- Increase in the functions of the govt, which has lent enormous powers to the executive & also led to increase in the legislative output.
- This has led to more litigation, restrictions on the freedom of the individuals & constant frictions between them and the authority.
- Objective of providing a new type of justice - public good oriented justice.
- Manned by technical experts, with flexibility in operations, informality in procedures have gained importance in the adjudication process.

ADMINISTRATIVE LAW

- Administrative law covers the entire gamut of public administration and includes the statutes, charters, rules, regulations, procedures, decisions etc
- According to Jennings, administrative law is the law relating to the administration.
- It determines the organization, powers and duties of administrative authorities.
- William Wade remarks that administrative law is concerned with the operation & control of the powers of administrative authorities with emphasis on functions rather than structure.
- It subordinates the common law, rights of personal freedom, & private property to the common good.
- The stress is on public interest than on individual interest.
- It entails the application of flexible standards for implementation of law.
- The interpretation of these standards lies with the administrative tribunals.
- It puts the public officials in a better position over the people. It is not codified & is in an experimental and dynamic condition.

TRIBUNALS

- Administrative adjudication is the resolution of quasi-judicial matters by administrative agencies or commissions.
- A number of technical issues and' disputes emerge in the day-to-day administration.
- The ordinary courts do not have the technical expertise and it becomes quite dilatory & costly to dispense with cases of administrative nature.
- The development of administrative law in a welfare state has made administrative tribunals a necessity.
- Administrative tribunals are authorities outside the ordinary court system, which interpret & apply the laws when acts of public administration are questioned in formal suits by the courts or by other established method.
- Tribunals are not a court nor are they an executive body. Rather they are a fusion of both.
- They are judicial in the sense that the tribunals have to decide facts & apply them impartially, without considering executive policy.
- They do not follow the technicalities of rules of procedure and evidence prescribed by the Civil Procedure Code (CPC) & Evidence Act respectively.
- They are specially constituted authorities established by law to settle the disputes between the citizen & administration.

EVOLUTION OF TRIBUNALS

- Unlike courts they ensure cheapness, accessibility, freedom from technicality, expedition & expert knowledge of the particular subject.
- Emergence of 'laissez faire' theory & gradual evolution of welfare states - 'judicialization of administration' proved a potential instrument for enforcing social policy & legislation.
- Law courts, on account of their elaborate procedures, legalistic terms & attitudes can hardly render justice to the parties concerned, in technical cases.
- The enactment of Administrative Tribunals Act in '1985 - for justice to the aggrieved government servants.
- Article 323 A empowers the Central Government to set up an administrative tribunal by an Act of Parliament, for adjudication of disputes & complaints with respective recruitment & conditions of service of persons appointed to the public services and posts in connection with the Union and the States.
- The Tribunals enjoy the powers of the High Court in respect of service matters of the employees covered by the Act.
- They are not bound by the technicalities of the Code of Civil Procedure, but have to abide by the Principles of Natural Justice.
- They are distinguished from the ordinary courts with regard to their jurisdiction & procedures. This enables them to provide speedy & inexpensive justice.
- There are 19 Benches & 19 Circuit Benches in the CAT. In addition to the Ministries & Departments of Central Govt, the GoI notified about 214 organizations under section 14 (2) of the Administrative Tribunals Act, 1985 to bring them within the jurisdiction of the CAT.
- There are 66 Members in various Benches of the Tribunal out of which 33 are Judicial Members, including Chairman and 33 are Administrative Members.
- After the establishment of the Tribunal in 1985, it received 13,350 pending cases on transfer from the

High Courts and subordinate Courts under section 29 of the Administrative Tribunal Act, 1985. Since its inception in 1985 to 31st July, 2018 about 7,79,101 cases were instituted in the Tribunal. Out of those 7,27,818 cases have already been disposed of. That is a disposal rate of 93.41%.

- Initially the decision of the Tribunal could be challenged before Supreme Court by filing Special Leave Petition.
- But, after the Supreme Court's decision in L. Chandra Kumar case, the orders of CAT are now being challenged by way of Writ Petition under Article 226/227 before respective High Court.

ADVANTAGES

- Administrative adjudication is a dynamic system of administration, which serves, more adequately than any other method, the varied and complex needs of the modem society.
- Administrative adjudication has brought about flexibility & adaptability in the judicial & administrative tribunals.
- Administrative justice ensures cheap & quick justice.
- The tribunal gives relief to ordinary courts which are already overburdened with ordinary suits.
- Experimentation is possible in this field & not in the realm of judicial trials.
- Flexibility, accessibility & low cost are the important merits of administrative tribunals.
- In the words of W.A. Robson, the advantages of administrative tribunals are cheapness & speed with which they usually work, the technical knowledge & experience which they make available for the discharge of judicial functions in special fields .
- The assistance which they lend to the efficient conduct of public administration & the ability they possess to lay down new standards and to promote a policy of social improvement.

