice upon the central government and provides room for ambiguity therein.

The instillation of the word ‘preferably’ came in as a surprise due to the fact that the exact same term was declared to be unconstitutional by the Supreme Court from the prior ordinance that is the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance in 2021 in the cases of Madras Bar Association v. Union of India.

The Silver Linings

In light of the numerous controversies raised against the Act, it is crucial to acknowledge the positive aspects that exist within this double-edged sword.

[13] Id.
[14] U.S. Const. art. II, § 1, cl. 1.

Inclination to Traditional Courts

The abolishment of multiple tribunals although took many by surprise, for a significant number of practitioners this might have been a blessing in disguise. Since the incorporation of Article 323A and 323B which led to the creation of tribunals, much has been discussed relating to the presence of executive in the quasi-judicial bodies.

The introduction of tribunals from the very begging was perceived as a blatant attempt to involve the executive in the adjudication of matters whilst making tribunals the first and last court of instance. However, aspirations to empower the tribunals with the function of 'judicial review' was swiftly shot down by the Supreme Court, terming such tribunals as a 'supplementary' to the High Court and not 'substitute,' underscoring that tribunals and High Courts cannot be placed in the same level of hierarchy[15]. Thus, the resolution outlined in the Act, which involves the abolition of multiple tribunals and the restoration of their functions to the High Court and other traditional court, comes as a sigh of relief for litigators who harbour reservations about these 'supplementary' bodies. Contrary to popular belief, litigators often favour approaching the well-established High Court system rather than navigating the complexities of the tribunal system in most cases, this has been further indicated by the survey Figure1.

The Expert Conundrum

The excessive categorization of tribunals in the name of 'specialization' or 'expertise' is likely to pose a threat to adjudication principles such as objectivity and neutrality. The presence of technical members in tribunal that does not pose the need for such technical expertise is illogical. While it is justified for the presence of administrative members in the Administrative Tribunals, or military officers in Armed Forces Tribunals and likewise, there is no justification as to the presence of general civil services members in Company Law Tribunals. In no case shall the number of technical members exceed the judicial member in any of the bench[16].

While these individuals are experts in their respective fields, there is a risk of subjectivity and other influences creeping in due to overfamiliarity with the arena. In Southall v General Medical Council[17], a case in the U.K., Lord Justice Leveson expressed the dangers of

[15] L. Chandra Kumar v. Union of India (1997) 3 SCC 261
[16] Supra Note 14. Union of India v. R. Gandhi (2010) 11 SCC 1.
[17] Southall v General Medical Council (2010) EWCA Civ 407.

excessive representation of specialists, stating that such expert opinions could pave the way for decisions made in ignorance of evidence and arguments. The abrogation of multiple tribunals, many of which were limited to specific niches, and a return to traditional courts, facilitates the appropriate adjudication of matters.

On the contrary, the abolition of specialized tribunals has also drawn some criticism, with proponents arguing that specialized tribunals are a necessity of the hour. The argument that often arise when asked about the difference between a court and a tribunal is that a court of law is a historically established normal body whereas a tribunal is viewed as a body created for the sole purpose of adjudicating specialised matters[18].

In an ideal administration system it has been said that tribunals may be preferred over ordinary courts due to the specialised knowledge of the members in the subject matter moreover due to the flexibility, cost- effectiveness and expeditious resolution offered. The matters adjudged by these bodies are little in consideration with the legal content, as a result a tribunal consisting of a qualified judge along with two lay members will be preferred over ordinary courts. However, it is not ideal to refer cases of complex nature to tribunals rather than courts solely with intention of avoidance of legal technicalities and issues[19].

The contradictory viewpoints regarding specialisation of tribunals is an ongoing dilemma. The ideal path to tackle the contrasting opinion is simply to strike balance between both the 'need' and 'excessiveness' of specialisation. As a result, the abolishment of specialized tribunals by the Act very much treads on the definition of 'silver lining.'

Dismantling of IPAB

The Intellectual Property Appellate Board (IPAB)[20], created in 2003 under section 83 of the Trade Marks Act, 1999, to handle appeals concerning decisions under the Trade Marks Act, 1999, and the Geographical Indications of Goods (Registration and Protection) Act, 1999, had come full circle by winding down its operations following the enactment of the Tribunal Reforms Act, 2021[21].

