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# **TRIBUNALS AS SOLUTION FOR JUDICIAL ARREARS: VIABLE OR QUESTIONABLE?**

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SOMIYA JOSHI & PADMAJA DUBEY

## **Abstract**

The Indian judicial system has always strived to ensure speedy and equal access to justice. At the same time, it desires to secure justice to all without affecting the cardinal principle of just and fair resolution of disputes and disposal of cases. However, pendency of proceedings and arrears in court cases has turned out to be in clear violation of this globally realised right. Tribunals were introduced with an underlying purpose to reduce the burden of pendency of cases in the judicial courts of India, as one of the many measures resorted to. These quasi-judicial bodies were introduced as specialist courts for expeditious resolution of cases, which delineates decentralisation of the monolithic system of administration of justice. The primary objective of tribunals was to provide a special forum for specific disputes and facilitate their faster and more efficacious adjudication. But with the passage of time, it has been found that there is blatant dilution of the adjudicatory character and functioning of many of these tribunals, which needs serious examination and regulation. The inability of the legislature to codify the defined contours of appointments, functions, powers and role of tribunals seems to have created another judicial institution with another figure of pending cases, delayed justice and issues of malfunctioning. Recent abolition of several tribunals and reinstating the jurisdiction and transferring cases to the concerned High Courts, which are already burdened owing to the “docket of case explosion”, needs a more careful and deeper scrutiny. This paper canvasses the journey of highlighting the pendency of cases as an urgent issue and analyses how far the tribunals can work and contribute as a solution for the judicial pendency and what more can be done to make them more effective and efficient in their working.

Keywords: *administration of justice, judicial reform, pendency, tribunals, high courts*

## I. INTRODUCTION

The Indian judicial system promises an apparatus that ensures easy access to justice on an equal basis for all, without any bias, prejudice or discrimination. It adheres to the cardinal principle of just and fair disposal of cases, by due application of constitutional and legal principles. The right to get speedy justice is found in various legal instruments pertaining to domestic<sup>1</sup> or international legal rights.<sup>2</sup>

The Preamble of the Indian Constitution embodies the trinity of justice- social, political and economic, thereby affirming right to justice in all forms and spheres of the society. The right to speedy disposal of cases and fair trial have been interpreted to be implicit in the Article 21 of the Indian Constitution, as a subset of the ‘right to life and personal liberty’ enshrined therein.<sup>3</sup> Equal, fair and speedy justice dispensation has been recognized as an inalienable right by the courts in various judgements over the years. The Supreme Court, in the case of *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>4</sup>, upheld the “constitutional obligation of this Court as the guardian of the fundamental rights of the people”, which implicitly contains the right to speedy trial. The State is under a constitutional mandate to ensure speedy trial and it cannot avoid it by pleading financial or administrative inability. Speedy justice is an edict of equal justice implicit in **Article 14** and the right to life and liberty conferred by **Article 21**. It is also the constitutional directive embodied in **Article 39A**, which entrusts the state with the duty to facilitate free legal aid to ensure access to justice for all citizens.<sup>5</sup> Quoting *Justice Krishna Iyer*, “Our justice framework even in grave cases, experiences slow motion syndrome which is deadly to ‘fair trial’, whatever the ultimate decision”.<sup>6</sup> He emphasised the dire need to ascertain speedy justice as an important component of social justice, which is required ‘for the bi-focal interests of justice-for the individual involved and the society affected.’<sup>7</sup>

However, the glaring pendency and arrears in court cases highlights the violation of the globally acknowledged rights to free, fair and speedy justice. The pending cases in the courts increase the social and economic burden on the country, as has been insinuated via multiple

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<sup>1</sup> The Constitution of India 1950, arts 21, 32, 37-38, 39-A, 226

<sup>2</sup> Universal Declaration of Human Rights, 1948 s.10; International Covenant on Civil and Political Rights, 1966 s 14; International Covenant on Social, Economic and Cultural Rights, 1966 s 26; Sustainable Development Goals, 2015 Goal 16

<sup>3</sup> *P. Ramachandra Rao v. State of Karnataka* (16 April 2002) Appeal (criminal) 535 of 2000

<sup>4</sup> **1980 (1) SCC 98**

<sup>5</sup> *Ibid.* at 4

<sup>6</sup> *Babu Singh v State of UP*, AIR 1978 SC 527.

