JUDICIAL INDEPENDENCE OF TRIBUNALS IN INDIA

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ABSTRACT

Constitutions promise judicial independence in the abstract; institutions have to deliver it in practice, and it is in that gap that the story of India's administrative tribunals really unfolds. Created under Articles 323A and 323B to offer faster, more expert justice in areas like taxation, insolvency, and service disputes, these tribunals were from the outset asked to do something structurally difficult: sit in judgment over the executive while remaining dependent on it for appointments, tenure, and day-to-day administration. This article follows how the judiciary has tried to work through that contradiction, starting from the colonial origins of administrative adjudication and the early jurisprudence of *S.P. Sampath Kumar v. Union of India* and *L. Chandra Kumar v. Union of India*, before turning to its main focus: the fifteen-year, six-judgment run of Madras Bar Association litigation. What emerges from that litigation is a fairly consistent pattern: the Court lays down safeguards to protect tribunal independence, and the executive, sooner or later, responds with legislation or rules that bring back the same problems in a slightly different form. The article examines this pattern closely through the 2025 decision in *Madras Bar Association v. Union of India*, which struck down the Tribunals Reforms Act, 2021 and directed the creation of a National Tribunals Commission, and uses it to unpack the structural pathologies, appointment manipulation, tenure insecurity, and administrative subordination to parent ministries that have allowed executive influence to persist despite repeated judicial correction. In doing so, the reader is taken through the doctrinal evolution of tribunal independence in India, the recurring institutional dynamics between the judiciary and the executive, and the design imperatives that will determine whether the proposed National Tribunals Commission finally breaks this cycle or becomes its latest instalment.

Keywords: Judicial independence, Administrative tribunals, Madras Bar Association litigation, Separation of powers, National Tribunals Commission

Introduction

Judicial independence is often described as the backbone of any constitutional democracy, but in reality, it functions more like its lifeblood, quietly sustaining the legitimacy of every decision that courts and adjudicatory bodies make. Without it, even the most carefully reasoned judgments lose their authority, because the process itself becomes suspect. This concern becomes particularly complex in the context of administrative tribunals in India. Created under Articles 323A and 323B of the Constitution[1], these bodies were envisioned as specialised forums that could deliver faster and more expert justice in areas such as taxation, environmental law, insolvency, telecommunications, and service disputes. Over time, they have come to occupy a central place in India's legal system, handling an enormous volume of cases that directly affect governance, business, and individual rights. Yet, despite this importance, their institutional design has often placed them in a vulnerable position dependent on the executive for appointments, funding, and administration, even when they are tasked with reviewing executive action. This structural contradiction lies at the heart of the debate on tribunal independence.

Recognising this tension, the Supreme Court has, over the decades, gradually attempted to build a constitutional framework that protects tribunals' autonomy. Starting with S. P. Sampath Kumar v. Union of India[2], the Court initially upheld the tribunal system but emphasised the need for safeguards to ensure fairness and independence. This approach matured significantly in L. Chandra Kumar v. Union of India[3], where the Court reaffirmed the centrality of judicial review and clarified that tribunals cannot replace the constitutional role of High Courts. These decisions collectively signalled an important shift: tribunals were no longer to be seen as mere administrative conveniences, but as integral parts of the justice delivery system, bound by the same constitutional expectations of impartiality and independence as traditional courts.

However, what makes this area of law particularly fascinating and at times frustrating is the persistent gap between judicial ideals and executive practice. Nowhere is this more visible than in the long-running litigation initiated by the Madras Bar Association. Over a span of more than fifteen years, this body has repeatedly approached the Supreme Court to challenge various legislative and executive attempts that, in different ways, threatened the independence of

[1] Constitution of India 1950, arts 323A and 323B.
[2] *SP Sampath Kumar v Union of India* AIR 1987 SC 386 (n 1
[3] *L Chandra Kumar v Union of India* [1997] 3 SCC 261 (n 2).

tribunals, whether through short tenures, excessive executive control over appointments, or administrative dependence. Each time, the Court responded by laying down clearer principles and stronger safeguards. Yet, each time, new measures emerged that seemed to sidestep or dilute those very principles. This back-and-forth has come to resemble an ongoing constitutional dialogue, in which the judiciary draws boundaries and the executive tests those limits.

The latest development in this evolving narrative came in Madras Bar Association v. Union of India[4], a decision that can be seen as both a culmination of past efforts and a turning point for the future. The Court, in this case, took a firm stand against what it viewed as a deliberate attempt to override its earlier rulings through the Tribunals Reforms Act, 2021. By striking down key provisions, it reinforced the idea that legislative power cannot be used to undo constitutional principles already settled by the judiciary. The introduction of the concept of "impermissible legislative override" reflects a deeper concern about preserving the balance between different branches of government. Importantly, the Court did not stop at criticism, it also pointed toward reform by directing the establishment of a National Tribunals Commission, signalling a move toward creating an institutional framework that could ensure long-term independence.