DISADVANTAGES

- Administrative adjudication is a negation of Rule of Law. Rule of Law ensures equality before law for everybody
- But administrative tribunals, with their separate laws & procedures often made by themselves, put a serious limitation upon the celebrated principles of Rule of Law.
- Administrative tribunals have in most cases, no set procedures & sometimes they violate even the principles of natural justice.
- Administrative tribunals often hold summary trials and they do not follow any precedents. As such it is not possible to predict the course of future decisions.
- Civil & criminal courts have a uniform pattern of administering justice. A uniform code of procedure in administrative adjudication is not there.
- Administrative tribunals are manned by administrators & technical heads who may not have the background of law or training of judicial work. Some of them may not possess the independent outlook of a judge.
- Administrative tribunals should be manned by persons possessing legal training and experience. To inspire public confidence, the appointment of members should be made in consultation with the Supreme Court.
- A code of judicial procedure for administrative tribunals should be devised & enforced.
- Reasons should invariably accompanied the decisions by the tribunals.
- "Good Laws", observed Jeremy Bentham,. "are such laws for which good reasons can be given".
- A reasoned decision goes towards convincing those, who are affected by it, about its innate fairness & is a check against misuse of power.
- According to M.C. Setalvad, former Attorney General of India, the need for judicial review is greater in a nascent democracy like India.
- Some of the administrative tribunals permit appeal to the court of law.

JURISPRUDENCE OF CONTEMPT

- Delhi High Court has held that the Central Administrative Tribunal (CAT), can exercise the same jurisdiction & powers, as a High Court, in respect of its contempt proceedings.
- A Bench of Justice Manmohan and Justice Sangita Dhingra Sehgal noted that the Supreme Court in its 2001 judgment has held that Section 17 of the Administrative Tribunals Act, 1985, confers jurisdiction on the CAT to punish for its contempt.
- The CAT has also framed the Contempt of Courts Rules, 1992, which provide the procedure for initiation of criminal contempt and suo motu contempt proceedings, respectively," the HC noted.
- In November 2019, a Constitution Bench of the Supreme Court, in Rojer Mathew, declared the Tribunal, Appellate Tribunal and other Authorities (Qualification, Experience and other Conditions of Service of Members) Rules, 2017 as unconstitutional for being violative of principles of independence of the judiciary and contrary to earlier decisions of the Supreme Court in the Madras Bar Association series.
- In Rojer Mathew case, a direction issued to the Central government to reformulate the rules strictly in accordance with principles delineated by the Court in its earlier decisions.
- Through Part XIV of the Finance Act, 2017, around 26 Central statutes were amended, & the power to prescribe eligibility criteria, selection process, removal, salaries, tenure and other service conditions pertaining to various members of 19 tribunals were sub-delegated to the rule-making powers of the Central government.