In 2007, the scope of the IPAB was expanded to cover appeals arising out of the orders and

[18] Alok Kumar, Administrative Adjudication : A Comparative Understanding With Special Reference to Tribunal, 1 SML L Rev 105, 118 (2018).
[19] Woolf & Jowell, De Smith's Judicial Review of Administrative Actions 34 7th edition (2013).
[20] Trade Marks Act, 1999, §83, No. 47, Acts of Parliament, 1999 (India).
[21] Tribunals Reforms Act, 2021, §§ 10,13,21,22, No. 33, Acts of Parliament, 2021 (India).

decisions of the patent controller under the Patents Act[22]. Thereby causing to transfer all the existing appeal matters before various High Courts to the IPAB. Later, through provisions of the Finance Act, 2017 the functions of the Copyright Board was merged with the IPAB[23]. At present, with the enactment of the Tribunal Reforms Act, 2021 all prevailing matters under the IPAB have been transferred either back to High Courts or Commercial courts[24].

Whilst the scrapping of Intellectual Property Appellate Board (IPAB) was intensely discussed amongst experts since the start of its functioning, the action towards implementing it did manage to receive a fair amount of flak**.** The IPAB at the time of establishment was predicted to be a step forward towards a building a robust Intellectual Property ecosystem in India. A strong intellectual Property ecosystem contributes to increased imports, inward foreign direct investment (FDI) and more.[25]

On a more important note, the action came in the backdrop of significant growth in the sphere of Intellectual Property Rights in India. The World Intellectual Property Organization (WIPO) report reveals that, in 2022, India experienced the largest increase in the number of patents filed, with 31.6% more applications than the previous year, surpassing any other country[26]. As for trademarks, India had fourth-highest number of registration, amounting to 467,918. Similarly, a notable growth is visible in the spectrum of Industrial Designs and Plant Varieties.

From the dawn, IPAB consistently found itself in the news for all the wrong reasons. The intense scrutiny from industry experts, who perceived the body as unnecessary and distorted, did not work in its favour either. To begin with, the law prescribes the presence of at least one Judicial Member and another Technical Member to hear any matter[27]. In 2019, a writ petition filed before the Delhi High Court revealed the staggering backlog of cases across all IPAB benches, estimated to be around 4000[28]. The status report produced by the Registrar evidenced that no Technical Member (Copyright) has been appointed till the date of filing the Writ Petition. With respect to Patents, the post of Technical Member (Patents) was lying

[22] Ministry of Commerce & Industry, Notifications No.12/15/2006-IPR-III, Notified on 2/4/2007 (India).
[23] Finance Act, 2017, §160, No. 7, Acts of Parliament, 2017 (India).
[24] Supra note 59. (Tribunals Reforms Act, 2021, §§ 10,13,21,22, No. 33, Acts of Parliament, 2021 (India).
[25] Rod Falvey & Neil Foster, The Role of Intellectual Property Rights in Technology Transfer and Economic Growth: Theory and Evidence, UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION, Vienna, 2006 at 3.
[26] World Intellectual Property Organization, https://www.wipo.int/pressroom/en/articles/2023/article_0013.html (last visited Jan. 30, 2024)
[27] Trade Marks Act, 1999, §84(2), No. 47, Acts of Parliament, 1999 (India).
[28] Mylan Laboratories Ltd. v. Union of India, (2019) SCC OnLine Del 9070

vacant since 04th May, 2016. In matters of Trade Marks, the post of Technical Member (Trade Marks) lying vacant since 05th December, 2018. Lastly, there was only one Technical Member for matters of Plant Varieties Protection.

Moving beyond the subject of vacancies and delving into the various appointments made by the board, several shortcomings can also be observed here. A significant number of appointments made to the post of technical members or the Vice-Chairpersons were bureaucrats from the Indian Legal service (ILS) or the Trade Marks Registry or the Patent Office which translates to none of them having experience neither practicing law before a Court nor holding a judicial office[29]. For instance, in the case of appointment of Z.S. Negi who served as Vice Chairman of the IPAB from 17.2.2006 and retired as a chairman in August, 2010, was a bureaucrat from Indian Legal Service whose credentials were holding a Group 'A' Legal post for more than 27 years and the position of Additional Secretary to the Government of India at the time of appointment[30]. A Group `A' post merely carries a higher administrative and executive responsibilities and include senior management positions in the ministries/departments and field organisations. Granted, Mr Z.S. Negi undoubtedly was a bureaucrat with decades of experience; however, it does not amount to gaining the knack for maintaining the principles of objectivity and neutrality, essential for a quasi-judicial position. A PIL filed in the Madras High Court by the late renowned legal scholar Shamnad Basheer effectively depicted the alarming conditions of the IPAB, highlighting it as a retirement haven for ILS officials[31].