<sup>7</sup> *Ibid.* at 6

reports, both national and international.<sup>8</sup> The policy makers have tried to identify various solutions to meet the challenges of delayed justice. Several reports of the Law Commission of India<sup>9</sup> have, from time to time, illuminated the policy makers and the government with data of pendency in both higher and subordinate judiciary<sup>10</sup>, followed by recommendations to deal with the rising number of pending cases.

One of the major revolutions in the framework of legal institutions innovated to deal with judicial delays and pendency has been the introduction of ‘tribunals’. The present paper attempts to study and analyse the emergence of tribunals, their role in arresting the judicial delays and impact on the system of administration of justice in India.

## II. TRIBUNALS: A BRIEF HISTORY

Tribunals are quasi-judicial institutions that provide quick and specialised resolution of disputes with the help of proven expertise of the technical members as part of these bodies. There are several tribunals in the present set up which are working to provide quick resolution of disputes on varied subject matters throughout the country, with their branches in various zones as well as at appellate levels.

### A. Era of tribunalisation and alternative mechanisms for dispute resolution

The Law Commission of India in its 14<sup>th</sup> Report (as discussed above) recommended several judicial and legislative reforms and highlighted two main causes for the delays in High Courts—*firstly*, the increasing volume of ordinary litigation due to economic and industrial development and *secondly*, the expansion of the special jurisdiction of High Courts due to a variety of fiscal enactments and provisions for appeals from Election Tribunals etc.<sup>11</sup> The 58<sup>th</sup> Report of the Commission had suggested that ‘litigation’ should be the last option. It reasoned that there is an imperative need to reduce the institution of civil cases in the higher courts. It recommended that commissions or tribunals must be constituted to deal with service matters on a separate basis.<sup>12</sup>

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<sup>8</sup> <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1577016>

<sup>9</sup> 14th Report 1958, 27th Report 1964, 58th Report 1974, 77th Report 1978 and 121st Report 1987

<sup>10</sup> National Law School of India University Scholarship Repository, “Decision Time: Illuminating Performance in India’s District Courts”, Varsha Aithala *et. al.*, 30-08-2024. [https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1101&context=nls\\_articles](https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1101&context=nls_articles)

<sup>11</sup> The Law Commission of India, 14<sup>th</sup> Report, ‘Reform of Judicial Administration’ (1958)

<sup>12</sup> The Law Commission of India, 58<sup>th</sup> Report, ‘The Structure and Jurisdiction of Higher Judiciary’ (1974).

The Law Commission recommended numerous solutions for dealing with service disputes of public servants and authorising different tribunals to deal with matters relating to specific subjects such as taxation, labour, land reforms, etc., that evolve from accumulated public services.

The *Swaran Singh Committee* suggested that administrative tribunals could be established for issues pertaining to public servants in government services. Eventually, the administrative tribunals were given the constitutional colour in form of Central and State Administrative Tribunals.<sup>13</sup>

The report of the *Arrears Committee* (1989-1990) was yet another report that elaborated various causes for judicial pendency including population and litigation explosion, gradual shift in the litigation pattern, increase in legislative enactments, indiscriminate resort to writ jurisdiction, lack of expert judges, inadequate court staff and insufficient infrastructure etc.<sup>14</sup> The Committee reiterated several recommendations given in the past by many reports of the Law Commission of India including employing the alternative modes and forums for dispute resolution which included *tribunalisation* of justice.<sup>15</sup>

In its 124<sup>th</sup> Report in 1988<sup>16</sup> LCI emphasised again on the recommendations given by the *High Court Arrears Committee* in 1969 and opined the need of a specialist court and tribunals to eliminate the jurisdiction of High Courts, hinting at reduced inflow of work into the High Court by nearly 45%.

In the 221<sup>st</sup> Report of LCI, speedy justice being a fundamental requirement of good judicial administration was reiterated. It was acknowledged that the administration of justice will become very slow and inefficient due to the current equation between the rate of institution of cases and the corresponding reduced rate of disposal. The Commission had suggested that filing of frivolous, vexatious and luxurious litigation must be controlled. It proposed amendments in Civil and Criminal Procedure Codes, which would provide speedy and cost effective justice.<sup>17</sup>

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<sup>13</sup> The Constitution (Forty-second Amendment) Act, 1976- Part XIV-A (Articles 323A and 323B) was inserted.

