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Tribunalisation and separation of powers in Indian context: A critical study

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Abstract
The doctrine of separation of powers is the bedrock of rule of law. In most written Constitutions, of the world, the Constitution being the source of all power, there exists a separation of functions between different organs of the State. The said phenomenon is clearly reflected in the Constitution of India, where, the doctrine of separation of powers though has not been followed in its rigid form, the functions of different parts or branches of the Government have been sufficiently differentiated (Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549, 556). The process of tribunalisation, which commenced with the 42nd Amendment to the Constitution, in 1976, has given rise to a new debate, that whether this process is in violation of the principle of separation of powers/functions, and amounts to negation of rule of law. The debate has become more acute with the growth of tribunals in different areas. This paper attempts to study the process of tribunalisation in India, as a part of growing regulatory regime, in the backdrop of doctrine of separation of powers. It also attempts to investigate, whether this process is in violation of doctrine of separation of powers/functions, or is an extension or illustration of that phenomenon.

Keywords: Tribunalisation, Separation, bedrock, Constitutions, phenomenon

1. Introduction
The recent century has seen a tremendous growth in the number of tribunals in India. Tribunals mark a departure from basic principle that disputes arising between parties must be decided by an established court of law [1]. The primary function of courts is to adjudicate and decide on matters which becomes a subject matter of dispute either between parties or between parties and State or between states. It is emphatically the province and duty of the judicial department to say what the law is [2]. However, the tribunals in India have been conferred with constitutional legitimacy by the Constitutional court [3]. The process of tribunalisation hardened its foothold with the coming into effect of the Constitution (Forty-Second) Amendment Act, 1976 [4]. Tribunalisation can be understood as transfer of unfettered adjudicatory power to the executive or quasi-judicial bodies. Criticisms against tribunalisation are often grounded on the salient principle of independence of judiciary and separation of power [5]. Needless to say, the Constitutional Court where on one hand has included these salient principles within the ambit of much celebrated "Basic Structure Doctrine [6] has also on the other hand conferred the constitutional legitimacy to the process of tribunalisation [7].

"Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the frame work of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence [8].

2. History of Tribunalisation in India
The tribunals have grown up rather sporadically and the legislations pertaining to them have been ad hoc. It is a matter of common knowledge that the tug of war between the legislature and the judiciary which had started since its very inception (the Constitution (First) Amendment Act would itself support this point) has often resulted in an amendment to the Constitution.

The 42nd Amendment [9] and its insertion into Part XIVA paved the way for tribunals in India. They were seen as a panacea to the increasing burden of litigation on the High Courts and the Supreme Court. Subsequently, a number of tribunals were established. These included Administrative Tribunals, Rent Control Tribunals and Tax Tribunals. However, the constitution and functioning of these tribunals have been controversial and intensely debated [10].

In *Associated Cement Co. Ltd. v. P.N. Sharm* [11]. a five judge Constitution bench of the Supreme Court defined, "Tribunals" distinguishing them from Courts and held at:

"*They are both adjudicated bodies and they deal with and finally determine disputes between parties which are entrusted to the jurisdiction...Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the state transfers its judicial functions and powers mainly to the courts established by the Constitution…The basis and the fundamental feature which is common to both the courts and the Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign state* [12].

a. Pre-Constitution (Forty-Second Amendment) Act
Under the Constitutional Scheme there was no place for, or even mention of Tribunals. Article 247 of the Constitution only permitted the creation of additional courts by the Parliament, for better administration of Parliamentary legislation. Despite this, tribunals were present and operational, and the extant legal disputes centered on themes such as the permissibility of a special leave appeal to the Supreme Court under Article 136 of the Constitution from an order passed by such quasi-judicial bodies [13]. Perhaps due to the fact that the constitutional controversies in the first twenty five years of the Constitution concerned the right to property and other fundamental rights which were

considered more vital to our existence as a democracy, issues such as tribunalisation were never seriously examined, and stood relegated to the status of third-generation constitutional debates [14].

Even the 'separation of powers doctrine' was largely examined in the context of the relationship between the legislature and executive, with decisions like *In re Delhi Laws Act* [15]. *Ram Jawaya Kapur v. State of Punjab* [16], *U.N.R. Rao v. Indira Gandhi* [17] and *Samsher Singh v. State of Punjab* [18]. The brooding presence of Article 50, made it part of the State's duty to "take steps to separate the judiciary from the executive….", made no sense whatsoever except in the limited manner that such directive principles are meant to be understood, that is, as mere guidelines without the force of legal or judicial sanctions in the event of non-compliance. The Supreme Court even went to the extent of observing that there was no rigid separation of powers in our Constitution, unlike the Australian Constitution, and hence, it would be constitutionally permissible to confer the state's judicial power on the hierarchy of courts established under the Constitution as well as on tribunals which were not 'courts [19]. Little did the Court, when holding so, realise that a day shall soon come when this observation would require reconsideration in the light of unbridled interference with the institutional independence of the judiciary.