Taken together, this journey is not just about tribunals; it is about the evolving understanding of constitutional governance in India. It raises fundamental questions about how power should be distributed, how accountability should be maintained, and how institutions can remain independent while functioning within a system of checks and balances. The discussion that follows builds on this foundation by exploring the historical development of tribunals, analysing the key judicial decisions that have shaped their functioning, examining the structural challenges that persist, and evaluating whether recent reforms offer a meaningful path toward securing their independence in both form and substance.

Historical and Constitutional Architecture

Colonial Antecedents and Post-Independence Expansion

The roots of administrative adjudication in India go back well before Independence, to a time when the colonial state began creating specialised forums to deal with complex governance issues. Bodies such as revenue boards, industrial tribunals, and tax appellate authorities were

[4] *Madras Bar Association v Union of India* 2025 INSC 1330 (n 3).

established not only to ease the burden on ordinary courts but also to handle disputes in a more technical and controlled manner. One of the most enduring examples is the Income Tax Appellate Tribunal, established in 1941, which continues to function even today. Interestingly, despite its long-standing reputation as a relatively independent and effective tribunal, it became a focal point in the later constitutional debates, especially in the Madras Bar Association v. Union of India, where the Supreme Court had to step in to restore the service conditions of its members after legislative changes were struck down. This continuity from colonial times to the present highlights how deeply embedded tribunals are in India's administrative and legal landscape.

When India became independent, the Constitution's framers were aware of the growing role of administrative bodies, but they chose not to create a detailed constitutional framework for tribunals. At that stage, the focus was on building a strong judiciary, and tribunals were seen more as supplementary mechanisms rather than central institutions. However, as the Indian state expanded, taking on roles in economic regulation, public administration, and welfare governance, the volume and complexity of disputes increased dramatically. Traditional courts, already struggling with delays and backlogs, found it difficult to keep pace. This created a practical need for specialised forums that could deliver quicker and more expert decisions, paving the way for the modern tribunal system.

The Forty-Second Amendment and the Administrative Tribunals Act, 1985

A major turning point came with the Constitution (Forty-Second Amendment) Act, 1976, which formally introduced Articles 323A and 323B into the Constitution[5]. These provisions empowered Parliament and state legislatures to establish tribunals for specific subjects such as service matters, taxation, and other regulatory fields. What made this development particularly significant and controversial was that it allowed the jurisdiction of ordinary courts, especially High Courts under Articles 226 and 227, to be excluded in favour of tribunals. In effect, this meant that tribunals were not just additional forums but could replace the role of constitutional courts in certain areas. This shift set the stage for decades of constitutional debate over whether such exclusion was compatible with the principles of judicial review and independence.

Acting under this new framework, the government enacted the Administrative Tribunals Act[6], 1985, leading to the creation of the Central Administrative Tribunal (CAT) and similar bodies

[5] Constitution (Forty-Second Amendment) Act 1976.
[6] Administrative Tribunals Act 1985.

at the state level. The stated goal was straightforward: reduce the burden on High Courts by diverting service-related disputes of government employees to specialised tribunals. On paper, this seemed like a practical and efficient solution. However, the way these tribunals were structured revealed a deeper problem. The appointment of members, their tenure, administrative control, and even removal processes were largely in the hands of the executive, particularly departments like the Department of Personnel and Training. This created an uncomfortable paradox: a body meant to adjudicate disputes involving the government was itself dependent on that very government for its functioning and survival.

This structural contradiction lies at the heart of the constitutional concerns surrounding tribunals in India. While they were designed to improve efficiency and expertise in adjudication, their institutional design often compromised the independence essential to delivering fair and impartial justice. It is this tension between the promise of specialised justice and the reality of executive control that has shaped the long and evolving judicial engagement with tribunal governance in India.

