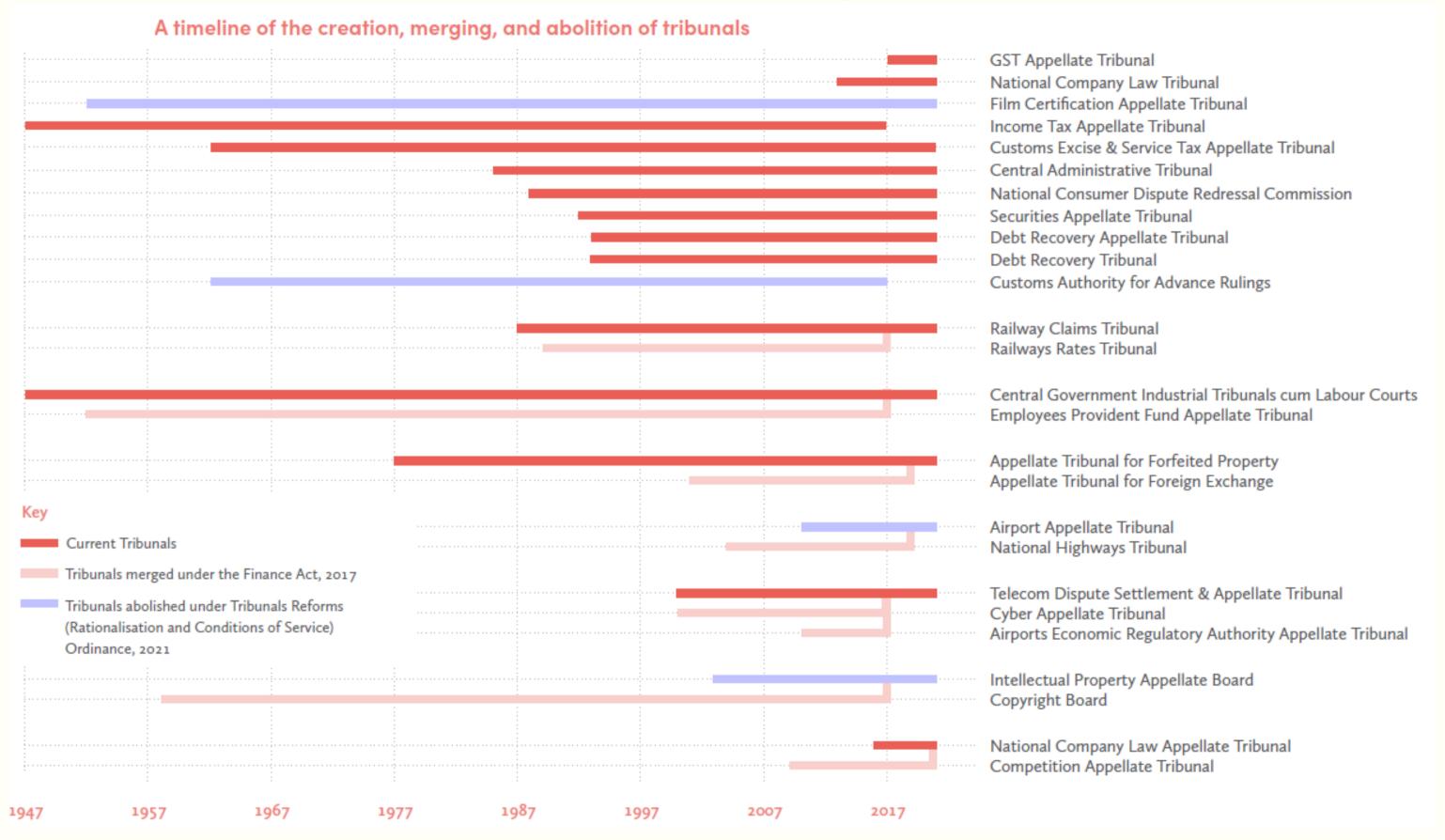
A Framework for the National Tribunals Commission - Draft White Paper

DAKSH
April 2021



Tribunals in India over time (pg.72)





Problems of the tribunals system (pg. 13)



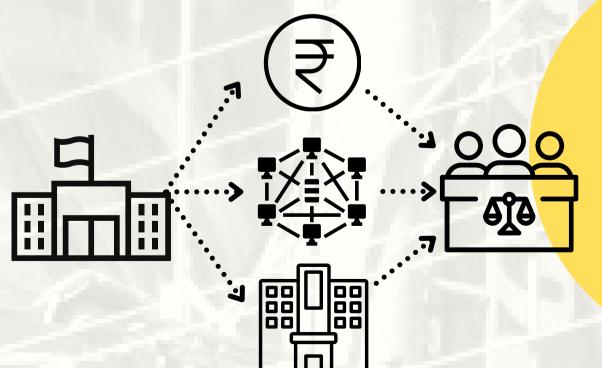
Executive interference in appointment and removal of tribunal members.