<sup>14</sup> Report of the Arrears Committee, 1989-90, pp.130-131 (under the leadership of V.S. Malimath, the then Chief Justice of High Court of Kerala)

<sup>15</sup> *Ibid.* at p. 145

<sup>16</sup> The Law Commission of India, 124<sup>th</sup> Report, 'The High Court Arrears-A Fresh Look', 1988

<sup>17</sup> The Law Commission of India, 221<sup>st</sup> Report, 'Need for Speedy Justice-Some Suggestions' (2009)

LCI also suggested that there is an urgent need to employ and utilise alternative dispute resolution (ADR) mechanisms for quick and speedy justice dispensation.<sup>18</sup>

The 222<sup>nd</sup> report of the Law Commission said that the courts should only proceed with the suits if the parties are unable to settle the dispute through ADR, as the last resort. The methods such as mediation and local dispute resolution prevailed in the ancient Indian system and the need for their revival was being strongly felt.

In its 230<sup>th</sup> Report, LCI again addressed the issue of judicial pendency.<sup>19</sup> Considering the staggering arrears, it stated that the vacations and holidays in the higher judiciary must be reconsidered. Judgments must be delivered within a reasonable time period and the use of technology and clubbing of similar cases for hearing can make the process more expeditious. Suggestions for strictly guided grant of adjournments and allowing lawyers to make brief oral arguments were also aired.

The present status of cases pending in all the courts throughout India calls for innovative ways of looking at the issue. The establishment of 'tribunals' as a parallel mechanism to judicial courts has been one of the most discussed solutions, with an underlying objective to reduce the burden of cases, especially in the High Courts.

## **B. Evolution of Tribunals**

*Income Tax Appellate Tribunal* (ITAT) was the first tribunal set-up in 1941. It was considered as an impartial and fair tribunal. After independence, on the pattern of ITAT, the *Sales Tax tribunals* were established in many States.<sup>20</sup>

Under the **Administrative Tribunals Act** of 1985, Central and State Administrative Tribunals were set up to deal with service disputes of public servants under the **Article 323A** of the Indian Constitution which empowers the Parliament to establish administrative tribunals for adjudicating disputes and complaints of certain nature. The *Central Administrative Tribunal* (CAT) has one principal bench in New Delhi, 18 Benches in the country along with 21 Circuit

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<sup>18</sup> The Law Commission of India, 222<sup>nd</sup> Report, 'Need for Justice Dispensation Through ADR etc.' (2009) p. 40

<sup>19</sup> The Law Commission of India, 230<sup>th</sup> Report, 'Reforms in the Judiciary-Some Suggestions' (2009)

<sup>20</sup> Ministry of Law and Justice, Income Tax Appellate Tribunal, Government of India < [Income Tax Appellate tribunal \(itat.gov.in\)](http://www.itat.gov.in)>

Benches.<sup>21</sup> Tribunals for certain specified subjects such as taxation, labour, land reforms etc. were also established through various legislations by the Parliament and State legislatures.<sup>22</sup>

The *Company Law Board* (CLB) was created in 1988 and started functioning in 1991. Initially these tribunals were responsible for deciding matters between citizens and government departments while the judicial courts were meant to decide all kinds of private disputes. However, most private disputes between shareholders or with the company were also transferred to these quasi-judicial bodies and various tribunals were set-up for effective resolution of distinct private disputes.<sup>23</sup>

To ascertain the liability of the railways for loss, destruction, damage or non-delivery of goods or for death or injuries to passengers in a railway accident etc., *Railway Claims Tribunal* (RCT) was established under the **Railways Act** 1989 with a Principal Bench at New Delhi and twenty other benches across the country. For facilitating speedy and effective recovery of loans given by banks and other financial institutions, and to avoid defaults etc. on the repayment, the *Debt Recovery Tribunals* (DRT) were established under the authority of the **Recovery of Debts and Bankruptcy Act** in 1993.

In 2013, the *National Company Law Tribunal* (NCLT) and *National Company Law Appellate Tribunal* (NCLAT) were established for transparent and efficient resolution of insolvency cases under the Companies Act. The *Consumer Disputes Redressal Commissions* were formed in 1986 to ensure quick and accessible remedies and redressal of consumer disputes along with promoting consumer awareness, and were revamped in 2019 to increase efficiency.<sup>24</sup>

The arrears of cases in judicial courts have always been a key area of concern and it has been explicitly acknowledged that the delayed cases are a crucial social challenge which would further dissatisfaction amongst the citizens, and subsequently affect the social and economic milieu of the nation.<sup>25</sup> The steps were taken and the numerous tribunals set up over the years.