It is only when the political dispensation of the late 1960s and early 70s revealed its agenda for a committed bureaucracy and judiciary, and various judicial pronouncements started acquiring the hue of political and ideological concerns, that jurists started applying serious thought to the manner in which the executive engineered inroads into the administration of justice. Precisely at this juncture, as if to stroke this analysis and give it a new direction, the Parliament amended the Constitution by way of the Constitution (42nd Amendment) Act, 1976 ('42nd Amendment') that was also known as the 'mini Constitution'. The 42nd Amendment severely attacked the foundations of our Constitution and made us conscious of what till then had largely been a principle, namely, the doctrine of separation of powers [20]. Similar was the effect of the emergency that was imposed a year prior to this amendment. The challenge to the election of Indira Gandhi, the invalidation of Mrs. Gandhi's election by the Allahabad High Court [21] the immediate amendments to the Representation of the People Act, 1951 as well as the Constitution necessitating the seminal decision by the Supreme Court in *Indira Gandhi v. Raj Narain* [22] all contributed in large measures to the perception of grievous risks posed to the very fate of this doctrine. The guarantee that power shall not be vested with, or usurped by any one individual or institution, suddenly appeared uncertain and weak. This, perhaps, fortified the flaccid foundations of the basic structure doctrine, first articulated in *Kesavananda Bharati v. State of Kerala* [23], and sealed the judicial recognition of its own independence and the separation of powers doctrine as part of the basic structure.

b. Insertion of Article 323-A and 323-B

The political dispensation headed by Mrs. Gandhi retaliated strongly to the criticism from various quarters by imposing a national emergency under Article 352. In an era that witnessed maximum strains on the working of the judiciary, the executive hounded 'non-compliant' judges. Before the unceremonious supersession of Justice Shelat, Justice Hegde and Justice Grover to the high office of the Chief Justice of India had faded from public memory [24], the great Justice Khanna was similarly superseded for his powerful dissent in A.*D.M. Jabalpur v. Shivakant Shukla* [25, 26]. While these are the more startling cases, which revealed the sad reality that even Supreme Court judges were not beyond the mala fide interference by the executive, the attack on the higher judiciary was much deeper. As former Supreme Court judge, Justice Ruma Pal, points out, "sixteen High Court judges were transferred in 1976, ostensibly to promote national integration [27]. Other methods of censure, direct and indirect, were also used to make them 'fall in line'.

It is in this milieu that the 42nd Amendment was passed. This amendment, introduced with the clear agenda to indiscriminately widen the powers of the executive, also sought to clip the wings of the sole institution that could realistically keep the executive action within bounds. This explains the presence of Article 323-A and Article 323-B, which proposed parallel institutions capable of replacing the judiciary. While reading the said Articles introduced by § 46 of the 42nd Amendment, the first thing that stands out is the inclusion of a separate chapter XIV-A, titled "Tribunals", only for the purpose of inserting these two provisions [28]. Article 323-A specifically addressed the legislative creation of administrative tribunals to hear service disputes between government employees. The history of this provision, mired in the Reports of various Committees, starting with the Shah Committee Report of 1969 [29], has been mapped out by Justice Ranganath Misra, in the first important constitutional challenge to the Administrative Tribunals Act, 1985 in *Sampath Kumar v. Union of India* [30]. Article 323-B vested the power with Parliament to create other tribunals, to adjudicate upon any of the eight matters stipulated therein. Benign as they appeared, these provisions authorised the Parliament to go to the extent of depriving the constitutional courts of the jurisdiction vested in them, and placing it in another body, wherein the appointment of members was left to an ordinary statute and not well-entrenched constitutional provisions and guarantees. Article 323-(A) (2)(d) and Article 323- (B) (3) (d) specifically authorised the Parliament to exclude the jurisdictions of all courts, except that of the Supreme Court under Article 136, with respect to the disputes or complaints that the Tribunals constituted under Article 323-A and Article 323-B could adjudicate upon. This ouster of jurisdiction along with the consequential undermining of judicial authority and independence, can only be truly appreciated when viewed alongside a parallel development in constitutional law, that is, the move by the judiciary to strengthen its domain by asserting greater authority over judicial appointments and transfers [31].

