

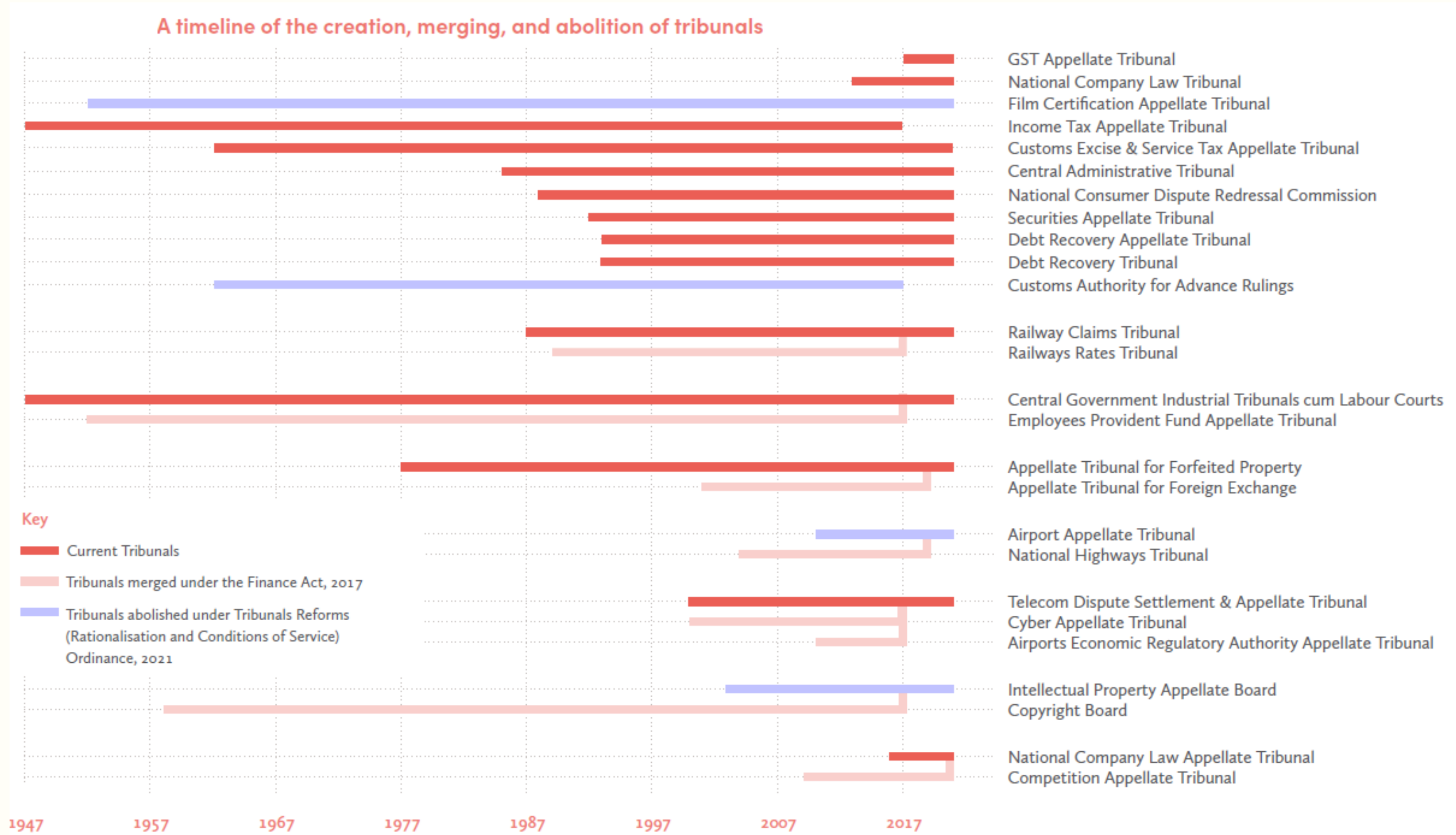
A Framework for the National Tribunals Commission - Draft White Paper

DAKSH

April 2021



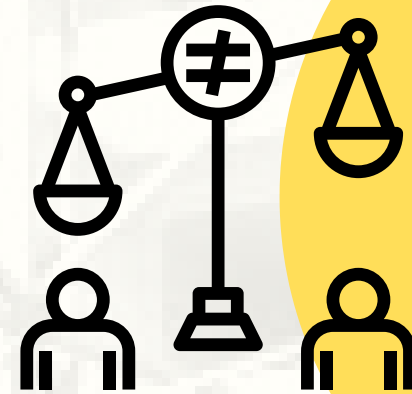
Tribunals in India over time (pg.72)



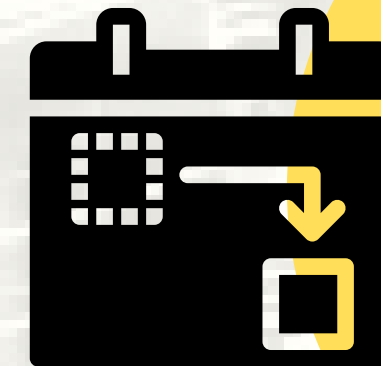
Problems of the tribunals system (pg. 13)