Seemingly, one can conclude from the above that the IPAB was far from efficient and as a result appears to be a real blessing in disguise for some. However, the abolishment of a body that once seemed highly prosperous raises questions into whether it was a well-thought-out idea or simply a concept lacking in careful planning.

It is noteworthy that renowned late IP expert Shamnad Basheer nearly a decade ago before the dismantling of IPAB had suggested the same idea and transferring the matters to a

[29] Prashant Reddy & Prannv Dhawan, The Case for Shutting Down the Intellectual Property Appellate Board (IPAB), SpicyIP, (April 15, 2020), https://spicyip.com/2020/04/the-case-for-shutting-down-the-intellectual-property-appellate-board-ipab.html#:~:text=Since%20the%20law%20prescribes%20a,patents%20for%204%20years%20now!

[30] Photocopies of documents pertaining to Mr Z.S. Negi, Chairman, IPAB (Retd.), SpicyIP, https://spicyip.com/docs/zs%20negi.pdf.

[31] A Subramani and Pushpa Narayan, Plea seeks to expose patent tribunal anomaly, Times of India, (Jan. 27, 2011, 03:33 AM), http://timesofindia.indiatimes.com/articleshow/7368425.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign= cppst.

division bench of the high court as done now.

Survey Findings

1. Preference for General Courts over Tribunals

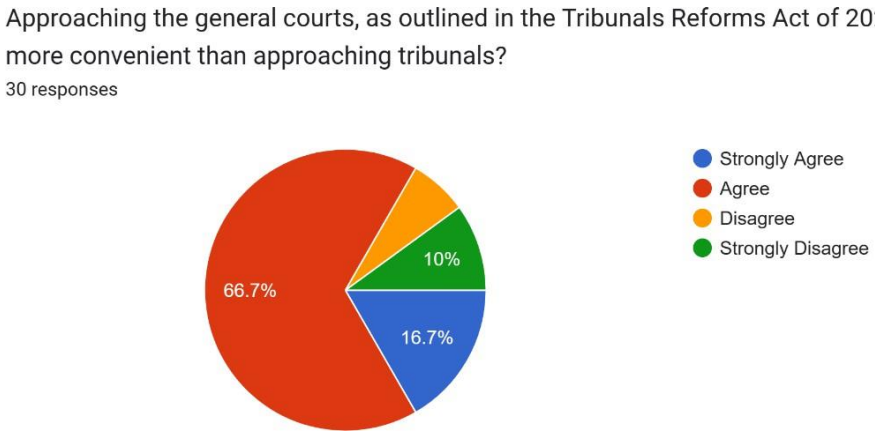

Figure 1

Although, the abolishment of several tribunals has sparked debates regarding the pros and cons of the move, 66.7% participants believe that approaching the Traditional/General Courts is of more convenience than approaching Tribunals.

The reasons to the same may be linked to the varying structure and working of each tribunals in comparison to the uniform and well-established structure of the traditional courts. Furthermore, the shortcomings in the tribunal system such as the lack of personnel adding to the delay and other informalities influences the pupil and professionals in the field to prefer the traditional courts.