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<sup>21</sup> Central Administrative Tribunal, Benches- CAT, Government of India < [CAT - Home \(cgat.gov.in\)](http://cgat.gov.in)>

<sup>22</sup> The Constitution (Forty-second Amendment) Act 1976, Articles 323A & 323B.

<sup>23</sup> Ministry of Corporate Affairs, Company Law Board, Government of India < [MinistryOf Corporate Affairs - clb \(mca.gov.in\)](http://MinistryOfCorporateAffairs-clb(mca.gov.in))>

<sup>24</sup> The Consumer Protection Act 2019

<sup>25</sup> The Law Commission of India, 14<sup>th</sup> Report, 'Reform of Judicial Administration' (1958); Law Commission of India, 58<sup>th</sup> Report, 'Structure and Jurisdiction of Higher Judiciary' (1974)

### III. Role of Tribunals and Statistical Analysis

The establishment of tribunals was one of the major structural reforms carried out in the legal and judicial system of India. Tribunals have always connoted a responsive system in the legal milieu of any civilised nation throughout the History.

In India, the tribunal system is a corresponding mechanism to the traditional court system. To reduce the procedural formalism and time taken in the adversarial system of adjudication, tribunals were established.<sup>26</sup> This is evident from the language used in the legislative enactments relating to Tribunals—“*The Tribunal and the Appellate Tribunal shall not be bound by the procedure lay down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice...*”<sup>27</sup> It is imperative to note that the tribunals aren't totally independent of procedures; rather, they have limited regulations to conduct adjudication given the limited scope of their subject matter jurisdiction. They have been freed from the shackles of the rules of Evidence Act and Civil Procedure code and have been vested with the powers of the Civil Courts including the power to review their decisions. Various similar provisions can be found in the other legislations governing specialised tribunals as well.

In *Jaswant Sugar Mills v. Laxmi Chand*<sup>28</sup>, Supreme Court observed that a tribunal is a body or authority invested with the judicial power of the state. These administrative bodies or authorities are required to act fairly in lines with principles of natural justice. The decisions reached by such administrative bodies are clearly distinct and separate in character from the judicial decisions pronounced by the courts.<sup>29</sup> The Apex Court reiterated the above position in a Constitution Bench judgement.<sup>30</sup>

Therefore, the tribunals primarily are meant to provide expert adjudication without getting involved in legal technicalities or procedural hassles in certain cases which require expertise to be determined judiciously. But with the passage of time, two key issues have surfaced- *firstly*, whether the tribunals could achieve the degree of success in ensuring speedy disposal of cases as anticipated or not and *secondly*, whether there is sufficient independence from the executive,

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<sup>26</sup> Regy, Prasanth and Roy Shubho, ‘Understanding Judicial Delays in Debt Tribunals’ (2017) National Institute of Public Finance and Policy < <https://ssrn.com/abstract=2996409> or <http://dx.doi.org/10.2139/ssrn.2996409>>

<sup>27</sup> The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, section 22

<sup>28</sup> AIR 1963 SC 677

<sup>29</sup> *Associated Cement Companies Ltd. v. P. N. Sharma*, AIR 1965 SC 1595

<sup>30</sup> *Kihoto Hollohan v. Zachillhu*, AIR 1993 SC 412

essential for effective working of tribunals or not. These two issues have surfaced as a cause of concern and need deliberations to resolve.

#### **A. Tribunals vis-à-vis Constitutional courts**

In 1987, in the case of *S.P. Sampath Kumar*<sup>31</sup>, the Apex Court upheld the constitutional validity of various statutes for formation of tribunals. It recognized the power of the Parliament to establish the effective, alternative institutional arrangements for judicial review, without violating the basic structure of the Constitution.<sup>32</sup> With the above judgement, the tribunals became concurrent to High Courts with an underlying idea to reduce the case burden on High Courts and bring about judicial efficiency.

However, in the case of *L. Chandra Kumar*<sup>33</sup>, a seven Judges bench of the Supreme Court opined that the jurisdiction conferred upon the High Courts under **Articles 226 and 227** and upon the Supreme Court under **Article 32** of the Constitution are parts of the essential features of our Constitution.