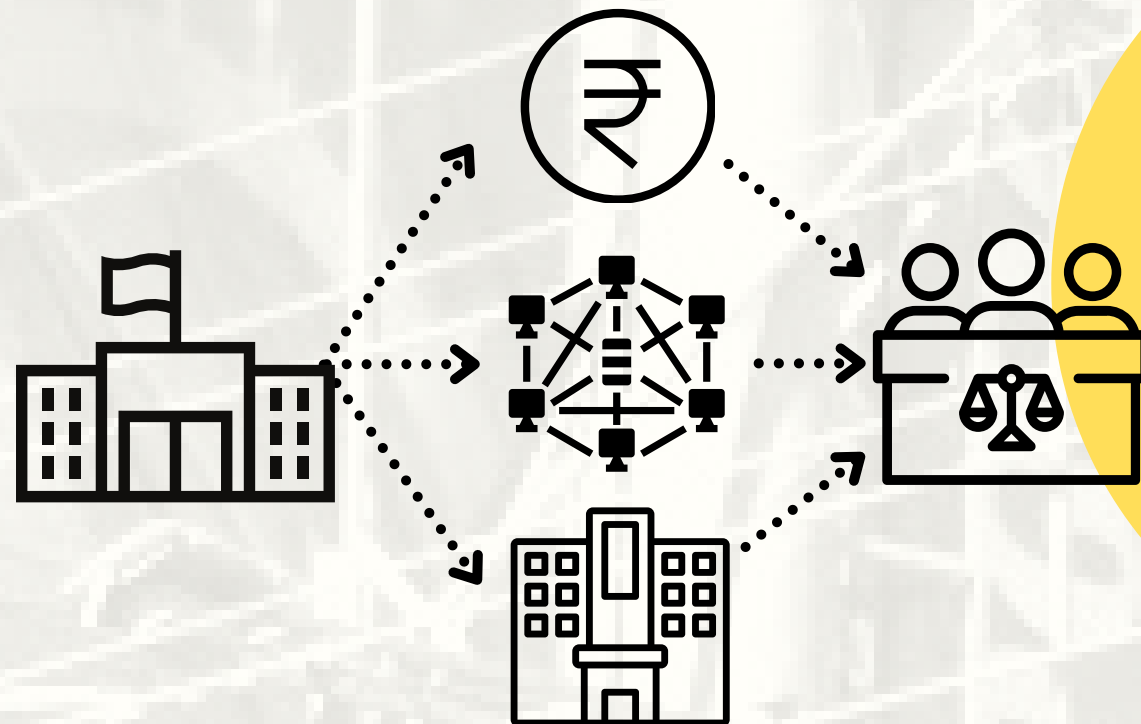
Executive interference in appointment and removal of tribunal members.