2. Overburdening of Courts

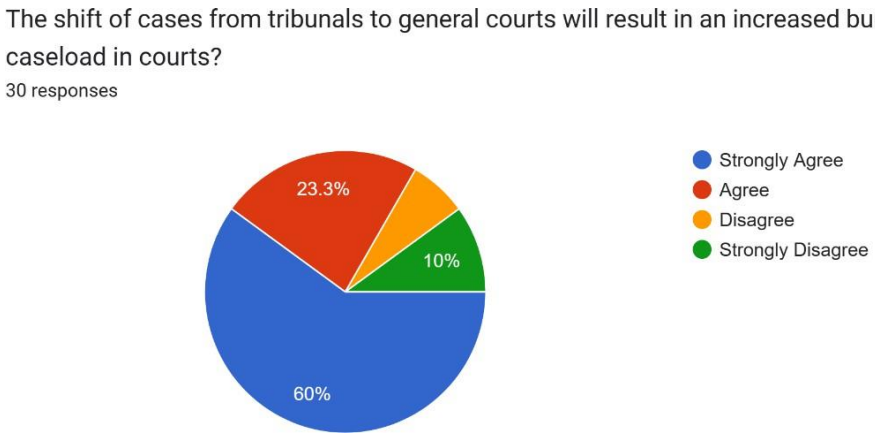

Figure 2

As of present, it is widely known that the Indian judiciary faces a substantial caseload that surpasses its capacity for systematic management. In July 2023, India crossed the mark of over 5 crore cases pending in the country[32]. There are over 80,000 cases pending in the Supreme Court alone as of 12-09-2023[33]. The primary change introduced by the Tribunal Reforms Act, 2021 involves the dissolution of nine tribunals[34], primarily prompted by issues related to inefficient case management and insufficient caseloads. The matters handled by these bodies made to hear disputes under various statutes shall be transferred to other judicial forums such as a Civil Court or High Court.

The decision to transfer cases to other judicial forums such as Civil Court or High Court adds to the already heavy caseload in these Courts. As of 12-09-2023, there exists more than 60 lakh cases accumulated and pending in High Courts alone[35].

The preference for traditional courts over tribunals solely is not bound to resolve the existing issues of the traditional court system. One of the prominent aim behind introduction of tribunals is to reduce the burden of the courts in terms of number of cases. While the preferences for traditional courts remain, 60% of the participants strongly believe that abolishment of multiple tribunals are bound to increase the already existing burden of courts.

[32] Arjun Ram Meghwal, written reply to Rajya Sabha 20.07.2023
[33] National Judicial Data Grid https://njdg.ecourts.gov.in/scnjdg/ (12-09-2023)
[34] THE TRIBUNALS REFORMS ACT, 2021 NO. 33 OF 2021
[35] Ecourts.gov.in https://ecourts.gov.in/ecourts_home/ 04-09-2023

3. Difficulty in Specialized Matters

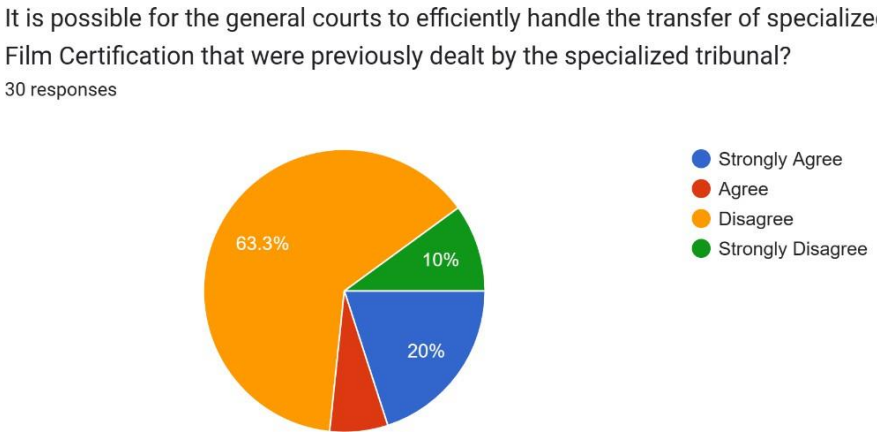

Figure 3

A significant 63.3% of the participants believe the transfer of niche matters to the general courts such as the High Court and Civil Courts negates the purpose of establishing specialized bodies for hearing the matter.

To provide an example, cases that fall under the jurisdiction of the Film Certification Appellate Tribunal will be handled by the High Court according to the act. Consequently, this arrangement may lead to situations where a judge with limited knowledge or no expertise in the film industry is tasked with overseeing such cases.

As previously mentioned, this particular motion may or may not tend to be a positive considering the negatives of over-specialization of matters but the belief in the ability of practitioners and others in the ability of the traditional courts to effectively adjudged such matter is still under considerable doubt.