Post *L. Chandra Kumar*<sup>34</sup> decision, it became a trend that every decision of the administrative tribunals was appealed to the High Court before going to the Supreme Court, irrespective of the substantial legal question involved or not.

Therefore, each case will achieve finality, only after final adjudication by the High Court and then by the Supreme Court of India, which usually takes years and has frustrated the whole idea of establishment of tribunals.

#### **B. The Principle of finality: Need of the hour**

The tribunals primarily were introduced as specialist courts, which delineated decentralisation of the monolithic system of administration of justice to enhance its efficiency. These quasi-judicial bodies were intended to resolve matters expeditiously and effectively. As judicial review is an indispensable feature of the Indian Constitution and cannot be taken away, therefore, any decision of tribunals involving 'substantial questions of law' has to go to the concerned High Court, only then can it attain finality. However, Parliament may set up an

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<sup>31</sup> (1987) 1 SCC 124

<sup>32</sup> *S.P. Sampath Kumar v. Union of India* AIR 1987 SC 386

<sup>33</sup> *L. Chandra Kumar v. Union of India* AIR 1997 SC 1125

<sup>34</sup> *Ibid.* at 51

alternative and effective mechanism such as tribunals and vest the power of judicial review in it.<sup>35</sup> The tribunals may be constituted in a way to resemble judicial courts in their composition, powers and functioning, so as to effectively settle and decide cases similarly to 'judicial courts', avoiding legal formalism and time taking procedures.

Finality of judgments and decisions is a basic principle of law based upon public policy and on the maxim "*interest reipublicae ut sit finis litium*". The maxim emphasises that it is for the public good that there be an end to the litigation after a long hierarchy of appeals. To put a quietus to litigation at some point of time, it is important to provide conclusive remedies to avail justice. In the adversarial system, one or more litigants may remain unsatisfied despite the best efforts of the judges, but continuing with litigation *ad-infinitum* is not justifiable and right.<sup>36</sup>

Moreover, ensuring reconciliation and achieving normalcy between the parties must be one of the priorities of the State. By quick settlements and resolutions of disputes, resources of the society and of the State can be saved. Allowing litigants to file applications or appeals endlessly in different courts or forums also aggravates acrimony amongst the parties, and is clearly an abuse of legal process and can have far-reaching adverse impact on the administration of justice. Any dispute filed in any court of law must come to an end at some stage quickly. The verdict of the court must acquire finality at some point of time. Finality and closure to litigation is absolutely imperative to any nation governed by rule of law.<sup>37</sup>

#### IV. STATUS OF TRIBUNALS IN INDIA AND RATIONALISATION

With the passage of time, the efficiency of tribunals in India got significantly reduced due to administrative issues. The heightened executive interference and control over tribunals has affected them badly.<sup>38</sup> Recently, LCI has also highlighted the high level of pendency before tribunals. According to the report of Vidhi Centre, the *lack of independence* in the tribunals is one of the key issues in India.<sup>39</sup> Many tribunals have lost the faith and confidence of the public due to purported lack of competence, objectivity, transparency and judicial approach. Lack of

<sup>35</sup> The Law Commission of India, 124<sup>th</sup> Report, 'High Courts Arrears-A Fresh Look' (1988).

<sup>36</sup> *Chanchal Kumar Chatterjee v State of West Bengal* (29 August, 2018)

<sup>37</sup> *M. Nagabhushana v State of Karnataka* AIR 2011 SC 1113

<sup>38</sup> The Law Commission of India, 272<sup>nd</sup> Report, 'Assessment of Statutory Frameworks of Tribunals in India' (2017), Government of India

<sup>39</sup> Arijeet Ghosh, Diksha Sanyal and others, 'Reforming the Tribunals Framework in India: An Interim Report' (2018) Vidhi Centre for Legal Policy <[8thJuneFinalDraft.pdf](#)> last accessed on August 6, 2024

independence and uniformity in regulation further aggravated the whole situation.

Even a recent report of LCI has cautioned that the selection, appointment and the terms and conditions of service in tribunals must be uniform and such as to utilise best of their expertise and experience.<sup>40</sup> Multiple times, and in various cases, the Supreme Court has reiterated the opinion that if tribunals are established in substitution of courts, they must possess the same capacity, security and independence.<sup>41</sup> In *Supreme Courts Advocates-on-Record Association v. Union of India*<sup>42</sup>, it was held that there is a need for compulsory exclusion of control of executive over quasi-judicial bodies discharging responsibilities akin to Courts.