Inconsistency in service conditions between tribunals



Pendency and delays, hampering access to justice

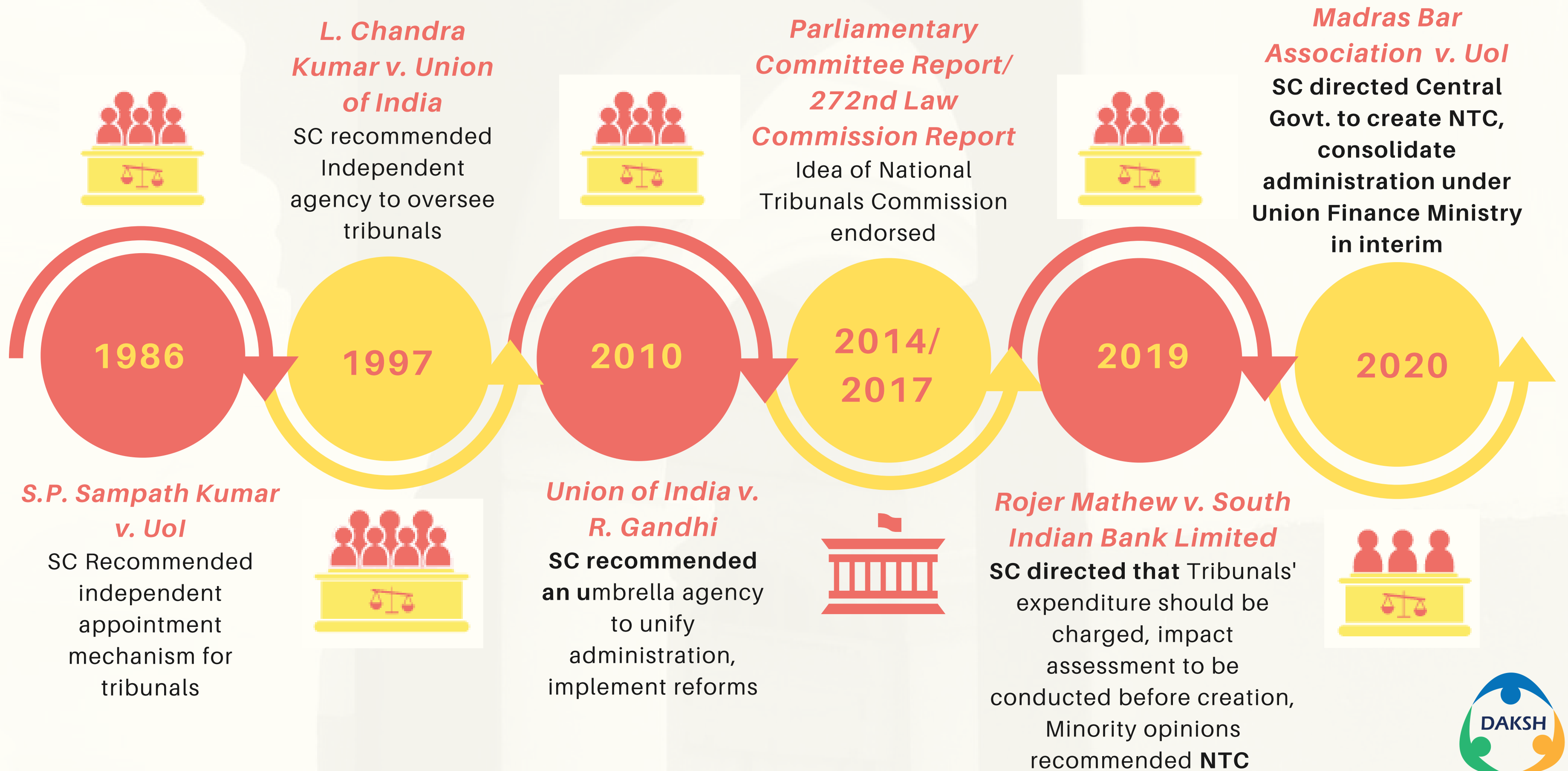


Dependence on executive for resources, infrastructure, and premises

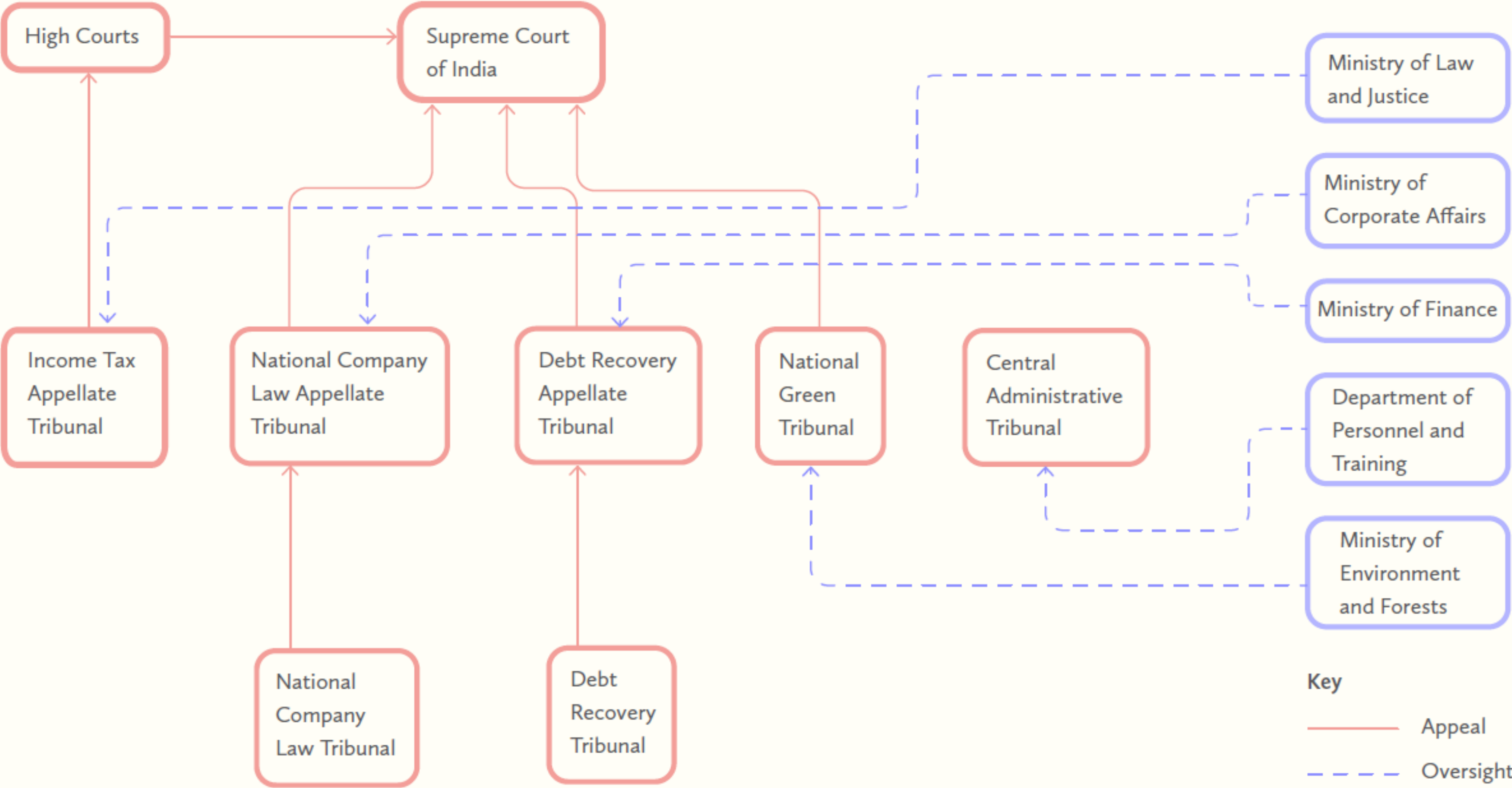


By-passing High Courts' jurisdiction, via direct appeal to the Supreme Court

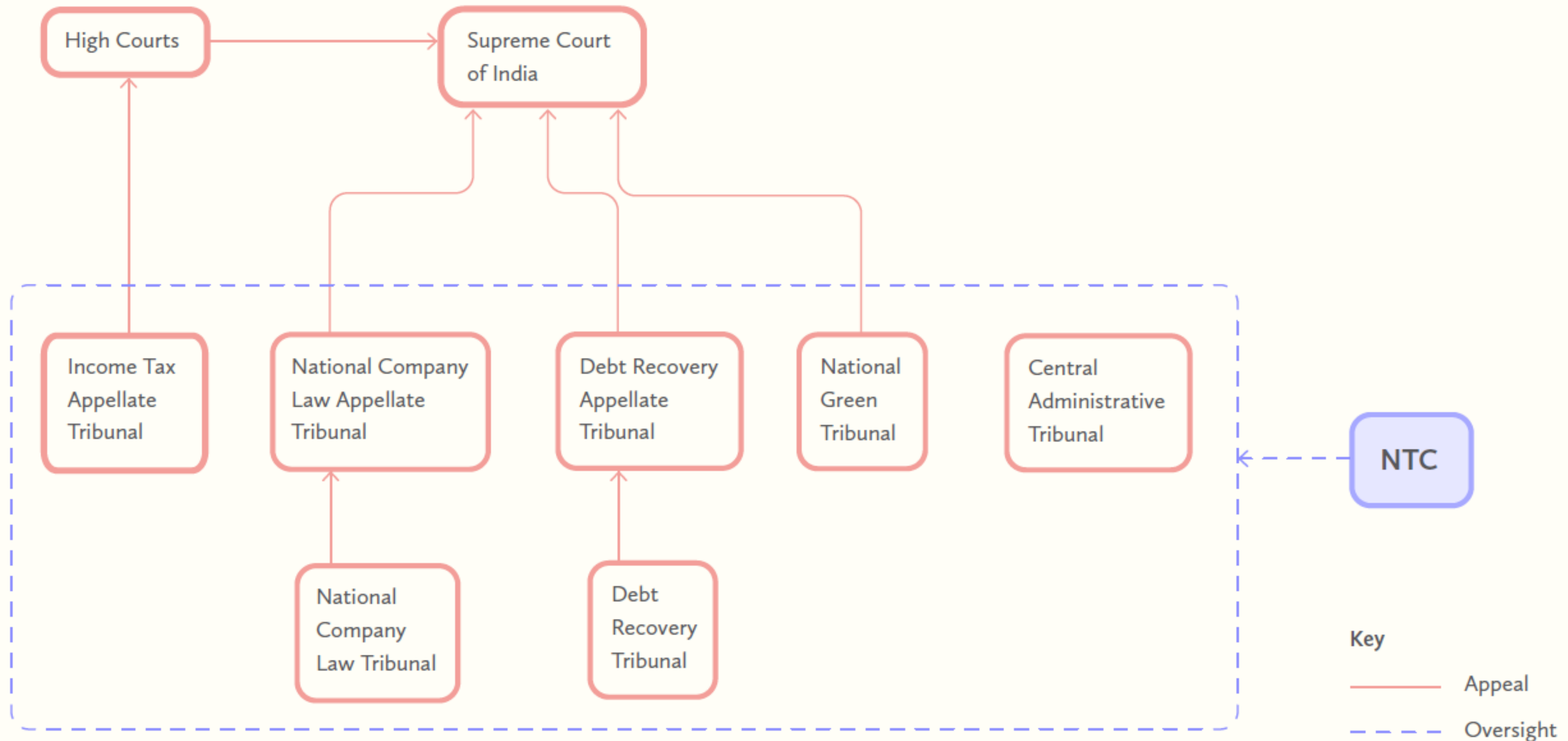
Evolution of idea of an NTC (pg.18)



Before NTC



After NTC



NTC as independent oversight institution (pg. 23)

The NTC should have the characteristics of an '**independent oversight institution**':

- Capacity for **co-ordination** with institutional frameworks from a whole-of-government perspective
- **Independence** and sufficient authority
- **Neutrality** in relation to all three branches of government
- integration into a **broad concept of reform**

Some of the functions that are frequently assigned to oversight institutions include:

- Regularly reporting (normally annually) on compliance with relevant legislation and good practice
- Investigating and maintaining data on complaints and their resolution;
- Monitoring policy and practices
- Assessing systemic issues in the institution's responsibility area
- Recommending policy changes to address systemic issues



NTC as independent oversight institution

The NTC should be empowered to **frame rules in certain areas**, e.g.:

- **Qualification and appointments** of tribunal members
- Conducting **disciplinary proceedings**,
- Identifying and addressing systemic issues in the tribunal system through **judicial impact assessments**,
- **Monitoring and evaluating the performance** of individual tribunals

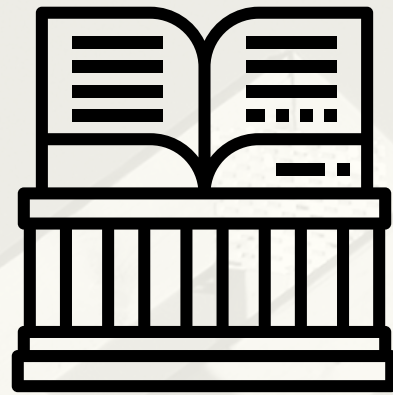
NTC should have **executive (administrative), legislative (rules and policy making)** as well as **quasi-judicial (disciplinary)** powers to effectively carry out its mandate.