Foundational jurisprudence: from Sampath Kumar to L. Chandra kumar

The evolution of tribunal jurisprudence in India reflects a careful, and at times uneasy, attempt by the Supreme Court to balance efficiency in administration with the deeper constitutional commitment to judicial independence. This journey begins with S. P. Sampath Kumar v. Union of India, where the validity of the Administrative Tribunals Act, 1985, was directly challenged. The core concern before the Court was not merely about the creation of tribunals, but about what their existence meant for the constitutional role of High Courts. The petitioners argued that removing the jurisdiction of High Courts, while placing adjudication in bodies that were structurally dependent on the executive, would undermine the basic structure of the Constitution.[7]

The Court, however, did not strike down the law. Instead, it adopted a more cautious and pragmatic approach by "reading down" the provisions, thereby preserving the statute while simultaneously imposing constitutional safeguards. This gave rise to what is now known as the substitution doctrine, the idea that tribunals can replace High Courts only if they genuinely function as their equivalents. The Court made it clear that substitution cannot be symbolic; it must be substantive. A tribunal must possess the same level of independence, expertise, and

[7] *SP Sampath Kumar v Union of India* AIR 1987 SC 386 (Constitution Bench) (n 1).

adjudicatory strength as a High Court if it is to take over its role. In doing so, the Court implicitly acknowledged that efficiency cannot come at the cost of constitutional values. It also established certain structural safeguards, including requiring that the Chairman be a sitting or retired High Court judge and that the appointment process reflect judicial standards. What is notable about this judgment is its method, which did not dismantle the tribunal system but attempted to constitutionalise it from within by setting minimum standards of independence. This approach, blending restraint with principle, would shape judicial thinking in the years to come.

A decade later, the Supreme Court revisited the issue in *L. Chandra Kumar v. Union of India*[8], and this time, the shift was far more decisive. A seven-judge bench fundamentally re-examined the earlier position and concluded that the complete exclusion of High Court jurisdiction could not be sustained. The Court held that the power of judicial review under Articles 226 and 227 is not just another constitutional provision; it is part of the basic structure of the Constitution and therefore cannot be taken away, even by legislation. This marked a constitutional watershed. Provisions that sought to exclude High Court jurisdiction were declared unconstitutional, restoring the supervisory role of High Courts over tribunal decisions.

At the same time, the Court did not reject the tribunal system altogether. Instead, it repositioned tribunals as first-tier adjudicatory bodies, whose decisions would remain subject to scrutiny by High Courts. This dual structure sought to preserve the benefits of specialisation and efficiency while ensuring that constitutional oversight remained intact. More importantly, the judgment deepened the conversation on independence. It recognised that if tribunals are to exercise judicial power, even at the first level, they must be designed to safeguard both structural and functional autonomy. This meant not only fair and secure appointment, tenure, and removal processes comparable to those of High Court judges, but also administrative independence from the very ministries whose decisions they are meant to review.

One of the most significant contributions of *L. Chandra Kumar* was its insistence on separating tribunals from executive control in practical terms. By directing that administrative supervision should ideally rest with the Ministry of Law rather than the parent ministry, and by emphasising safeguards in removal procedures, the Court laid down a constitutional baseline for tribunal independence. These directions were not merely procedural—they reflected a deeper

[8] *L Chandra Kumar v Union of India* [1997] 3 SCC 261 (Seven-Judge Constitution Bench) (n 2).

understanding that independence is not achieved through formal declarations alone, but through institutional design.

Together, *Sampath Kumar* and *L. Chandra Kumar* mark two distinct but connected phases in the Court's approach. The former sought to preserve the tribunal system by setting conditions for its legitimacy, while the latter reaffirmed constitutional supremacy by restoring judicial review and strengthening safeguards. In doing so, the Supreme Court did not just resolve specific disputes; it laid the intellectual and doctrinal foundation for all subsequent debates on tribunal independence, including the later interventions in the Madras Bar Association cases.[9]

The madras bar association trajectory: a decade and a half of constitutional contestation

The evolution of tribunal independence in India finds its most sustained and dynamic expression in the litigation pursued by the Madras Bar Association. What began as a series of challenges to specific statutory frameworks gradually transformed into a prolonged constitutional dialogue between the judiciary and the executive. Over nearly 15 years, through multiple rounds of litigation, the Association consistently brought before the Supreme Court a fundamental concern: whether adjudicatory bodies that exercise judicial power can remain meaningfully independent when their structure, appointments, and functioning are closely tied to executive control. This trajectory is remarkable not merely for the number of decisions it has generated, but for the pattern it reveals, one in which the Court repeatedly articulated clear constitutional standards, only to find those standards diluted, reworked, or in some instances, effectively disregarded by subsequent legislative or executive action.