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- Describing the search-cum-selection-committee as an attempt to keep the judiciary away from the process of selection and appointment of members, vice-chairman and chairman of tribunals, the Court held that the executive is a litigating party in most of the litigation and hence cannot be allowed to be a dominant participant in tribunal appointments.
- Reiterating its previous decision in Madras Bar Association (2010), the Court held that the tenure of three years for members will "preclude cultivation of adjudicatory experience and is thus injurious to the efficiency of the Tribunals".
- In the 2017 rules, as noted by the Court in Rojer Mathew, barring the National Company Law Appellate Tribunal (NCLAT), the selection committee for all other tribunals was made up either entirely from personnel within or nominated by the Central government or comprised a majority of personnel from the Central government.
- While the selection committee for NCLAT consisted of two judges & two secretaries to the Government of India, all other committees comprised only one judge & three secretaries to the Government of India.
- In the 2020 rules , all committees consist of a judge, the chairman of the tribunal concerned & two secretaries to the Government of India.
- The common thread in the Madras Bar Association series & Rojer Mathew decisions is that judiciary must have an equal say in the appointment of members of the tribunals.
- To deny the executive an upper hand in appointing members to tribunals, the court ordered to have two judges of the Supreme Court to be a part of the four-member selection committee.
- In Madras Bar Association (2010), a Constitution Bench dealing with the validity and appointment of members to the National Company Law Tribunal (NCLT) under the Companies Act, 1956, held that the selection committee should comprise the Chief Justice of India or his nominee , a senior judge of the Supreme Court or Chief Justice of the High Court, and secretaries in the Ministry of Finance and Ministry of Law and Justice respectively.
- Subsequent Constitution Bench decisions in Madras Bar Association (2014), Rojer Mathew and have repeatedly held that the principles of the Madras Bar Association (2010) are applicable to the selection process and constitution of all tribunals in India.
- In the Income Tax Appellate Tribunal (ITAT), Customs Excise and Service Tax Appellate Tribunal (CESTAT), Central Administrative Tribunal (CAT), Debt Recovery Appellate Tribunal (DRAT), etc., a non-judicial member can become the president/chairman/chairperson, as the case may be.
- Therefore, when a non-judicial member becomes a member in the selection committee, the Supreme Court judge will be in minority, giving primacy to the executive, which is impermissible.
- In Madras Bar Association (2010), the Court explicitly held that only judges & advocates can be considered for appointment as judicial member of the tribunal and that persons from the Indian Legal Service cannot be considered for appointment as judicial member.
- Recently, in Revenue Bar Association (2019), the Madras High Court, while dealing with selection & composition of the Goods and Services Tax Appellate Tribunal (GSTAT), declared Section 110(1)(b)(iii) of the CGST Act, 2017 as unconstitutional for allowing members of Indian Legal Service to be judicial members in GSTAT.
- In Madras Bar Association (2010), the Court had held that the term of office "shall be changed to a term of seven or five years".
- Now, in the 2020 rules, the tenure of members has been increased from three years to four years, thereby blatantly violating the directions of the Supreme Court.
- Since Madras Bar Association (2010), the government has repeatedly violated the directions of the Supreme Court. One by one, the traditional courts, including the High Courts, have been divested of their jurisdictions and several tribunals have been set up.
- When the National Taxation Tribunal was struck down as unconstitutional by the Supreme Court, it was hoped that the government would stop experimenting with tribunals.
- The Madras High Court had to then deal with selection of members to the Intellectual Property Appellate Board. Then came the rules of 2017 and the GST Appellate Tribunal and Advance Authorities under the CGST Act.
- According to experts, the strategy looks like: divest courts of their powers, vest those powers with new tribunals, and fill them with civil servants.
- Now, only if an advocate has more than 25 years of experience, can he apply to the post of judicial member of various tribunals such as ITAT, CESTAT, Appellate Board under the Trade Marks Act, 1999, Appellate Tribunal for Electricity, etc.
- This 25-year eligibility is unheard of even for an appointment as a High Court judge. It seems absurd to even think that a lawyer with more than 25 years of successful practice would apply for the post of judicial member with a tenure of just four years.
- By eliminating chances of bright advocates applying for the post of judicial members, the government surely intends to fill them with candidates from the Indian Legal Service.
- The 2020 rules are, thus, in contempt of several Constitution Bench decisions of the Supreme Court.

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aspirations

- The Supreme Court asked the Central government point-blank to come clean on whether it intends to "close" tribunals across the country by not filling up vacancies that have been pending for years.
- Former Chief Justice Ramana read out in open court the details of over 200 vacancies in key tribunals, making them redundant in their slow death.
- The Supreme Court stayed the applicability of provisions of the Central Tribunal, Appellate Tribunal and other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017 which gave the government primacy in making key appointments to tribunals, including the National Green Tribunal.
- Primarily, the court accepted the formation of an interim search-cum-selection committee in respect for appointment of both judicial and administrative members to CAT.
- The panel includes, the Chief Justice of India or his nominee, Chairman of the Central Administrative Tribunal, and two secretaries nominated by the Government of India.
- It has been argued that the Finance Act strikes at the root of the independence of quasi-judicial bodies, such as the National Green Tribunal.
- The Centre 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. This Ordinance has been challenged in the Supreme Court.
- 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.
- Centre is yet to constitute a National Tribunals Commission (NTC), an independent umbrella body to supervise the functioning of tribunals, appointment & 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 has still not seen the light of day.
- In India, executive interference in the functioning of tribunals is often seen in matters of appointment & removal of tribunal members, in provision of finances, infrastructure, personnel & other resources required for day-to-day functioning of the tribunals.
- 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 & 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 & provide requisite administrative support to all tribunals
- The NTC can function related to administration & oversight. It could set performance standards for the efficiency of tribunals & their own administrative processes.
- 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, & other service conditions, subject to regulations, would help maintain tribunals' independence.
- Administrative roles of the NTC - providing support services to tribunal members, litigants, and their lawyers, hire and supervise administrative staff, and to consolidate, improve, and modernise tribunals' infrastructure.
- 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.
- A Supreme Court Bench led by former Chief Justice of India N.V. Ramana confronted the Centre with a list of 240 vacancies of Chairpersons, Judicial & Technical Members in tribunals across the country.
- CAT adjudicates recruitment & service related cases, is functioning at half its sanctioned strength, as 31 of the 66 sanctioned posts of members are lying vacant.
- Even after 30 years of its establishment, CAT lacks human as well as physical infrastructure. Because of this, 14 of the 17 Benches are not fully functional.
- The appointment process of tribunal members should start well in advance & the government should examine the reasons for members leaving service prematurely & take remedial measures.
- Department of Personnel & Training and CAT should sit together to chalk out strategy to overcome the procedural hurdles in commencement of construction of buildings for Benches at three locations.
- Seven Benches of CAT do not have their own buildings and the three Benches for which land has been acquired, construction is yet to begin due to purely procedural reasons .
- Despite allocation of funds, CAT was not carrying out construction at these sites.
- Tribunals were established as a substitute and not as supplement to the High Courts in the scheme of administration of justice.

