



Restructuring the tribunals system

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(Mains GS 2 : Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies & Statutory, regulatory and various quasi-judicial bodies.)

Context:

- Recently the Central government has abolished several appellate tribunals and authorities and transferred their jurisdiction to other existing judicial bodies through the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance 2021.
- However, this Ordinance has been challenged in the Supreme Court.

The tribunals:

- In India, judicial powers are vested in the Courts which aims to safeguard the rights of the individuals and promotes justice.
- Therefore, to institute an effective system of the judiciary with fewer complexities, the judicial powers are delegated to the tribunals which holds quasi-judicial features.
- The 42nd Amendment to the Constitution introduced Part XIV-A which included Article 323A and 323B providing for constitution of tribunals dealing with administrative matters and other issues.
- Article 323A provides the establishment of administrative tribunals by law made by Parliament for the adjudication of disputes and complaints related to the recruitment and conditions of service of Government servants under the Central Government and the State Government.
- It includes the employees of any local or other authority within the territory of India or under the control of the Government of India or of a corporation owned or controlled by the Government.
- Article 323B empowers the Parliament and the State Legislature to establish tribunals for the adjudication of any dispute or complaint with respect to the matters specified under clause (2) of Article 323B.

- Some of the matters given under clause (2) are a levy, assessment, collection and enforcement of any tax; foreign exchange and export; industrial and labour disputes; production, procurement, supply and distribution of foodstuffs; rent and its regulation and control and tenancy issues etc.

Sharp criticism of the ordinance:

- The Ordinance has met with sharp criticism for not only bypassing the usual legislative process, but also for abolishing several tribunals such as the Film Certification Appellate Tribunal without any stakeholder consultation.
- Despite the Supreme Court's direction in *Rojer Mathew v. South Indian Bank* (2019), no judicial impact assessment was conducted prior to abolishing the tribunals through this Ordinance.
- However, the Ordinance has incorporated the suggestions made in *Madras Bar Association v. Union of India* (2020) on the composition of a search-cum-selection committee and its role in disciplinary proceedings,
- It has also fixed a four-year tenure for Chairpersons and members of tribunals "notwithstanding anything contained in any judgment, order, or decree of any court" by blatantly disregarding the court's direction for fixing a five-year term.

National tribunals commission:

- The advent of Articles 323A and 323B into our Constitution through the 42nd amendment has successfully introduced tribunals into the justice delivery mechanism.
- Tribunals are forums for seeking specialised justice and are expected to be as fair and as independent as any other court.
- The Supreme Court ("SC") has been issuing a slew of directions to the government for maintaining independence of these tribunals in line with the Constitutional scheme.
- On the contrary, Government time and again have been framing rules in contravention to such directions, giving life to never ending litigation on the validity of these rules.
- The SC has been directing the government for the formation of the National Tribunal Commission ("NTC").
- NCT will act as an independent umbrella body to supervise the functioning of tribunals, appointment of and disciplinary proceedings against members, and to take care of administrative and infrastructural needs of the tribunals.

The idea of an NTC was first mooted in *L. Chandra Kumar v. Union of India* (1997), but it is not yet constituted.

Importance of NTC :

- Initiating dialogue and promoting awareness about the NTC is vital for overcoming the government's inertia in establishing such a body.
- Developing an independent oversight body for accountable governance requires a legal framework that protects its independence and impartiality.
- Where the institutional design is not properly conceived, partisan interests can twist the law to serve political or private interests.
- In India, executive interference in the functioning of tribunals is often seen in matters of appointment and removal of tribunal members, as well as in provision of finances, infrastructure, personnel and other resources required for day-to-day functioning of the tribunals.
- Therefore, the NTC must be established via a constitutional amendment or be backed by a statute that guarantees its functional, operational and financial independence.
- One of the main reasons that has motivated the idea of NTC is the need for an authority to support uniform administration across all tribunals.
- The NTC could therefore pave the way for the separation of the administrative and judicial functions carried out by various tribunals.
- A 'corporatised' structure of NTC with a Board, a CEO and a Secretariat will allow it to scale up its services and provide requisite administrative support to all tribunals across the country.

Administrative duties:

- The NTC would ideally take on some duties relating to administration and oversight.
- It could set performance standards for the efficiency of tribunals and their own administrative processes.
- Importantly, it could function as an independent recruitment body to develop and operationalise the procedure for disciplinary proceedings and appointment of tribunal members.
- Giving the NTC the authority to set members' salaries, allowances, and other service conditions, subject to regulations, would help maintain tribunals' independence.
- Administrative roles of the NTC include providing support services to tribunal members, litigants, and their lawyers.
- For this purpose, it would need to be able to hire and supervise administrative staff, and to consolidate, improve, and modernise tribunals' infrastructure.

Conclusion:

- As the Finance Ministry has been vested with the responsibility for tribunals until the NTC is constituted, it should come up with a transition plan.
- The way to reform the tribunal system is to look at solutions from a systemic perspective supported by evidence.

- Establishing the NTC will definitely entail a radical restructuring of the present tribunals system.