MBA I: Union of India v. R. Gandhi (2010): Laying the Constitutional Baseline

The first major articulation of this constitutional tension emerged in Union of India v. R. Gandhi, where the Supreme Court examined the validity of the National Company Law Tribunal and its appellate counterpart. The Court recognised the practical need for specialised adjudicatory bodies in complex areas such as company law, particularly in light of the increasing burden on traditional courts. However, it was equally clear that functional efficiency could not come at the cost of constitutional principle. Several provisions governing the structure and functioning of these tribunals were found to compromise judicial independence

[9] *L Chandra Kumar v Union of India* [1997] 3 SCC 261 (n 2); see also *Supreme Court Advocates on Record Association v Union of India* [1993] 4 SCC 441.

and blur the separation of powers. In response, the Court did not reject the tribunal model altogether; instead, it laid down what may be described as a constitutional template. It insisted on judicial primacy in the selection process, meaningful qualifications for judicial members, and a clear demarcation between judicial and technical roles. This decision thus established a baseline, a minimum constitutional architecture that would guide all future tribunal design.

MBA II: Madras Bar Association v. Union of India (2014): The National Tax Tribunal Struck Down

This foundational position was significantly reinforced in Madras Bar Association v. Union of India, where the Court was called upon to examine the National Tax Tribunal Act. Unlike the earlier case, which focused on structural safeguards, this litigation brought into sharp focus the question of jurisdiction. The Act sought to transfer the adjudication of substantial questions of law in tax matters from High Courts to a specialised tribunal. The Supreme Court responded by striking down the legislation in its entirety. It reasoned that disputes involving substantial questions of law form an essential part of the constitutional role of High Courts, and that transferring such jurisdiction to a body lacking comparable independence would undermine the basic structure of the Constitution. Importantly, the Court reframed the issue: the concern was not merely about institutional competence, but about the constitutional implications of shifting adjudicatory power from a protected judicial forum to a body susceptible to executive influence. In doing so, the Court emphasised that tribunalisation cannot be used as a means to bypass constitutional safeguards.

MBA III: Madras Bar Association v. Union of India (2015): Companies Act, 2013 Revisited

The subsequent decision in Madras Bar Association v. Union of India reflects a more iterative phase of judicial engagement. Here, the Court revisited the tribunal framework under the Companies Act, 2013[10], which had been enacted in response to earlier judicial concerns. Rather than approaching the matter in absolute terms, the Court examined whether the revised statutory provisions adequately addressed the previously identified defects. While the framework was upheld in broad terms, the Court introduced further refinements, particularly regarding the role and qualifications of technical members. It underscored that such members should be appointed only where specialised expertise is genuinely required, and not as a matter

[10] *Madras Bar Association v Union of India* [2015] 8 SCC 583 (*MBA III*).

of administrative convenience. This judgment illustrates the Court's evolving role not merely as a reviewer of legislation, but as an active participant in shaping institutional design in accordance with constitutional principles.[11]

MBA IV: Madras Bar Association v. Union of India (2020): The 2020 Rules Invalidated

The tension between judicial direction and executive response became more pronounced in Madras Bar Association v. Union of India, where the validity of the 2020 Rules governing tribunal appointments and service conditions was challenged. Although these rules were ostensibly framed in compliance with earlier judicial pronouncements, they retained features that, in substance, reintroduced executive influence. [12]The requirement that the Selection Committee recommend two names for each appointment effectively allowed the executive to exercise discretion in choosing candidates, thereby diluting judicial primacy. Similarly, the prescription of a four-year tenure was seen as insufficient to ensure security of office.[13] The Supreme Court invalidated these provisions, emphasising that independence cannot be compromised through indirect mechanisms or procedural design. The judgment made it clear that constitutional compliance requires not only formal adherence but substantive alignment with the principles previously articulated.

MBA V: Madras Bar Association v. Union of India (2021): The Ordinance and the 'Impermissible Override'

This ongoing contest reached a particularly sharp moment in Madras Bar Association v. Union of India. In response to earlier rulings, the executive promulgated the Tribunals Reforms Ordinance, 2021, which reintroduced several provisions that had already been declared unconstitutional. The Court's response was notably firm. It struck down these provisions and articulated the concept of an "impermissible legislative override," holding that the State cannot simply reenact invalidated provisions without addressing the constitutional defects identified by the judiciary. This marked an important doctrinal development, framing the issue not merely as one of statutory validity but as a question of constitutional propriety and institutional respect.

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[11] Companies Act 2013, Parts XIV and XV.

[12] *Rojer Mathew v South Indian Bank Ltd* [2019] 9 SCC 209 (Constitution Bench).

[13] Tribunal, Appellate Tribunal and Other Authorities (Qualification, Experience and Other Conditions of Service of Members) Rules 2020.

What followed further highlighted the depth of this institutional tension. Despite the Court's clear pronouncement, Parliament enacted the Tribunals Reforms Act, 2021, incorporating many of the same provisions that had just been invalidated. This sequence of events underscored a recurring pattern in the tribunal reform process, one characterised by judicial articulation of principles and executive attempts to reassert control through legislative means.