Legal Framework - some considerations (pg. 26)

Ease and permanence of establishment

The NTC could be established through a **constitutional amendment**, a dedicated **statute**, or by an **executive order/resolution**



Extensive process of **constitutional amendment** may delay further delay establishment, but amendment necessary to **harmonize the powers** to be vested on the NTC vis-à-vis the matters relating to tribunals on which the legislature can make laws, and would result in a more **permanent body**



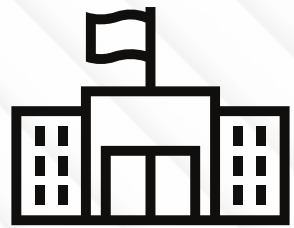
Primary advantage of establishing the NTC through a **statute** is **flexibility**, enabling the legislature to respond to changing needs over time.



Establishing it through **executive action** would take less time than other methods but would raise **serious concerns, discussed in next few slides**

Legal Framework - Independence (pg. 28)

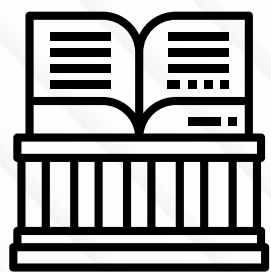
The NTC should be free from the influence of any external interests



This **cannot be achieved** by establishing it through executive order.

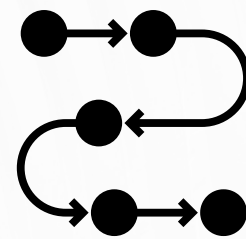


NTC as statutory authority may be **adequately independent**



NTC as a constitutional authority **would be stronger** if statutory bodies have been **weak in the past, or if the legislature is subject to executive influence/domination**

The NTC should be operationally independent, meaning no external interests affect operation .



The procedure of appointing NTC members, its composition, and its procedures should be transparent and free from influence.



Service conditions and tenure should be secure

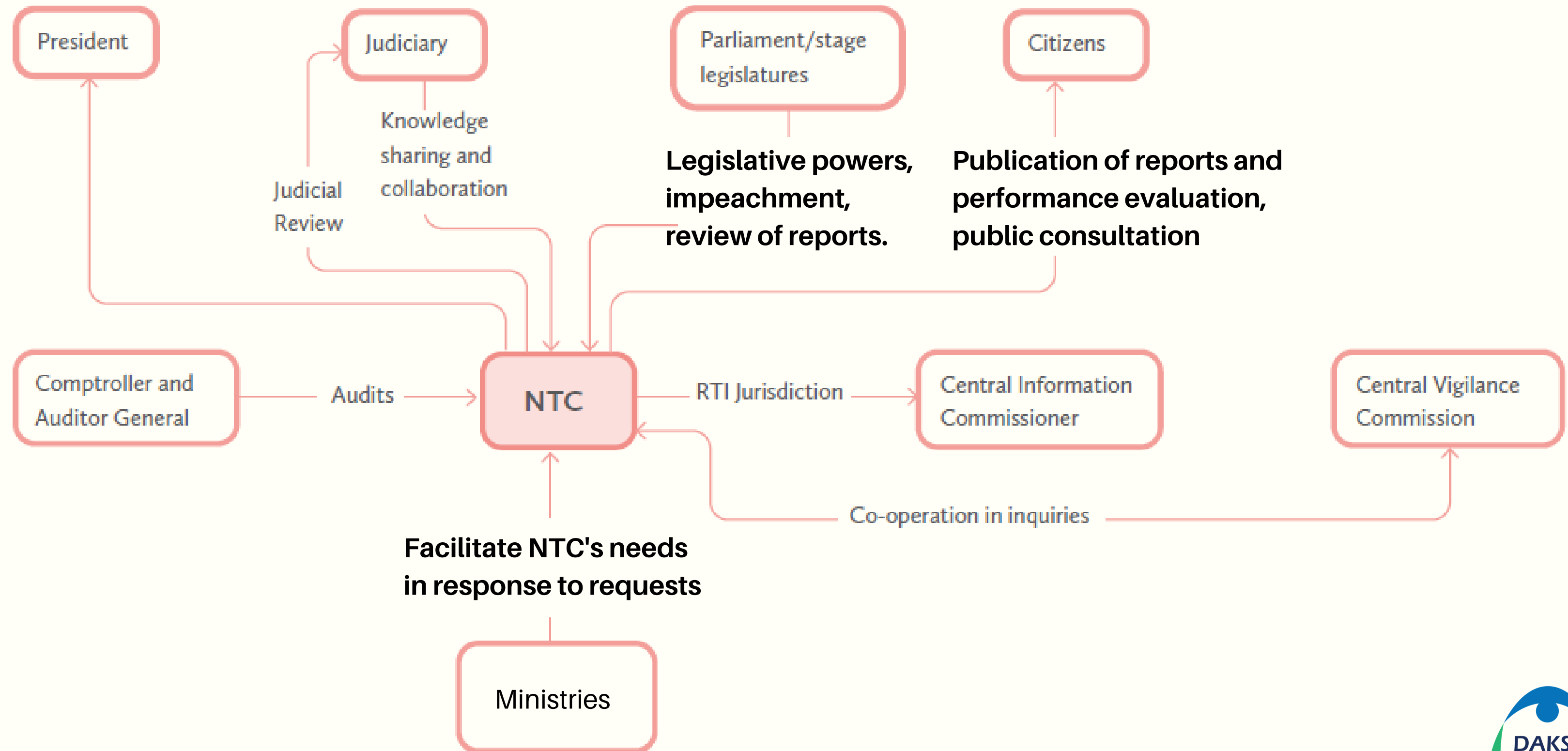


Expenditure should be charged to the Consolidated Fund of India.