4. An Incomplete 'Resolution'

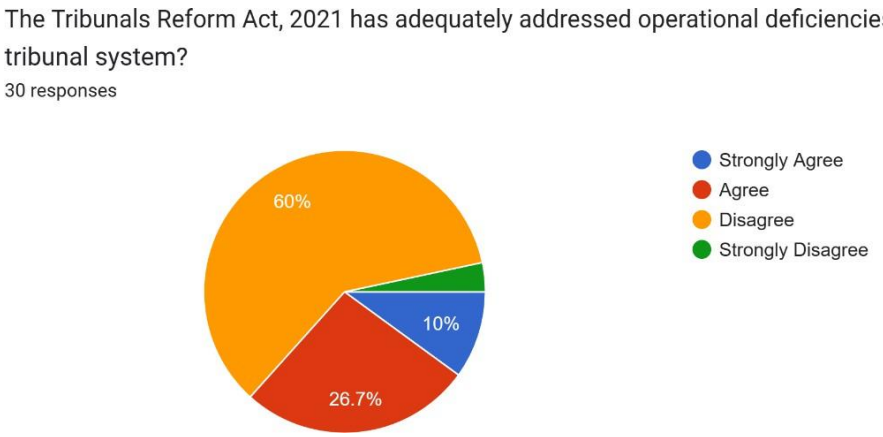

Figure 4

The introduction of Tribunals Reforms Act, 2021 was proposed as a stride towards streamlining of tribunals thereby addressing the deficiencies of the working sphere of tribunals but throughout the provisions of the Act little is found that point towards its betterment.

The same opinion is indicated by 60% of the participants believing that there are questions yet to be addressed and rectified towards the efficient working of tribunals. Multiple questions such as mechanism to address the looming vacancies and the neutrality of the tribunal system and its parent bodies are still unclear.

Contrarily, the introduction of the act has led to the raising of more questions in consideration with the procedure for appointment of the search-cum-selection committee and the alignment of the whole act with various democratic principles.

5. Imprecise Abolishment of Tribunals

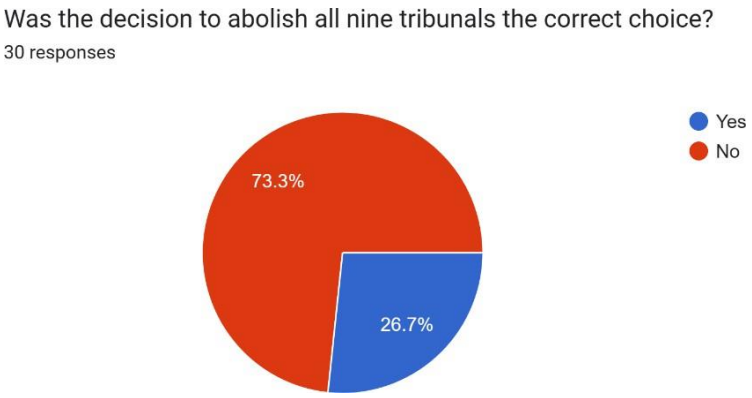

Figure 5

A remarkable 73.3% of the participants in the survey believed the abolishment of all nine tribunals by the Act, was not the appropriate decision. The dissatisfaction can be linked multiple reasons such as the effective working of some of the abolished tribunals and also the requirement of certain specialized tribunals.

For instance, the abolishment of boards concerning the Intellectual Property Rights matter namely the Appellate Board under the Trade Marks Act, 1999, Appellate Board under the Copyright Act, 1957, Appellate Board under The Patents Act, 1970, Appellate Tribunal under the Protection of Plant Varieties and Farmers' Rights Act, 2001 and Appellate Board under the Geographical Indications of Goods (Registration and Protection) Act, 1999 is a decision likely to resurface and pose consequential challenges in view of the exponential growth in matters related to Intellectual Property Rights in the Country.

The presence of each of these tribunals effectively addressed the growing demand for resolution of intellectual property matters individually. The varying nature and extensive detail of most matters dealt by these boards require the presence of member with in-depth knowledge in the particular subjects. The transfer of these matters to the traditional courts shall cause consequential increase the number over pending cases and the raise questions regarding judges ability to appropriately address the matter in a time-bound manner further adding fuel to the fire.