Viewed as a whole, the Madras Bar Association's trajectory reveals more than a series of individual rulings. It reflects a sustained constitutional struggle over the meaning and content of judicial independence in the context of specialised adjudicatory bodies. The judiciary's role has been one of continuous vigilance, repeatedly reaffirming that independence is not an abstract ideal but a structural necessity embedded in the design and functioning of institutions. At the same time, the executive's responses illustrate the challenges of reconciling administrative efficiency with constitutional discipline. The result is an evolving body of jurisprudence that not only defines the contours of tribunal governance but also illustrates the enduring tension between power and accountability within India's constitutional framework.

MBA VI: Madras Bar Association v. Union of India, 2025 INSC 1330: The Constitutional Reckoning

The challenge to the Tribunals Reforms Act, 2021, finally came to hearing before a two-judge bench of Chief Justice B.R. Gavai and Justice K. Vinod Chandran. The proceedings were themselves illuminating: the Attorney General, R. Venkataramani, sought repeated adjournments, prompting CJI Gavai to remark pointedly that the delays appeared designed to push the hearing beyond his own retirement, noting that the Court had 'accommodated the Attorney General multiple times' and that such conduct was 'very unfair to the Court' in a matter of significant constitutional consequence. The observation exposed the executive's strategy of temporal dilution using procedural delay to defer constitutional accountability.

On 19 November 2025, the bench delivered its judgment, striking down Sections 3(1), 3(7), 4, 5, 6, 7(1), and 33 of the Tribunals Reforms Act, 2021. The Court's reasoning was structured around three constitutional propositions. First, constitutional supremacy: India operates under constitutional supremacy, not parliamentary sovereignty, and Parliament's legislative power, however wide, must be exercised within the contours of constitutional rights and structural principles. Second, the binding force of precedent: Article 141 makes the law declared by the Supreme Court binding on all courts and authorities, including Parliament as a legislator; re-enacting provisions struck down as unconstitutional without curing their constitutional defects is not an exercise of legislative power but a violation of constitutional authority. Third, the non-negotiability of judicial independence: the structural requirements for tribunal independence selection by a judicially chaired committee whose recommendation binds the executive, a minimum five-year tenure, removal analogous to that of High Court judges, and administrative separation from parent ministries are constitutional minimums embedded in the basic structure and cannot be contracted by legislative preference.

Key Holdings of MBA VI (2025 INSC 1330): The Tribunals Reforms Act, 2021 is struck down as violating separation of powers and judicial independence, which are part of the basic structure. Parliament cannot re-enact provisions previously declared unconstitutional without curing their defects. The Union Government is directed to constitute a National Tribunals Commission within four months. MBA IV and MBA V remain the binding constitutional baseline for all tribunals.

Justice K. Vinod Chandran, in a characteristically pithy concurrence, distilled the essence of the Court's holding: 'The Tribunals Reform Act, 2021 is a replica of the struck down Ordinance; old wine in a new bottle. The wine whets not the judicial palette, but the bottle merely dazzles.' The concurrence's metaphorical clarity underscored the Court's deepening institutional frustration with executive recidivism.

The Court also addressed a specific relief claim regarding Income Tax Appellate Tribunal (ITAT) members who had been appointed on 11 September and 1 October 2021 under terms that would now be governed by the invalidated Act. The bench restored these members' service conditions to be governed by the 'old Act and the old Rules,' demonstrating a concern not merely for doctrinal correctness but for the practical protection of individuals who had relied on the executive's statutory arrangements. Additionally, on the representation of the Institute of Chartered Accountants of India, the Court in a supplementary note dated 20 November 2025 held that the requirement of twenty-five years of experience for Chartered Accountants to be eligible as technical/accountant members of the ITAT was arbitrary an eligibility threshold that effectively meant no Chartered Accountant could qualify before age fifty and struck it down in line with the earlier invalidation of the corresponding advocates' experience requirement in MBA IV.

Structural pathologies: the anatomy of continuing executive dominance

The long line of decisions culminating in Madras Bar Association v. Union of India might suggest that the constitutional position on tribunal independence is now firmly settled. Yet, the lived reality tells a more complicated story. Beneath the clarity of doctrine lies a set of persistent structural problems, deeply embedded features of the tribunal system that continue to enable executive dominance despite repeated judicial correction. These are not isolated defects, but systemic patterns that shape how tribunals function in practice.

The Appointment Problem: Executive Patronage Persists

One of the most enduring concerns relates to the process of appointment. Over the years, the Supreme Court has consistently emphasised that appointments must be insulated from executive control, requiring selection committees chaired by the judiciary and bound by their recommendations. Yet, in practice, executive influence continues to linger in subtle but significant ways.