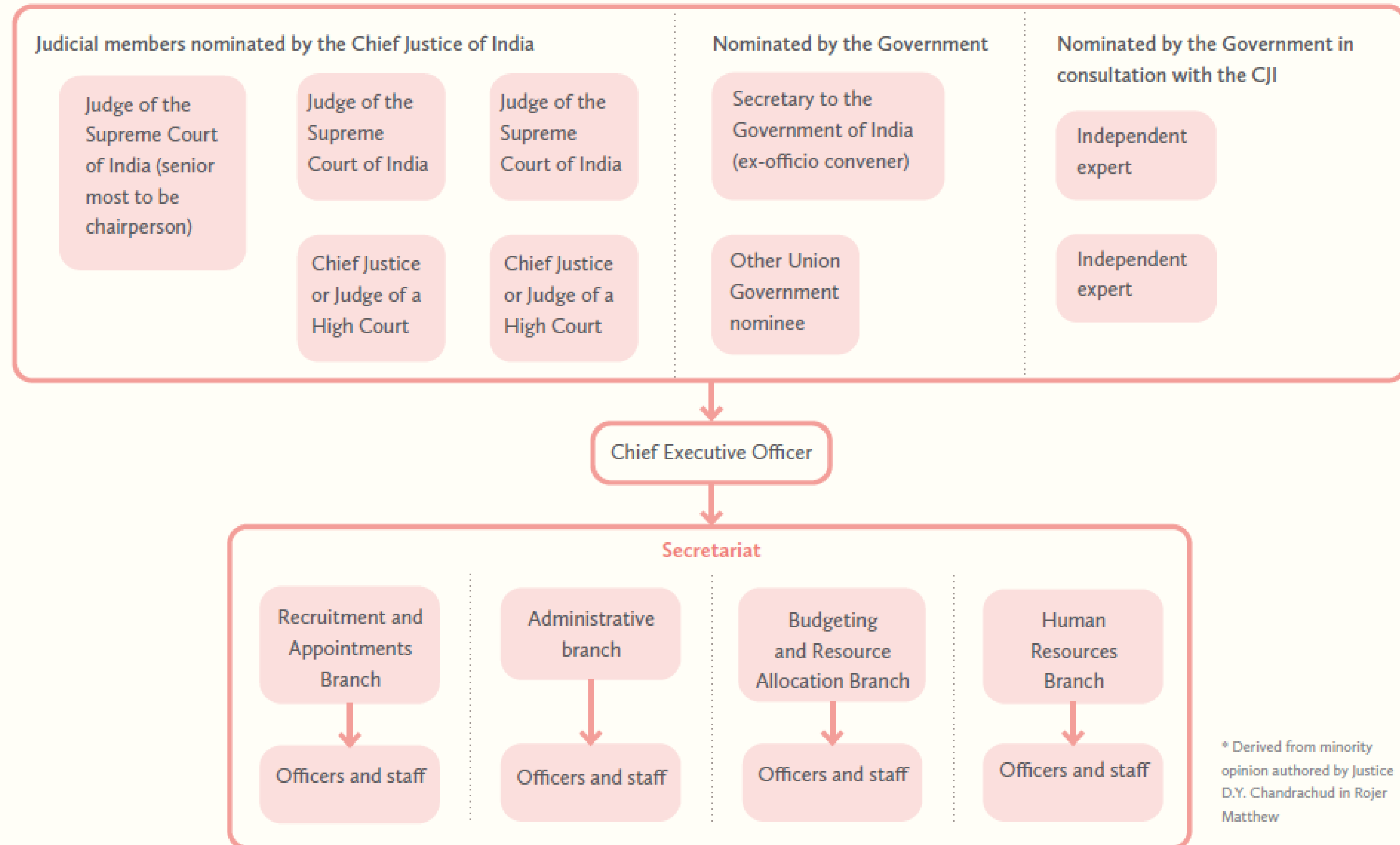
The legal framework should **eliminate incentives** which compromise independence, eg. barring members from holding political or executive offices

Accountability and other institutions (pg. 34)



Organisational structure (pg. 41)

Board*

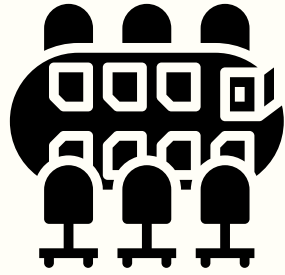


* Derived from minority opinion authored by Justice D.Y. Chandrachud in Rojer Matthew

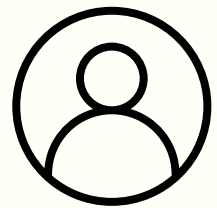


Legal Framework - Organisational structure

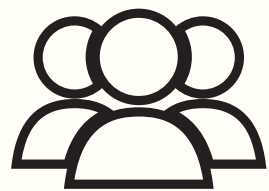
Key features :



The NTC should be headed by a **Board**, composed of diverse stakeholders headed by the **Chairperson**.