3. Separation of Powers and Tribunalisation

Principal argument in *Sampath Kumar v. Union of India* [32]. centred around the ouster of judicial review rather than an overall undermining of judicial independence. As a compromise of sorts, the Supreme Court held that the writ jurisdiction of the High Court could be excluded with respect to the disputes placed within the jurisdiction of these Administrative Tribunals, which qualified as 'alternative institutional mechanisms'. However, since these Tribunals could substitute, and not merely supplement the jurisdiction of High Courts, which would result in a massive power transfer from these constitutional courts to the Tribunals, the

Court also went on to observe that "the Tribunal should be a real substitute of the High Court, not only in form and demure but also in content and de facto [33]. This observation, without any further embellishment, summarises the Supreme Court's stance on tribunalisation from the very beginning. All attempts by the Court have been directed quite unsuccessfully, towards guaranteeing that tribunals function in an independent and efficient manner. In its final view, the Court held that as long as the Chairperson of the Tribunal was a retired High Court or Supreme Court Judge, and the Vice-Chairperson and other members were selected by a high profile committee headed by the Chief Justice of India, the Central Administrative Tribunal would be free from infirmities. By doing so, the Court deviated from the realm of adjudication to that of policy-making or engineering policy. Instead, it would have been more desirable had the Court merely struck down the legislation on the ground of constitutional infirmity and left it open to the Parliament to devise a constitutionally compliant Tribunal. Perhaps, the large number of pending writ petitions in service matters before various High Courts had compelled the Court to take a more 'practical' view of the situation and sustain the constitutionality of Administrative Tribunals, but with appropriate safeguards to guarantee efficiency.

This judicial strategy clearly failed, as seen from the strong reasons that necessitated a challenge to Article 323-A and Article 323-B in *L. Chandra Kumar v. Union of India* [34]. Even here, the thrust of the constitutional challenge was on the ouster of the power of judicial review of the High Courts contained in Article 226 and that of the Supreme Court enshrined in Article 32. The earlier decision of the Supreme Court in *R.K. Jain v. Union of India* [35], significantly triggered this challenge as the Court, in this case pertaining to the functioning of the Customs, Excise and Gold Control Appellate Tribunal established under Article 323B, held that the Tribunals created under Article 323A and Article 323B could not be considered as substitutes of the High Courts for the purpose of exercising jurisdiction under Article 226 and Article 227 of the Constitution. The fact that the Court here took into account the data pertaining to the working of these Tribunals for more than five years and expressed anguish with the state of affairs, weighed heavily in the mind of the seven-judge bench in Chandra Kumar. The Bench also had the benefit of a well-reasoned and exhaustively researched decision of the Andhra Pradesh High Court in *Sakinala Harinath v. State of A.P* [36], wherein an Indian Court had, for the first time, looked at foreign precedents from the United States, United Kingdom and Australia to understand the nature and concept of 'judicial power' and ultimately, proceeded to strike down Article 323A(2)(d) as unconstitutional.

The Supreme Court in *L Chandra Kumar* [37], influenced strongly by the reasoning of the Andhra Pradesh High Court in the *Sakinala Harinath* [38] case, concluded that the power of judicial review contained in Article 226 and Article 32 were part of the basic structure of the Constitution and could never be ousted through tribunalisation [39]. However, the Court provided leeway to the executive by holding that nothing in the Constitution proscribed the creation of tribunals that supplemented the High Courts without substituting them. Thus, the Court paved way for the transition of tribunals from an 'alternative institutional mechanism' to one integrated within our judicial system, and subject to the power of judicial review by the High Courts under Article 226 of the Constitution. Interestingly, the Court also observed that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions was part of the basic structure, since a situation where the High Courts were divested of all other judicial functions "apart from that of constitutional interpretation" was to be avoided. This observation assumes significance due to the developments post *Chandra Kumar* [40], and particularly, in light of the creation of the National Company Law Tribunal. Finally, the Court rejected the contention that administrative members must be kept out of the fold of the Administrative Tribunals and reiterated the premise that specialist bodies must comprise of both, trained administrators and those with judicial experience. However, the executive has completely misused this premise, as seen from the attempt to appoint bureaucrats to the National Company Law Tribunal in the next section.

Recently, former Supreme Court judge Ruma Pal described the "increasing tribunalisation" as serious encroachment on judicial independence [41].