Selection committees still often include senior bureaucrats, particularly Secretaries from the very ministries whose decisions tribunals are meant to review. While recent rulings have attempted to limit their role, even their presence can shape institutional dynamics. More importantly, the process does not end with a recommendation. The time taken by the executive to act on these recommendations remains largely unregulated, resulting in prolonged delays and a growing number of vacancies.[14]

The consequences of this are visible across the tribunal system. Bodies such as the National Company Law Tribunal, the National Company Law Appellate Tribunal, and the Income Tax Appellate Tribunal are burdened with an overwhelming number of pending cases. Collectively, commercial tribunals in India are dealing with lakhs of disputes involving enormous financial stakes. Delays in appointments translate directly into delays in justice, undermining the very purpose for which these specialised bodies were created. This situation is not new. The Law Commission of India had, as early as its 272nd Report, highlighted alarming vacancy levels across tribunals. Yet, despite repeated judicial and institutional attention, there has been little evidence of sustained structural reform.[15] The persistence of vacancies suggests that the problem is not merely administrative inefficiency, but a deeper reluctance to relinquish executive control over appointments.

[14] Insolvency and Bankruptcy Code 2016, s 12; LiveLaw, 'Madras Bar Association and the Economic Cost of Tribunal Dysfunction' (LiveLaw, January 2026).
[15] Law Commission of India, 272nd Report, 'Assessment of Statutory Frameworks of Tribunals in India' (October 2017) ('Law Commission 272nd Report').

Tenure, Chilling Effects, and the Reappointment Vulnerability

If appointments determine who enters the system, tenure determines how they function within it. Here too, a pattern of concern emerges. The repeated attempts by the executive to impose short tenures, particularly the four-year term that was struck down multiple times, reveal a preference for maintaining some control over tribunal members

Short, renewable tenures create a structural chilling effect. A tribunal member nearing the end of their term, and dependent on the executive for reappointment, may consciously or unconsciously be influenced in their decision-making. This is not something that can be easily demonstrated in individual cases, but its impact is systemic. Over time, it risks producing an institutional culture of caution and deference rather than independence.[16]

The Supreme Court has sought to address this by insisting on a minimum tenure of five years and by questioning the logic of reappointments. However, the deeper issue goes beyond tenure length. True independence requires that tribunal members, like High Court judges, be completely insulated from the prospect of reappointment by the executive. Without this, the possibility of influence, however indirect, remains embedded within the system.[17]

In reaffirming these principles, the Court in MBA VI signalled that tenure is not a matter of administrative convenience but a constitutional safeguard. Yet the repeated need to restate this position underscores how contested even this basic protection remains.

Administrative Subordination to Parent Ministries

Another structural weakness lies in the administrative placement of tribunals. Despite clear judicial guidance in L. Chandra Kumar v. Union of India[18], tribunals in India continue to function under the control of the very ministries whose decisions they adjudicate. This arrangement creates an inherent conflict. A tribunal reviewing environmental decisions, for instance, remains administratively dependent on the environment ministry. Similarly, bodies dealing with telecommunications or labour disputes often operate under the corresponding executive departments. This overlap does not merely affect perception; it raises genuine concerns about institutional neutrality.

[16] Rahul Hemrajani, 'Tribunal Reforms in India: A Critical Evaluation of the 2021 Act' (2022) 34 National Law School of India Review 1, 12-15.

[17] *Madras Bar Association v Union of India* [2021] 7 SCC 369 (n 25); *Madras Bar Association v Union of India* [2021] 9 SCC 560 (n 27); *Madras Bar Association v Union of India* 2025 INSC 1330 (n 3).

[18] *L Chandra Kumar v Union of India* [1997] 3 SCC 261 (n 2).

Independence is not only about actual impartiality but also about the appearance of impartiality. When a tribunal is financially, administratively, and operationally linked to a party that frequently appears before it, public confidence in its fairness is inevitably weakened.

The proposal for a National Tribunals Commission, as directed in MBA VI, offers a potentially transformative solution. By creating a single, independent body to oversee all tribunals, such a commission could break the direct line of dependence between tribunals and parent ministries. Comparative experience, particularly in jurisdictions like the United Kingdom, demonstrates that unified administrative structures can significantly strengthen institutional independence. Whether this vision will be realised in practice, however, remains to be seen.[19]

The Technical Member Controversy and Specialisation Concerns

The inclusion of technical members in tribunal benches has long been justified on the grounds of specialisation. In theory, their expertise is meant to complement judicial reasoning, particularly in complex or domain-specific disputes. In practice, however, this arrangement has generated persistent concerns.