A **Chief Executive Officer, responsible to the Board**, would manage and execute the functions of the NTC a day-to-day basis.



A **Secretariat** to enable separation of judicial and administrative functions, with functional and/or territorial distribution of work

Union and State level Commissions

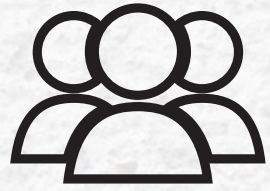
NTC will oversee tribunals and all their benches at the **national and state levels** made under the **laws of the Parliament**

There should be **State Tribunals Commissions** in each state for oversight of state level tribunals created under the **laws of that state**

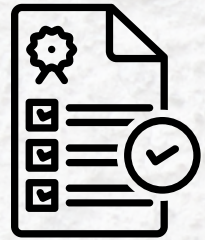
Where Tribunals do not have the critical mass of cases to justify a state-level tribunals commission for each in a group of states, a **Joint Tribunals Commission** can be set up



Functions of the NTC (pg. 46)



A **single sub-committee** under the NTC should be responsible for the appointment of **judicial members** to all tribunals. Sub-committees should be formed to appoint technical members.



The NTC be responsible for setting the qualifications necessary for every tribunal member's post. These qualifications should be **uniform for judicial members**, across all tribunals.

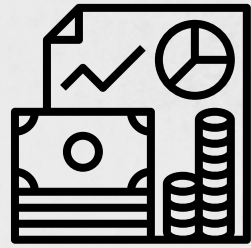


Qualifications for technical members should include comparable standards of experience and education in the relevant area of expertise, to the extent possible.



The nature of misconduct for which **disciplinary proceedings** can be instituted should be the same across all tribunals, and the framing of **rules** and **procedure** for the conduct of disciplinary proceedings would be a crucial early objective of the NTC.

Functions - administrative oversight



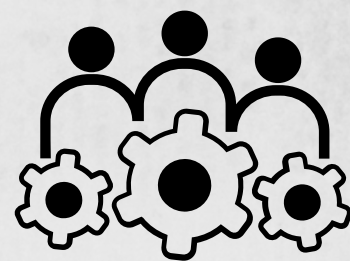
Appoint staff with expertise in public budgeting to implement **effective, efficient budgeting practices**.



Statutory responsibility for setting salaries, allowances, conditions pertaining to leave, and other service conditions.



Development of **metrics for efficiency** and their incorporation into **case management rules** and administrative decision making enables systematic improvement, and can feed into **process re-engineering**



Oversee **administrative staff** enables transfer of administrative responsibilities from Chairpersons /Presidents to officers with administrative expertise



Rationalisation of physical infrastructure and consolidation and development of **technological infrastructure** along a **platform model** with open standards, open data and digitally native processes

Institutional division of functions

	NTC/State Tribunals Commissions	Tribunals themselves	Parliament/ State Legislature (via parent statute or through constitutional amendment)
.....			
Authority to recruit and appoint tribunal members	Yes	No	No
.....			
Authority to appoint staff	Yes	No	No
.....			
Full control of adjudicatory decision- making	No	Yes	No
.....			
Demarcation of jurisdiction of tribunals	No	No	Yes
.....			
Determining the process of appeal of tribunal decisions, including specifying whether there is an appellate authority or if decisions are appealed to a High Court directly	No	No	Yes
.....			
Scheduling of hearings	No	Yes	No



Institutional division of functions

	NTC/State Tribunals Commissions	Tribunals themselves	Parliament/ State Legislature (via parent statute or through constitutional amendment)
.....			
Specification of procedure to be followed in proceedings	No	Yes	Yes
.....			
Authority to conduct disciplinary proceedings	Yes	No	No
.....			
Authority with respect to budget estimates	Yes	No	Yes (authority to approve)
.....			
Authority to determine salaries, allowances, and other service conditions	Yes	No	No
.....			
Responsibility for administrative oversight and technology infrastructure	Yes	No	NA



Need for JIA – Preventing ‘over’ tribunalisation

Over-tribunalisation

results when tribunals are established indiscriminately, without an eye to coherence or a principled structure.

This can be addressed by conducting **Judicial Impact Assessments (JIAs)** which are analyses of the impact on the budgets, personnel and resource requirements, and capacity of courts/tribunals due to changes in legislation or from a judicial interpretation.

It can be extended to output and outcomes for litigants and citizens.

Therefore, the NTC should:

Carry out JIA for proposed legislations and judicial interpretation that would impact tribunals under its administration.

