

## Tribunals in India

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The **Supreme Court** recently clarified that **tribunals** functioning under the strict parameters of their governing legislations **cannot direct the government** to make policy.



[Ref- The Hindu]

## What are Tribunals?

- The term 'Tribunal' has historical roots in the **Roman Republic**, where '**Tribunes**' were officials protecting **plebeian citizens**.
- Today, it is an **authority for adjudication**, established to **address delays in justice administration** and adjudicate **specific disputes** through relevant statutes.
- It is **different from domestic tribunals** that regulate professional conduct and enforce discipline, while legal tribunals adjudicate disputes based on statutory jurisdiction.
- It is an **administrative body** established to discharge **quasi-judicial duties** and functions neither as a Court nor an executive body.
- The inception of tribunals in India was by the [Income-Tax Appellate Tribunal](#) in 1941-42.
- The **Franks Report of 1957** identified **advantages of Tribunals** including cost-effectiveness, accessibility, freedom from technicality, expedition and expertise in subjects.
- The **42nd Constitutional Amendment Act, 1976** provided for the setting up of Administrative Tribunals in India, based on recommendations of the **Swaran Singh Committee**.
  - **Article 323-A**: It grants exclusive power to the Parliament for tribunal establishment.
  - **Article 323-B**: It confers concurrent power to State Legislatures and Parliament for tribunal creation.
  - Its provisions **supersede any other constitutional provision** or existing law.
- **Appointments** should be made by the **central government** after consultation with the **Chief Justice of India (CJI)**, or by a **high-powered selection committee** headed by CJI or current SC or concerned HC judge.

## Examples of some Indian Tribunals:

- [National Green Tribunal](#): It was set up under the National Green Tribunal Act of 2010 with primary role in matters related to environmental protection.
- **Water Disputes Tribunal**: It operates under the Inter-State River Water Dispute Act of 1956 and specifically deals with disputes concerning inter-state river water.
- [Central Administrative Tribunal \(CAT\)](#): Established under the Administrative Tribunals Act, 1985

to handle matters relating to public services and posts under Article 323A.

- **National Company Law Tribunal (NCLT)**: It was constituted in 2016 under the Companies Act, 2013 as recommended by the **Eradi committee** for Indian companies.
- **Armed Forces Tribunal**: The Armed Forces Tribunal was established under the Armed Forces Tribunal Act 2007, which deals with issues concerning the armed forces.

### Key SC Judgements regarding Tribunals:

- **S. P. Sampath Kumar vs. Union of India and Ors., 1986**: Parliament can constitutionally establish tribunals as substitutes for High Courts, and provided provisions for appointment.
- **L. Chandra Kumar vs Union of India and Ors, 1997**: A tribunal that substitutes HCs as an alternative institutional mechanism must have the status of a High Courts.
  - Decisions of these tribunals **can be scrutinized** by the concerned HC and preferential treatment towards non-judicial members can reduce effectiveness.
- **R. Gandhi vs Union of India & Anr, 2010**: Parliament may create alternate mechanisms to High Courts on subject matters in the Union List, and technical members must not outnumber judicial members.
- **Madras Bar Association vs Union of India, 2014**: Administrative support for all tribunals should come from the Ministry of Law and Justice.
- **Roger Mathew Vs South Indian Bank Limited, 2019**: Judicial functions cannot be performed by technical members and removal of judges by the Executive is unconstitutional.
- **Madras Bar Association vs Union of India, 2020**: National Tribunals Commission should be set up to supervise appointments, functions, and administration of tribunals.
- **Madras Bar Association vs Union of India, 2021**: It struck down provisions related to the four-year tenure and minimum age requirement of 50 years for members.

### Difference between Tribunals and Court of Law:

Aspect	Tribunals	Courts
Basic Idea	Specialized bodies addressing departmental disputes	Hierarchical system addressing diverse cases
Meaning	Statutory agencies with judicial powers	Judicial bodies with a long-standing tradition
Nature	Less formal and expedient proceedings	Formal and rigid proceedings
Powers and Functions	Quasi-judicial functions, limited power to decide legislation	Primarily judicial functions, can decide validity of legislation
Fees	Comparatively less expensive and expeditious resolution	Determined based on subject matter, can be costly
Technicality	Adjudicators possess department-specific knowledge	Judges resolve disputes based on expertise and evidence
Jurisdiction	Limited to departmental issues within a specific area	Broad jurisdiction covering various types of disputes

### **What is the Supreme Court judgement on Policy directions?**

- The case focused on the jurisdiction of the **Armed Forces Tribunal (AFT)** to instruct the government to formulate a policy to appoint **Judge Advocate General (Air)**.
- The Court emphasized the **constitutional demarcation** that the act of policy formulation resides **outside** the **purview of judiciary**.
- Tribunals functioning as **quasi-judicial entities** within the specified parameters of governing legislation, lack the authority to compel the government to formulate policy decisions.
- The AFT, despite being vested with the powers akin to a civil court, did not possess the expansive authority wielded by the **Supreme Court or High Courts**.
- Even **High Courts**, exercising powers under **Article 226** of the Constitution, lack the prerogative to mandate a government department to formulate a specific policy.
- **Initiation or endorsement** of a scheme or policy concerning the service conditions or regularization of defense personnel rests as the sole prerogative of the government.
- Moreover, courts endowed with **writ jurisdiction** frequently confront situations conflicting with **fundamental rights**, yet are not endowed with this authority.
- The judgment **reinforces the separation of powers** and underscores the limitations on the judiciary in venturing into the realm of policymaking.