The Supreme Court, beginning with *Union of India v. R. Gandhi*, made it clear that technical members should play a limited and carefully defined role. They are meant to assist in areas requiring specialised knowledge, not to replace judicial decision-making in matters involving substantial questions of law. Yet, this distinction has not always been consistently maintained. There have been instances where technical members have presided over benches dealing with issues that are fundamentally legal in nature, raising questions about both competence and constitutional propriety.

The issue is further complicated by eligibility criteria that are either too restrictive or poorly designed. The recent intervention concerning the experience requirement for Chartered Accountants illustrates this problem. Setting thresholds so high that qualified professionals are effectively excluded does not enhance expertise; it reduces the pool of eligible candidates and contributes to vacancies. And vacancies, in turn, weaken the functioning of tribunals, delaying adjudication and, in some cases, discouraging rigorous scrutiny of executive action.[20]

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[19] Tribunals, Courts and Enforcement Act 2007 (UK).
[20] *Union of India v R Gandhi* [2010] 11 SCC 1 (n 17).

In this sense, the debate over technical members is not merely about composition, it is about the very purpose of tribunalisation. If specialisation is to justify the creation of tribunals, it must be meaningful, balanced, and consistent with constitutional principles. Otherwise, it risks becoming a convenient rationale for institutional arrangements that fall short of genuine independence.

Taken together, these structural pathologies reveal a deeper truth: constitutional principles, however clearly articulated, do not automatically translate into institutional reality. The persistence of executive dominance in subtle forms through appointments, tenure, administration, and composition suggests that the challenge of securing tribunal independence is far from resolved. It is not enough to declare independence; it must be designed, protected, and continuously enforced within the everyday functioning of institutions.

The national tribunals commission: promise, design, and prospects

The 2025 Direction and Its Significance

MBA VI's direction to the Union Government to constitute a National Tribunals Commission (NTC) within four months of the judgment's date, carrying a deadline of approximately March 2026, is the most structurally significant judicial directive on tribunal governance since L. Chandra Kumar's restoration of High Court superintendence in 1997. The direction represents judicial recognition that the piecemeal, case-by-case correction of unconstitutional tribunal provisions is institutionally unsustainable: each legislative cycle reproduces the same defects in slightly altered statutory clothing, compelling the Court to revisit the same constitutional ground in an endless loop that serves no one except those who benefit from institutional instability.

The Court specified that the NTC must adhere to the principles of independence from executive control, professional expertise, transparent appointment processes, and oversight mechanisms that reinforce public confidence. [21]These parameters, while deliberately broad, align closely with the recommendations of the Law Commission of India's 272nd Report (2017), which proposed a statutory National Tribunal Commission with authority over appointments, removal, service conditions, infrastructure, and performance oversight across all central tribunals.[22]

[21] *Madras Bar Association v Union of India* 2025 INSC 1330 (n 3), directions para.
[22] Law Commission 272nd Report (n 37).

Design Imperatives for a Credible NTC

For the NTC to deliver genuine institutional transformation rather than cosmetic restructuring, several design imperatives must be honoured. On governance, the NTC must be a body corporate with independent statutory standing, not a committee or sub-body of an existing ministry. Its chairperson should be a retired Chief Justice of India or a retired Supreme Court judge of equivalent standing, appointed on the recommendation of the Chief Justice of India. On appointments, all tribunal member selections must be routed through the NTC's Search-cum-Selection mechanism, with a judicially chaired committee whose single recommendation binds the executive. On administration, all central tribunals must be transferred to the NTC's administrative supervision, severing links with parent ministries. On finances, the NTC should have its own budget appropriation, insulating it from executive financial leverage.

The UK model provides instructive comparative guidance.[23] The Tribunals, Courts and Enforcement Act 2007 created the First-tier and Upper Tribunal structures within a unified administrative framework, with the Senior President of Tribunals providing judicial leadership and appointments conducted through the Judicial Appointments Commission.[24] The result has been a structurally coherent, publicly credible tribunal system that preserves specialisation while delivering genuine adjudicative autonomy. India's tribunal landscape, more fragmented, more politically contested, and more deeply embedded in executive patronage networks, will require equally determined structural surgery.