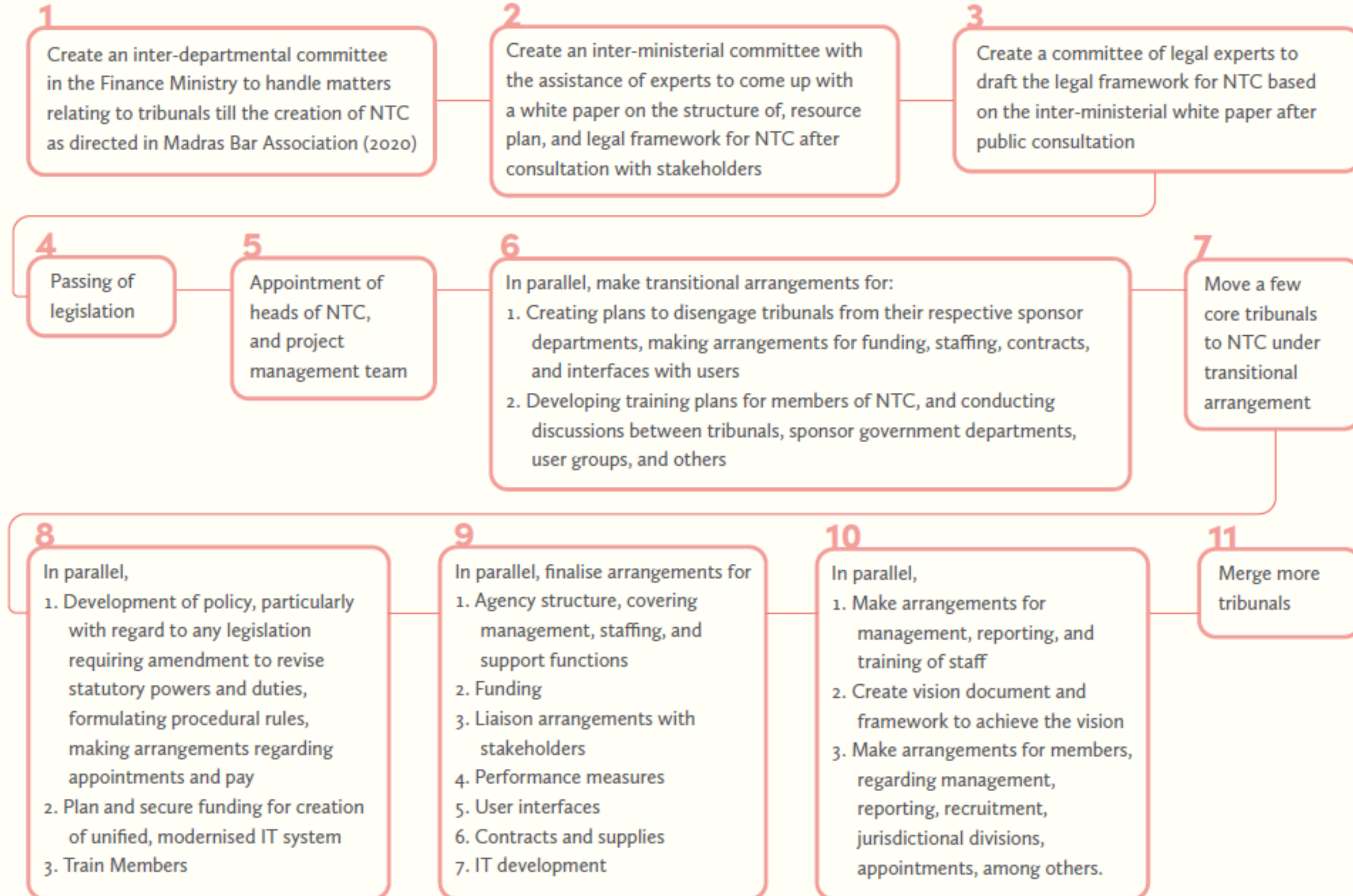
Specify the process to be followed in carrying out the JIA.

Put out in the public domain the results of the JIA immediately after the finalisation of the report.

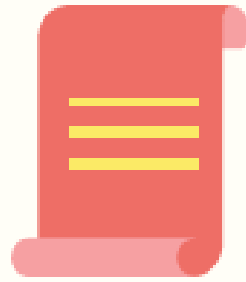
JIA should have been carried out before abolishing Tribunals through the ordinance route recently



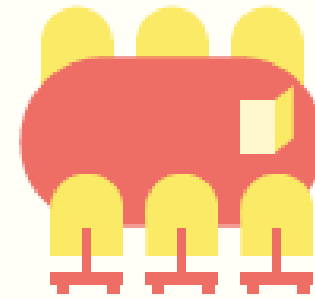
Pathway to change



Further discussion



Should NTC be established through statute or constitutional amendment?



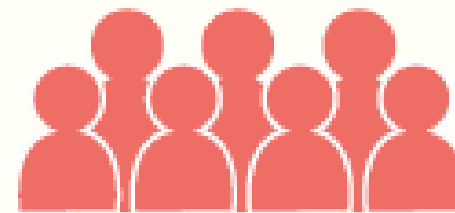
How can the legal framework ensure that the Board has judicial and technical expertise, and represents tribunals' needs?



Should all expenditure be charged to the Consolidated Fund of India, or only salaries of NTC members?



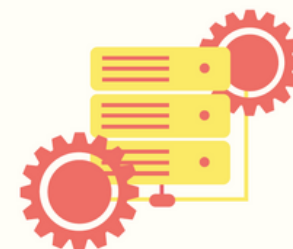
How should the Chief Executive Officer be appointed, and what should be their responsibilities?



What legal and other arrangements are necessary to transition to a administrative cadre to provide registry services to all tribunals?



How should NTC prescribe qualifications, selection procedure, and service conditions of tribunal members?



How can the NTC oversee creation, maintenance, and improvement of a unified technological infrastructure or platform for all tribunals?

Thank you