In order to rectify the ambiguity of the Finance Act, 2017, the legislature introduced the *Tribunals Reforms Act (Rationalization and Conditions of Services) Ordinance 2021*, which later became **Tribunals Reforms Act, 2021**. Its statement of objects and reasons stipulates that the presence of tribunals in certain sectors has not led to faster adjudication and they add to the cost of exchequer.<sup>43</sup> It dissolved certain existing appellate bodies such as Film Certification Appellate Board, Intellectual Property Appellate Board, Appellate Authority for Advanced Ruling (Customs), National Highways Appellate Board and Plant Variety Protection Appellate Board etc., and transferred their functions to other existing judicial bodies. It further standardised the qualifications, appointments and other conditions of service of the chairperson and members of a tribunal.<sup>44</sup>

The constitutionality of this Ordinance/Act was challenged in the Supreme Court. In *Madras Bar Association v. Union of India*<sup>45</sup>, the petitioners, i.e., Madras Bar Association argued that the above Ordinance/Act and Rules 2020 enacted are unconstitutional and will hinder judicial efficiency and effective administration of justice. The standards of appointment, qualifications and conditions of service for members of tribunals must be similar to that of the courts, ensuring their capacity to handle diverse legal and technical issues and security of tenure. The Court also

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<sup>40</sup> The Law Commission of India, 232<sup>nd</sup> Report, 'Retirement Age of Chairpersons and Members of Tribunals-Need for Uniformity' (2009)

<sup>41</sup> *Union of India v. Madras Bar Association*, (2010) 11 SCC 1; *Madras Bar Association v. Union of India*, (2014) 10 SCC 1

<sup>42</sup> (2016) 5 SCC 1

<sup>43</sup> The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021, Ministry of Finance <[https://prsindia.org/files/bills\\_acts/bills\\_parliament/The%20Tribunals%20Reforms%20\(Rationalisation%20and%20Conditions%20of%20Service\)%20Bill,2021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/The%20Tribunals%20Reforms%20(Rationalisation%20and%20Conditions%20of%20Service)%20Bill,2021.pdf)>

<sup>44</sup> The Tribunals Reforms Act, 2021, secs.3, 7.

<sup>45</sup> (2021) 7 SCC 369.

directed to constitute a *National Tribunal Commission* (NTC) which shall act as an independent body to supervise the appointment and functioning of tribunals to conduct disciplinary proceedings against the members which could be empowered to take care of administrative and infrastructural needs of tribunals in an appropriate manner.

All in all, the functioning of tribunals must be effective so that its judgements are equally accepted and trusted as those of general courts. However, apprehensions such as control exercised by government, manner and methods of appointment of presiding officers and members have raised questions upon the efficiency of the role of tribunals in dealing with pendency of cases. The above journey canvassed by the tribunals reflects an ambiguous status of the most important quasi-judicial bodies entertaining lakhs of cases.

## V. SUGGESTIONS AND CONCLUSION

According to *H.W.R Wade*:

“The social legislation of the twentieth century demanded tribunals for purely administrative reasons; they could offer speedier, cheaper and more accessible justice, essential for the administration of welfare schemes involving large numbers of small claims. The process of Courts of law is elaborate, slow and costly....”<sup>46</sup>

In view of the above lines, the intention behind idealising the ecosystem of tribunals has been recognized in India as well in other nations. The Law Commission Reports mentioned above explicitly highlight the grave situation of pendency in High Courts. In fact, the high arrear of cases is an issue prevalent at every level of the hierarchy in the Indian judicial system and the Tribunals were introduced as a solution. They grew sporadically and the legislature provided heterogeneous statutory provisions facilitating the functioning of these tribunals.<sup>47</sup> Surprisingly, the pendency in tribunals itself has evolved as yet another issue in pendency of cases, as aforementioned. Moreover, the recent reforms in the tribunal system have enabled the appellate powers of the High Courts which have raised concerns regarding burden on the High Courts itself.<sup>48</sup> Thus, the acute congestion of cases since times prior to independence has today

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<sup>46</sup> Wade, H.W.R & Forsyth, C.F., ‘Administrative Law’ (2009) 10 Oxford University Press United Kingdom, 773.