The Risk of Non-Compliance and the Limits of Judicial Authority

The most sobering lesson of the MBA trajectory is that judicial directions, however constitutionally authoritative, are not self-executing. MBA V's direction to cure the Ordinance's defects was met by the 2021 Act, which reproduced those defects. The previous directions from

L. Chandra Kumar on parent-ministry separation were never fully implemented. The Law Commission's NTC recommendation from 2017 gathered dust for eight years. The question is not whether the Supreme Court has the constitutional authority to mandate the NTC MBA VI, which makes clear that it does, but whether the executive has the institutional will to comply,

[23] Sir Andrew Leggatt, 'Tribunals for Users: One System, One Service' (UK Lord Chancellor's Department 2001).
[24] Tribunals, Courts and Enforcement Act 2007 (UK) (n 41).

or whether the Bar Association will need to return to the Court with yet another contempt or compliance petition.[25]

CJI Gavai's pointed observations during the hearing, remarking on the government's pattern of strategic delay designed to outlast individual Chief Justices, suggest that the Court is acutely aware of this dynamic. The four-month deadline, rather than the more typical 'reasonable time' direction, signals deliberate judicial urgency. Whether the March 2026 deadline produces a compliant and genuinely independent NTC, or produces another exercise in constitutional circumvention, will determine whether MBA VI marks the end of a fifteen-year constitutional struggle or merely its latest instalment.

Conclusion

The long journey of the Madras Bar Association v. Union of India cases, stretching across fifteen years and six major judgments, stands as one of the most revealing constitutional narratives in India's post-independence history. It is not merely a story about tribunals; it is a story about the limits of judicial intervention when confronted with persistent institutional resistance. Each time the Supreme Court struck down provisions that undermined tribunal independence, the executive responded not by fully accepting the constitutional mandate, but by reintroducing similar features in new legislative forms. What emerges, therefore, is a cycle of correction and circumvention, one that exposes how difficult genuine institutional reform can be when those required to implement it are also those most affected by it.

This constitutional story traces its roots back to S. P. Sampath Kumar v. Union of India, where the Court first articulated a simple but powerful idea: if tribunals are to replace High Courts, they must be more than symbolic substitutes.[26] They must possess real independence, real expertise, and the courage to decide cases even against the government when justice demands it. A decade later, this principle was firmly embedded into constitutional doctrine by L. Chandra Kumar v. Union of India, which restored the supervisory role of High Courts and clarified that certain safeguards, such as fair appointments, secure tenure, impartial removal processes, and administrative independence, are not optional features but constitutional essentials.

[25] *L Chandra Kumar v Union of India* [1997] 3 SCC 261 (n 2); HM Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 2013) vol 3, 3189.
[26] *SP Sampath Kumar v Union of India* AIR 1987 SC 386 (n 1).

The Madras Bar Association litigation transformed these principles from abstract doctrine into enforceable standards. Each judgment in the series addressed a new method through which executive control attempted to persist. Step by step, the Court dismantled these mechanisms: it restructured appointment processes, protected judicial tenure, rejected diluted safeguards, and coined doctrines such as "impermissible legislative override" to describe attempts at bypassing judicial rulings. [27]By the time of the 2025 decision, delivered under the leadership of Chief Justice B.R. Gavai, the Court's message had become unmistakably clear: constitutional principles cannot be negotiated through legislative persistence.

Yet, what makes this final phase particularly significant is not just the striking down of the Tribunals Reforms Act, 2021, but the recognition that litigation alone cannot resolve a structural problem. The direction to establish a National Tribunals Commission marks a shift from judicial resistance to institutional reconstruction. It reflects an understanding that, unless the tribunal governance framework itself is redesigned, the same issues will continue to resurface, no matter how many times the Court intervenes.

Justice K. Vinod Chandran's evocative description "old wine in a new bottle" captures the essence of this prolonged struggle. Over the decades, the underlying tendency to retain executive influence over adjudication has remained unchanged, even as its legislative expressions have evolved. Each iteration has been tested against constitutional standards and found wanting. The question that now arises is whether this pattern will finally break, or whether it will continue in new and subtler forms.

Ultimately, the future of tribunal reform no longer depends on the clarity of judicial pronouncements; that clarity already exists. The real question is whether there is sufficient political will to translate these principles into functioning institutions. The Constitution demands adjudicatory bodies that are independent not only in theory but in practice, bodies capable of holding the State accountable without fear or favour.

The proposed National Tribunals Commission offers a meaningful opportunity to realise this vision. If designed and implemented with integrity, it could finally bring coherence, independence, and credibility to India's tribunal system. But if it is diluted or reduced to a

[27] *Madras Bar Association v Union of India* 2025 INSC 1330 (n 3); MP Singh, 'Securing the Independence of the Judiciary - The Indian Experience' (2000) 10 Indiana International and Comparative Law Review 245.

formal compliance mechanism, it risks becoming yet another missed opportunity in a long line of partial reforms.

In the end, this is not just a legal issue, it is a test of constitutional maturity. It asks whether the promise of the rule of law will be upheld through strong, independent institutions, or whether it will continue to be negotiated through cycles of resistance and correction. The answer to that question will shape not only the future of tribunals but the broader integrity of India's constitutional governance in the years to come.

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