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- Supreme Court ruling in 1997 in the L. Chandra Kumar case - the power of the High Courts to review judicially the CAT orders could not be taken away by a statute
- The ruling had defeated the very purpose for which the Administrative Tribunal Act was brought into force.
- Article 323-A, which came by way of 42nd constitutional amendment in 1976, enabled the Centre to enact The Administrative Tribunals Act, 1985.
- The Union Government recently issued another notification – the one abolishing the Himachal Pradesh Administrative Tribunal which had been in existence since 2015. The request for it came from the state cabinet.
- Odisha also got abolished its Administrative Tribunal through a notification issued by the Centre.

TRIBUNAL REFORMS BILL 2021

- Bench led by Chief Justice of India N V Ramana asked the government if it intends to shut down tribunals that have several key vacant posts. This came days after Lok Sabha passed a Bill to dissolve at least eight tribunals.
- The Tribunals Reforms Bill, 2021 replaces a similar Ordinance promulgated in April 2021 that sought to dissolve eight tribunals
- The Bill states that the Chairpersons & Members of the tribunal being abolished shall cease to hold office, and they will be entitled to claim compensation
- There was hardly any discussion in Parliament before the Bill was passed. But some key questions made it a proper debate
- Bill provides for uniform pay & rules for the search & selection committees across tribunals, removal of tribunal members. It states that the central government shall, on the recommendation of the Search-cum-Selection Committee, remove from office any Chairperson or a Member, who—
- (a) has been adjudged as an insolvent; or
- (b) has been convicted of an offence which involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such Chairperson or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- In the Search-cum-Selection Committee for state tribunals, the Bill brings in the Chief Secretary of the state and the Chairman of the Public Service Commission of the concerned state who will have a vote and Secretary or Principal Secretary of the state's General Administrative Department with no voting right.
- Among the key ones are the Film Certification Appellate Tribunal (FCAT) under the Cinematograph Act, 1952; the Intellectual Property Appellate Board under the Copyrights Act, 1957; and the Customs Excise and Service Tax Appellate Tribunal.
- According to the analysis of last three years data done by GoI of tribunals, some tribunals have not led to faster justice delivery and they are also at a considerable expense to the exchequer. Led to decision to rationalise the functioning of tribunals, a process that it began in 2015
- The SC challenged the government to produce material showing its reasons for introducing the Tribunal Reforms Bill of 2021, which abolishes nine appellate tribunals and revives provisions of an ordinance struck down by the Supreme Court, in the Parliament.
- The Bill had replaced the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021. The provisions in the ordinance regarding conditions of service and tenure of Tribunal Members and Chairpersons were struck down by the Supreme Court.
- The same provisions re-appeared in the Tribunal Reforms Bill introduced by Finance Minister
- Bill was passed in the Lok Sabha by voice vote without a debate amid protests
- India now has 16 tribunals including the National Green Tribunal, the Armed Forces Appellate Tribunal, the Debt Recovery Tribunal among others which also suffer from crippling vacancies as the SC has noted.
- These cases will be transferred to High Courts or commercial civil courts immediately. Legal experts have been divided on the efficacy of the government's move.
- the Government cut short the tenure of the Acting Chairperson of the National Company Law Appellate Tribunal (NCLAT)
- Tribunals have always been seen as institutions that were a rung lower in independence as regular courts .
- Section 3 of the Act provides for the constitution of the SCSCs. Headed by Chief Justice of India (CJI) or his nominee SC Justice as the chairperson, the Act provides for mandatory recommendation of a panel of two names to the Centre who shall take a decision within three months of such recommendation.

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