Recommendations

Efficient Review Mechanism

At the outset, in the case of L. Chandra Kumar v. Union of India (1997) the declaration of the apex court concerning Section 28 of the Administrative Tribunal Act which deprives the High Court of the function of Judicial review were held to be unconstitutional[36]. Additionally, it led to the recognition of the same as part of the 'basic structure[37].' Constitutional safeguards provided to superior judges ensure Independence of Judges of the superior judiciary are not available to the judges of the subordinate judiciary similarly to the those who man the Tribunals created by ordinary legislation, ergo the both the latter bodies cannot be viewed as an effective substitute for the superior judiciary in discharging functions of constitutional interpretation[38]. Nevertheless, though the function of judicial review cannot be exercised by the subordinate courts or tribunals created under ordinary legislation with expulsion of the High Court and Supreme Court there is no prohibition in performing a supplementary role in contrast to a substitute one[39]. As a result, it was held that all decisions of the tribunal under article 323-A shall be subject to the jurisdiction the High Court of the state in which the tribunal is located before a Division bench[40]. In essence, litigants shall be unable to directly approach the High Court regarding the decisions of a tribunal even if the case pertains to testing vires of a statutory legislation except for testing the same with regards to the parent statute whereby the tribunal has been constituted[41].

While successful in its goals of reducing the quantity of dockets before the Supreme Court, the persistent challenges on tribunal decisions, even on trivial grounds[42], the mechanism for filtering out frivolous claims[43] only serve to further burden the High Courts. It is essential that an efficient machinery of justice needs to be integrated with tribunals serving both supervisory and appeal powers[44].

The Administrative Review Committee created in the Commonwealth of Australia for the purpose of creation of general system of administrative law and for the introduction of legislation similar to the United Kingdom's Tribunal and Inquiries Act, 1958 faced similar

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[36] Supra note 15 at 263 *L. Chandra Kumar v. Union of India (1997) 3 SCC 261
[37] Id. 264
[38] Id. 265
[39] Ibid.
[40] Id. at 308
[41] Id. at 266
[42] Id. at 308
[43] Ibid.
[44] REVIEWING DECISIONS OF ADMINISTRATIVE TRIBUNAL: PATERNALISTIC APPROACH OF THE INDIAN SUPREME COURT AND NEED FOR INSTITUTIONAL REFORMS, P. Leelakrishnan, Journal of the Indian Law Institute, Vol. 54, No. 1 at 6.

challenges in regards to the implementation of review mechanism and conformity with the principle of 'Separation of Powers'[45].' The Australian legal framework being adopted from the English Common-law system[46], Chapter I, II, and III of the Australian Constitution vividly depicts the powers of legislative, executive, and judiciary of the Commonwealth hence highlighting the principle of 'Separation of Power'[47]. The committee proposed a comprehensive plan for the establishment of four bodies that shall ensure and strengthen independent review of administrative decisions[48].

The first and foremost part of this structure is the High Court of Australia, the High Court is the superior most court in the Commonwealth of Australia[49]. The High Court of Australia being the Highest Court in the Commonwealth, it is deemed appropriate for the Court to possess the power of supervisory review of all administrative actions[50]. The primal question posed by the committee was whether to broaden the scope of supervisory jurisdiction to include other courts[51]. The response was affirmative and accompanied by various justifications[52]. The next proposal in line of the committee was the establishment of the Commonwealth Administrative Court. The committee's inclination of spreading the scope of review jurisdiction solely from the High Court meant the establishment of a Commonwealth Administrative Court[53]. The Review Court shall not have a general jurisdiction due to the constitutional barriers of placing administrative power on courts thereby it shall be conferred with a supervisory jurisdiction. The committee deduced in due course of time such court shall formulate expertise in administrative area[54]. Next in place comes the Administrative Review Tribunal, the committee proposes that the body responsible for the reviewing of administrative decisions, particularly those involving merits, should include individuals with both judicial expertise and administrative experience therefore ensuring a more comprehensive and informed review process[55]. The concept of placing all administrative discretions on the radar through supervisory review of the Administrative Court or even by