<sup>47</sup> Law Commission of India, ‘Assessment of Statutory Framework of Tribunals in India’ Law Commission Reports (272<sup>nd</sup>) 2017.

<sup>48</sup> Government of India, ‘National Judicial Data Grid’ National Judicial Data Grid-s High Courts (2024) [Welcome to NJDG - National Judicial Data Grid for High Courts of India \(ecourts.gov.in\)](https://ecourts.gov.in) (last accessed on March 26, 2024)

transpired to have become one of the weariest affairs in the current judicial system.

The act of extending the jurisdiction of Judicial Review to High Courts in the *L. Chandra Kumar* case (1997) (supra) and judicial reforms of 2021 abolishing nine tribunals and reinstating the jurisdiction of the abolished tribunals to High Courts, has transferred the burden back to High Courts, already unable to function efficiently.<sup>49</sup> Moreover, the pendency of cases in Tribunals itself also raises a red flag towards its efficiency. The policy makers must initiate strategies to regulate and optimise the functions of tribunals, instead of evading it out. This calls for further reforms in the tribunal system in India. Few of them could be:

1. The exclusion of jurisdiction of High Courts in instances of appeals must be respected.<sup>50</sup> The statistics regarding pending cases, increasing population and limited resources (manpower and institutional) makes the system of tribunals as an indispensable solution. The establishment of tribunals with similar powers of High Courts will reduce the arrears in High Courts related to specific subject matters in civil cases such as income tax, environment and insurance if regulated per requirement.
2. The decisions of tribunals must be considered as final, except only in cases where the appeal is required to interpret a substantial question of law by the constitutional courts. The aim and intent of establishing tribunals must be understood in its letter and spirit. The tribunals are established as means to provide speedy disposal of cases relating to specific subject matters, which must be manned by judges or legal experts having legal or judicial expertise and experience, along with the persons having specialised knowledge of the case at hand.
3. Inadvertent entertainment of petitions and cases in the Apex Court must be checked and dissuaded. Expansion of the jurisdiction of judicial institutions, specifically the High Court has increased the backlog of cases tremendously and has resulted in dilution of the right to access justice.<sup>51</sup> Only the cases requiring interpretation or re-formulation of substantial questions of law should be considered and taken up by the Constitutional Courts and strict 'no' must be conveyed to unnecessary and vexatious filing of appeals so that 'finality' to the litigation may be achieved at the earliest.

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<sup>49</sup> PRS, 'The Tribunals Reforms (Rationalization and Conditions of Service) Bill, 2021' PRS Legislative Research [The Tribunals Reforms \(Rationalisation and Conditions of Service\) Ordinance, 2021 \(prsindia.org\)](https://prsindia.org) (last accessed on March 26<sup>th</sup>, 2024).

<sup>50</sup> *Ibid.* at 46, page 92.

<sup>51</sup> Ghosh, Y. 'Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency' (2018) 5(1) Asian Journal of Legal Education, 21-39. <https://doi.org/10.1177/2322005817733566>

4. To ensure uniformity in administration of tribunals throughout the country, a separate and comprehensive mechanism or an *Apex Tribunal Council* should be set up for supervision. The regulation of all the tribunals in India including managing the appointments, tenures and conditions of service etc. of presiding officers, members and staff etc. of all the tribunals must be entrusted with such body.
5. To improve the efficiency and smooth working, the tribunals must be digitised at the earliest. Provisions for necessary training to the tribunal members and staff along with required assistance for the parties filing cases before tribunals are must, so as to get quick and desired results. Digitalization of tribunals in India will help citizens to have an equal and easy access to justice.
6. The tribunals must be established at the grass root levels as an effective alternative mechanism. An effective and robust system of tribunals can be shaped by the policy makers– a system that is not subordinate to the other judicial institutions and has concurrent powers and resources.

The citizens and non-citizens of India derive right to justice from various nuances in the Indian Constitution and the social and economic development of the nation gets affected by the delay in dispensation of justice. Moreover, globalisation and liberalisation have opened the gates of trade and development for all, the continuity and requisite pace of which cannot be maintained and sustained without the effective participation and role of the third wing of governance i.e. the judiciary. Thus, there is a need for ensuring efficient and quick disposal of cases, may it be through the formal judicial courts or quasi-judicial bodies or any other system in sync with the fundamental constitutional requirements.