In *Rai Sahib Ram Jawaya Kapur v. The State of Punjab* [42], this Court explained the doctrine of separation of powers thus:

".....the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another [43].

In *Chandra Mohan v. State of U.P.* [44], this Court held:

"The Indian Constitution, though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the States; it constitutes a High Court for each State, prescribes the institutional conditions of service of the Judges thereof, confers extensive jurisdiction on it to issue writs to keep all tribunals, including in appropriate cases the Governments, within bounds and gives to it the power of superintendence over all courts and tribunals in the territory over which it has jurisdiction. But the makers of the Constitution also realised that it is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges. Presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in Ch. VI of Part VI under the heading Subordinate Courts. But at the time the Constitution was made, in most of the States the magistracy was under the direct control of the executive. Indeed, it is common knowledge that in pre-independent India there was a strong agitation that the judiciary should be separated from the executive and that the agitation was based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be a mockery. So, article 50 of the Directive Principles of Policy states that the State shall take steps to separate the judiciary from the executive in the public services of the States. Simply stated, it means that there shall be a separate judicial service free from the executive control [45].

In *Indira Nehru Gandhi v. Raj Narain* [46], this Court

observed that the Indian Constitution recognizes separation of power in a broad sense without however their being any rigid separation of power as under the American Constitution or under the Australian Constitution. This Court held thus:

"It is true that no express mention is made in our Constitution of vesting in the judiciary the judicial power as is to be found in the American Constitution. But a division of the three main functions of Government is recognised in our Constitution. Judicial power in the sense of the judicial power of the State is vested in the Judiciary. Similarly, the Executive and the Legislature are vested with powers in their spheres. Judicial power has lain in the hands of the Judiciary prior to the Constitution and also since the Constitution. It is not the intention that the powers of the Judiciary should be passed to or be shared by the Executive or the Legislature or that the powers of the Legislature or the Executive should pass to or be shared by the Judiciary. The Constitution has a basic structure comprising the three organs of the Republic: The Executive, the Legislature and the Judiciary. It is through each of these organs that the sovereign will of the people has to operate and manifest itself and not through only one of them. None of these three separate organs of the Republic can take over the functions assigned to the other. This is the basic structure or scheme of the system of Government of Republic....But no constitution can survive without a conscious adherence to its fine checks and balances. Just as courts ought to enter into problems entwined in the `political thicket'. Parliament must also respect the preserve of the court. The principle of separation of powers is a principle of restraint [47]

In *L. Chandra Kumar* [48], the seven-Judge Bench of this Court referred to the task entrusted to the superior courts in India thus:

"The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial and judicial independence [49].

The doctrine of basic structure has always been considered to be the part of basic structure of the Constitution [50]. In *Union of India v. R Gandhi* [51], the Madras Bar Association contented that the High Court ought not to have upheld the constitutional validity of establishment of NCLT and NCLAT and that the High Court ought to have held that constitution of such Tribunals taking away the entire Company Law jurisdiction of the High Court and vesting it in a Tribunal which is not under the control of the Judiciary, is violative of doctrine of separation of powers and the independence of Judiciary which are parts of the basic structure of the Constitution. Therefore, tribunalisation should be looked upto as a weapon for curtailing the rights of the judiciary by the Parliament thereby, affecting judicial integrity and independence, violating separation of powers which are an integral aspect of rule of law, held to be the basic structure of the Constitution [52]. Judicial independence and separation of judicial power from the Executive are part of the common law traditions implicit in a Constitution like ours which is based on the Westminster model [53].

The Court in *R Gandhi v. Union of India* [54] stated that

"when we say that the Legislature has the competence to make laws providing which disputes will be decided by courts and which disputes will be decided by Tribunals, it is subject to constitutional limitations, without encroaching upon the independence of judiciary and keeping in view the principles of Rule of Law and separation of powers. If Tribunals are to be vested with judicial power hitherto vested in or exercised by courts, such Tribunals should possess the independence, security and capacity associated with court……when transferring the jurisdiction exercised by Courts to Tribunals, which does not involve any specialized knowledge or expertise in any field and expediting the disposal and relaxing the procedure is the only object, a provision for technical members in addition to or in substitution of judicial members would clearly be a case of dilution of and encroachment upon the independence of the Judiciary and Rule of Law and would be unconstitutional."