[45] Australia. Administrative Review Committee, Parliamentary Paper No. 144 of 1971 (J.R. Kerr ed., Govt. Printer 1971) at 107.
[46] Australian Parliament House, https://rb.gy/4s8703 (last visited January 20, 2024).
[47] Australia's Constitution: With Overview and Notes by the Australian Government Solicitor (Parliamentary Education Office & Australian Government Solicitor, Canberra) at iii.
[48] Supra note 33 (ADMINISTRATIVE REVIEW COMMITTEE) at 68.
[49] Australian Constitution, §71.
[50] Supra note 33 at 72.
[51] Ibid.
[52] Ibid.
[53] Id at 73.
[54] Ibid.
[55] Id at 74.

the mechanism of review by Administrative Review Tribunals is simply impracticable in order to limit the scope of the same[56]. In this regard, the committee proposed the setting-up of the General Counsel for Grievances. The General Counsel will be vested with the discretionary authority to ascertain the most suitable adjudicative body for a specific case, choosing among the Administrative Court, the Administrative Review Court, or any other specialized tribunal[57].

Admittedly, the function of the Supreme Court of India is nearly identical to that of the High Court of Australia and the High Courts of India could be considered a substitute for the proposed Administrative Review Court, yet there is room for optimization. The adoption of a similar structure in the nation of India could be beneficial in terms of reducing the already existing excessive burden on the High Courts by the creation of a separate Administrative Court. Additionally, the machinery in effect for the review of decisions of Tribunal is excessively narrow in scope[58], therefore the Administrative Review Tribunal shall provide an extended room for challenge. More importantly, the creation of a body akin to the General Counsel for Grievance could potentially fill the gap of a much needed umbrella organization specifically for the conduct of tribunals much like the Council on Tribunals in England and the of Ombudsman in New Zealand[59].

National Tribunal Commission

The initial recommendation for the establishment an umbrella organisation that shall streamline and ensure independency of tribunals was poured in the L. Chandra Kumar judgement (1997)[60]. The creation of such organization is a stride towards the independency of tribunals ranging from aspects of appointment of members to fund allocation[61]. The Supreme Court in Rojer Mathew v. South Indian Bank (2018) termed the concept of having an effective and autonomous body for the overseeing of all Tribunals as inevitable[62].

The Committee on Administrative Tribunals and Enquiries of the U.K, more famously known as the Franks Committee (1857) in its report made a principle recommendation for the establishment of two standing councils. The committee recommended establishment of one council for England whilst the other one for Scotland that shall constantly review the

[56] Id. at 9.
[57] Ibid.
[58] Supra note 29. (Id. at 266)
[59] Id. at 7.
[60] Supra note 15 at 267 (L Chandra)
[61] Ibid.
[62] Rojer Mathew v. South Indian Bank Ltd., (2018) 16 SCC 346

working of Tribunals[63]. The government although not wholly accepting the intricacies as suggested by the committee, abided by its fundamental idea thereby appointing a sole council. The primary aim of the council is to keep under review the constitution and that of working of the principal tribunals, furthermore, to report on any special problems connected with inquiries[64]. The council shall not have any executive power rather it shall be an advisory body, however it shall be independent and free from constraints of political responsibility[65]. The establishment of Administrative Court that explicitly reviews decisions made by courts, tribunals and public bodies is certain development in rationalising of administrative Law in the region.

The establishment of a body of significant importance, careful consideration should be given to the details of its structure, all while keeping in mind the paramount goals of independence and effectiveness. The path for the establishment of a National Tribunal Commission are multiple, however, it boils down to meeting the ideal requirements.

Firstly, the convenience and flexibility offered by an executive order for the commission's establishment are evident, given the exclusion of rigorous parliamentary protocols. Nevertheless, the sole discretion of the executive in creating the body raises concerns about the intended independence, highlighting the need for careful consideration to ensure appropriateness[66].

The next apparent method involves the creation of the commission through a statute and thereby abiding by the legislative process. Although, inevitably the entirety of the process is prone to be prolonged, this mechanism offers flexibility. The legislature shall be able to regulate the institutions in terms of their powers, remit, government structure and more according to the changing needs. Additionally, the built-in parliamentary scrutiny would ensure a fair formation of statute. However, the challenge in the process of enacting a statute is deciding whether the bill should be categorized as an Ordinary or Money Bill. It is important to keep in mind that the amendment in the Finance Act of 2017 altering the conditions of various aspects of tribunal was remarked to be a money bill and therefore was challenged before the court in the case of Rojer Mathew v. South Indian Bank (2018)[67].