4. Conclusion

Judicial independence and separation of powers are two strong pillars of a democratic state. They are an inherent aspect of a country governed by rule of law. Judicial independence and separation of powers have been held to be part of basic structure of the Constitution by the Hon'ble Supreme Court of India. It has often been alleged against excessive tribunalisation that it strikes a hard blow on judicial independence and separation of powers. Excessive tribunalisation means transferring more and more power to the executive branch which goes against the very idea of having separation of power. Judicial independence ensures judicial branch which is free of any sort of intrusion from any other branch. Thus, excessive tribunalisation goes against the very idea of a country governed by rule of law.

References

1. The Tribunalization of Justice in India; Arvind P Datar, Acta Juridica 288. Also see, The Tribunal System in India; S P Sathe, The Institute of Advanced Legal Studies, Pune; N.M. Tripathi Private Limited, 1996, pp-1-14.
2. William Marbury v. James Madison, 5 U.S.137
3. Union of India v. R Gandhi, 11 SCC 1; L Chandra Kumar v. Union of India, AIR 1997 SC 1125. Also see Constitutional Infirmities: Failure of the Copyright (Amendment) Act, 2012 and the Suggestions for Reforms; Ananth Padmanabhan, 2010. Available at: http://www.nujslawreview.org/pdf/articles/2012_3/09_ananth.pdf. (Last accessed on 22.06.2020 at 10:04 a.m.)
4. Tribunals: A Tragic Obsession by Arvind P Datar. Available at http://india-seminar.com/2013/642/642_arvind_p_datar. (Last accessed on 22.06.2020 at 10:04 a.m.)
5. See L, Chandra Kumar V. Union of India, AIR 1997 SC 1125; Indira Nehru Gandhi v. Raj Narain, AIR SC 2299, 1975.
6. See, Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; I R Coelho v. State of Tamil Nadu, AIR SC 861, 2007.
7. See, Sampath Kumar v. Union of India, (1987) 1 SCC 124; L. Chandra Kumar v. Union of India, AIR 1997 SC 1125; Union of India v. Delhi High Court Bar

Association, (2002) 4 SCC 275 and Union of India v. R Gandhi, 11 SCC 1, 2010.
8. Chandra Kumar LV. Union of India, AIR SC 1125,1997.
9. The Constitution of India (42nd Amendment Act), 1976.
10. BIFR & NCLT: An Analysis of Tribunalization in India; Ali Amerjee. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401842. Last accessed on 24.07.2020 at 12:29 p.m.
11. Associated Cement Co. Ltd. v. P.N. Sharma, AIR 1965 SC 1595
12. Id.
13. In Associated Cement Companies Ltd. v. P.N. Sharma, AIR 1965 SC (The Supreme Court has extensively discussed the earlier precedent, and held that a body would qualify as a 'tri- bunal' for the purpose of Article 136(1) of the Constitution so long as it was clothed with the State's inherent judicial poser to deal with disputes between parties and determine them on the merits fairly and objectively), 1595.
14. Constitutional Infirmities: Failure of the Copyright (Amendment) Act, and the Suggestions for Reforms; Ananth Padmanabhan, 2012. Available at: http://www.nujslawreview.org/pdf/articles/2012_3/09_ananth.pdf. (Last accessed on 23.06.2020 at 10:04 a.m.)
15. In re Delhi Laws Act, AIR SC 332, 1951.
16. Ram Jawaya Kapur V. State of Punjab, AIR SC 549,1955.
17. U.N.R Rao v. Indira Gandhi, AIR 1971 SC 1002
18. Samsher Singh V. State of Punjab, AIR SC 2192, 1974.
19. Associated Cement Companies Ltd. v. P.N.Sharma, AIR 1965 SC 1595.
20. Constitutional Infirmities: Failure of the Copyright (Amendment) Act, and the Suggestions for Reforms; Ananth Padmanabhan, 2012. Available at: http://www.nujslawreview.org/pdf/articles/2012_3/09_ananth.pdf. (Last accessed on 23.06.2020 at 10:04 a.m.)
21. Raj Narain V. Indira Nehru Gandhi, AIR All 324,1974.
22. Indira Nehru Gandhi V. Raj Narain, AIR SC 2299, 1975.
23. Kesavananda Bharati V. State of Kerala, AIR SC 1461, 1973.
24. Kuldip Nayar. Justice Denied to Judge, The Sunday Times, February 21, 2010.
25. ADM Jabalpur V, Shivkant Shukla. AIR SC 1207,1976.
26. Justice Khanna was a Crusader for Civil Rights, the Hindu, February 29, 2008.
27. Justice Ruma Pal, 5th V.M. Tarkunde memorial Lecture: An Independent Judiciary. Available at http://theradicalhumanist.com/index.php?option=com_radical&controller=article&cid=431&Itemid=56. (Last accessed on 23.06.2020 at 10:04 a.m.).
28. 323A. Administrative tribunals — (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons
29. appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation
30. owned or controlled by the Government.
31. (2) A law made under clause (1) may—
32. provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;
33. specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
34. provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
35. exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);
36. provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction
37. of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;
38. (f) repeal or amend any order made by the President under clause (3) of article 371D;
39. (g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.
40. (3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.
41. 323B. Tribunals for other matters.— (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause(2) with respect to which such Legislature has power to make laws.
42. (2) The matters referred to in clause (1) are the following, namely:
43. levy, assessment, collection and enforcement of any tax;
44. foreign exchange, import and export across customs frontiers;
45. industrial and labour disputes;
46. land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;
47. ceiling on urban property;
48. elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;
49. production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;
50. rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;
51. offences against laws with respect to any of the matters