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[63] Committee on Administrative Tribunals and Enquiries, Report of the Committee on Administrative Tribunals and Enquiries (Cmnd. 218, 15 July 1957) at ¶43.
[64] H. W. R. Wade, Tribunals and Inquiries Act, 1958, Vol. 16, Camb Law J, 129, 180 (1958)
[65] Ibid.
[66] Aakanksha Mishra, Siddharth Mandrekar Rao, Surya Prakash B.S., A FRAMEWORK FOR THE NATIONAL TRIBUNALS at 26. COMMISSION, DRAFT WHITE PAPER.
[67] Ibid.

Finally, the National Tribunal Commission may be established as a constitutional body, but a constitutional amendment is essential for this to take place. An amendment to the Constitution must receive the assent of the President notably after receiving a special majority of at least two-thirds of the house members present and voting[68].'

Regrettably, as of August 2023, there has been no progress whatsoever in realizing the much-anticipated National Tribunal Commission[69].

Conclusions

The decision to abolish several tribunals due to reason of significant pendency of cases and lack of timely justice[70] can be termed as a half-hearted measure lacking consideration of the bigger picture. Even more, the reason for the same deficiencies can be traced back to bureaucratic incompetency in multiple aspects, as previously stated.

The 42nd amendment of the India Constitution explicitly demonstrates the necessity of tribunals prominently in reducing the excessive burden constituted upon High Courts. Moreover, matters of service, revenue and amongst other matter of special importance mandates speedy disposal[71].

The Supreme Court in Madras Bar Association v. Union of India (2021), had made observations in view of the importance of alternative institutions for speedy resolution of matters[72]. Furthermore, the court expressed grievance in the lethargic administration of tribunals and long pending vacancies predicting the dismal closure of such tribunals. The Apex Court also issued directions to expedite the appointments in the interest of justice and to uphold rule of law.

The Tribunal Reforms Act, 2021 represents a proper concept but with a misguided implementation. To rectify its flaws, several key amendments are imperative. Foremost, the central focus should be on addressing the prevailing vacancies within the tribunals, as emphasized by the Supreme Court, before assessing the effectiveness of the Tribunal system. Additionally, revising the composition of the search-cum-selection committee is crucial to restore faith in the principles of judicial separation. Ensuring a clear separation of the

[68] Id. at 27.
[69] Government of India, Ministry of Law and Justice, Department of Legal Affairs, Lok Sabha, Unstarred Question No. 2552, To be Answered on Friday, the 4th August 2023, National Tribunal Commission (2023).
[70] Tribunals Reforms Act, 2021, STATEMENT OF OBJECTS AND REASONS, No. 33, Acts of Parliament, 2021 (India).
[71] Indian Constitution (Forty-second Amendment) Act, 1976, Statement of Objects and Reasons.
[72] Supra note 15. (2021) 7 SCC 369

judiciary is paramount for upholding public trust. Furthermore, in cases with specialized subject matter, transferred to the courts, a specialized approach is essential for effective resolution.

When it pertains to tribunals, an uneven case distribution is noticed among tribunals in India, with certain tribunals burdened by an overwhelming caseload while others experience minimal case numbers. Meanwhile, the Supreme Court of India had expressed serious concern over the central government's handling of tribunal appointments, which has led to significant shortcomings in tribunal administration[73].

From a slightly more positive perspective, the Tribunal Reforms Act, 2021 has provided sound and effective mechanisms in order to facilitate the optimum use of tribunals. Firstly, the transfer of cases from less-burdened to High Courts and Commercial Courts is an appropriate step towards cost-saving. Secondly, the establishment of the search-cum-selection-committee can prove to be a streamlined mechanism as the involvement of the executive only in a bona fide manner will help ensure that qualified and competent individuals are selected.

In conclusion, the Tribunal Reforms Act of 2021 is a complex piece of legislation that attempts to address long-standing challenges in the tribunal system. Its effectiveness in safeguarding the independence and efficiency of tribunals remains a subject of debate and scrutiny. Striking the right balance between executive involvement and judicial independence is essential to ensure that the Act serves its intended purpose and upholds the principles of justice and democracy in India. Further analysis and monitoring of its implementation will be crucial to assess its long-term impact.

[73] Express News Service, Testing patience no respect for rulings: SC slams govt over vacancies in Tribunals, Indian Express, September 7, 2021.