specified in sub-clauses (a) to (h) and fees in respect of any of those matters;
52. any matter incidental to any of the matters specified in sub-clauses (a) to (i).
53. (3) A law made under clause (1) may—
54. provide for the establishment of a hierarchy of tribunals;
55. specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
56. provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
57. exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;
58. provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;
59. contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.
60. (4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.
61. Explanation — In this article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of
62. Part XI.
63. See, Department Related Parliamentary Standing Committee On Personnel, Public Grievances, Law And Justice, Seventeenth Report On The Administrative Tribunals (Amendment) Bill, 2006. available at http://164.100.47.5/book2/reports/personnel/17threport.htm (Last accessed on 23.06.2020 at 10:04 a.m.) (States that the Shah Committee recommended the setting up of an independent tribunal to handle service matters pending before High Court and Supreme Court.)
64. Sampath Kumar v. Union of India, 1 SCC 124, 1987.
65. Constitutional Infirmities: Failure of the Copyright (Amendment) Act, and the Suggestions for Reforms; Ananth Padmanabhan, 2012. Available at: http://www.nujslawreview.org/pdf/articles/2012_3/09_ananth.pdf. (Last accessed on 23.06.2020 at 10:04 a.m.).
66. Sampath Kumar v. Union of India, 1 SCC 124, 1987.
67. Id.
68. L Chandra Kumar V. Union of India, 3 SCC 261, 1997.
69. RK Jain V. Union of India, (65) ELT 305 (SC), 1993.
70. Sakinala Harinath V. State of A.P, (3) ALT 471 (This decision is a must-read for any serious student of constitutional law, as it delves into the silences in any Constitution and the vesting or apportionment of judicial power, absent any written provision. The Full Bench of the Andhra Pradesh High Court examined decisions from varied jurisdictions and Courts such as that of the Privy Council in Don John Francis Douglas Liyanage v. The Queen, 1967 (1) A.C. 259, and the U.S. Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipe Line Company, 458 U.S. 50, and held that in our constitutional scheme, though unwritten in specific terms, one can conclude that "it is axiomatic that they (Supreme Court and the High Court) are the sole repositories of the power of judicial review" in light of the nature of powers conferred upon them), 1993.
71. Supra note 34
72. Supra note 36
73. Supra note 34
74. L Chandra Kumar v. Union of India, 3 SCC 261, 1997.
75. Available at: http://legindia.blogspot.in/2011/11/tribunalisation-is-serious-encroachment.html. (Last accessed on 23.06.2020 at 10:04 a.m.).
76. Ram Jawaya Kapur v. State of Punjab, (2) SCR 225, 1955.
77. Id.
78. Chandra Mohan v. State of U.P., AIR 1966 SC, 1987.
79. Id.
80. Indira Nehru Gandhi v. Raj Narain, Supp SCC 1, 1975.
81. Id.
82. L Chandra Kumar V. Union of India, 3 SCC 261, 1997.
83. Supra note 34
84. Keshavananda Bharati v. State of Kerala, (1973) 4 SCC 225, Indira Gandhi v. Raj Narain, Supp SCC 1, State of Bihar v. Bal Mukund Shah, 4 SCC 640 and I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1, 1975, 2000.
85. Union of India v. R Gandhi, (5) SCALE 514, 2010.
86. Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1
87. Union of India v. R Gandhi, (5) SCALE 514, 2010.
88. Id.