Inconsisency 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)



L. Chandra Kumar v. Union of India

SC recommended
Independent
agency to oversee
tribunals



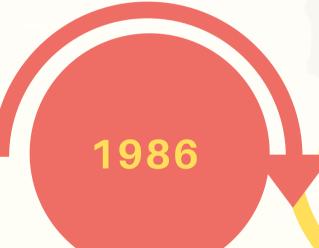
Parliamentary
Committee Report/
272nd Law
Commission Report

Idea of National Tribunals Commission endorsed



Madras Bar Association v. Uol

SC directed Central
Govt. to create NTC,
consolidate
administration under
Union Finance Ministry
in interim



1997

2010

2014/2017

2019

2020

S.P. Sampath Kumar v. Uol

SC Recommended independent appointment mechanism for tribunals



Union of India v. R. Gandhi

SC recommended
an umbrella agency
to unify
administration,
implement reforms



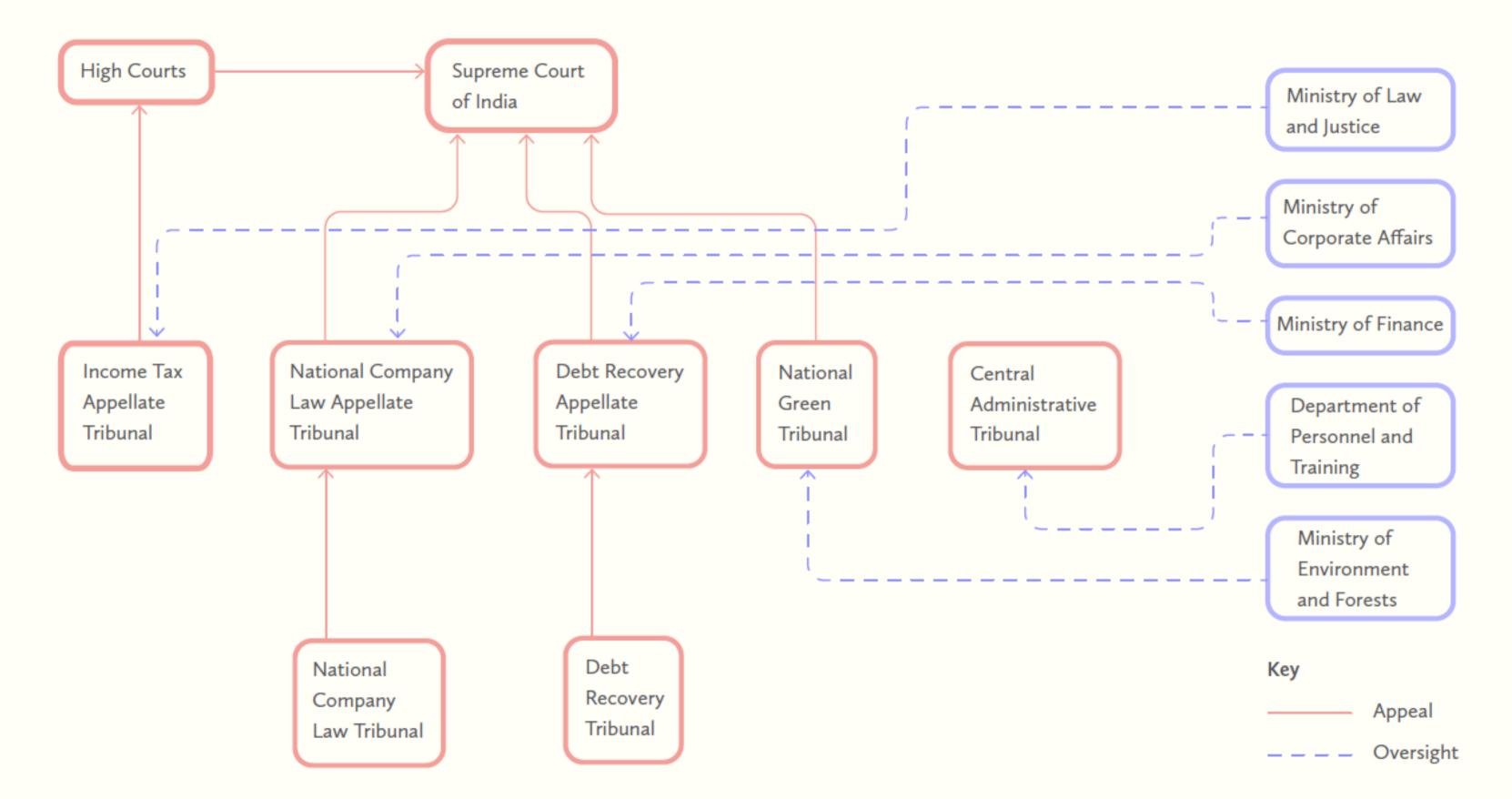
Rojer Mathew v. South Indian Bank Limited

sc directed that Tribunals'
expenditure should be
charged, impact
assessment to be
conducted before creation,
Minority opinions
recommended NTC



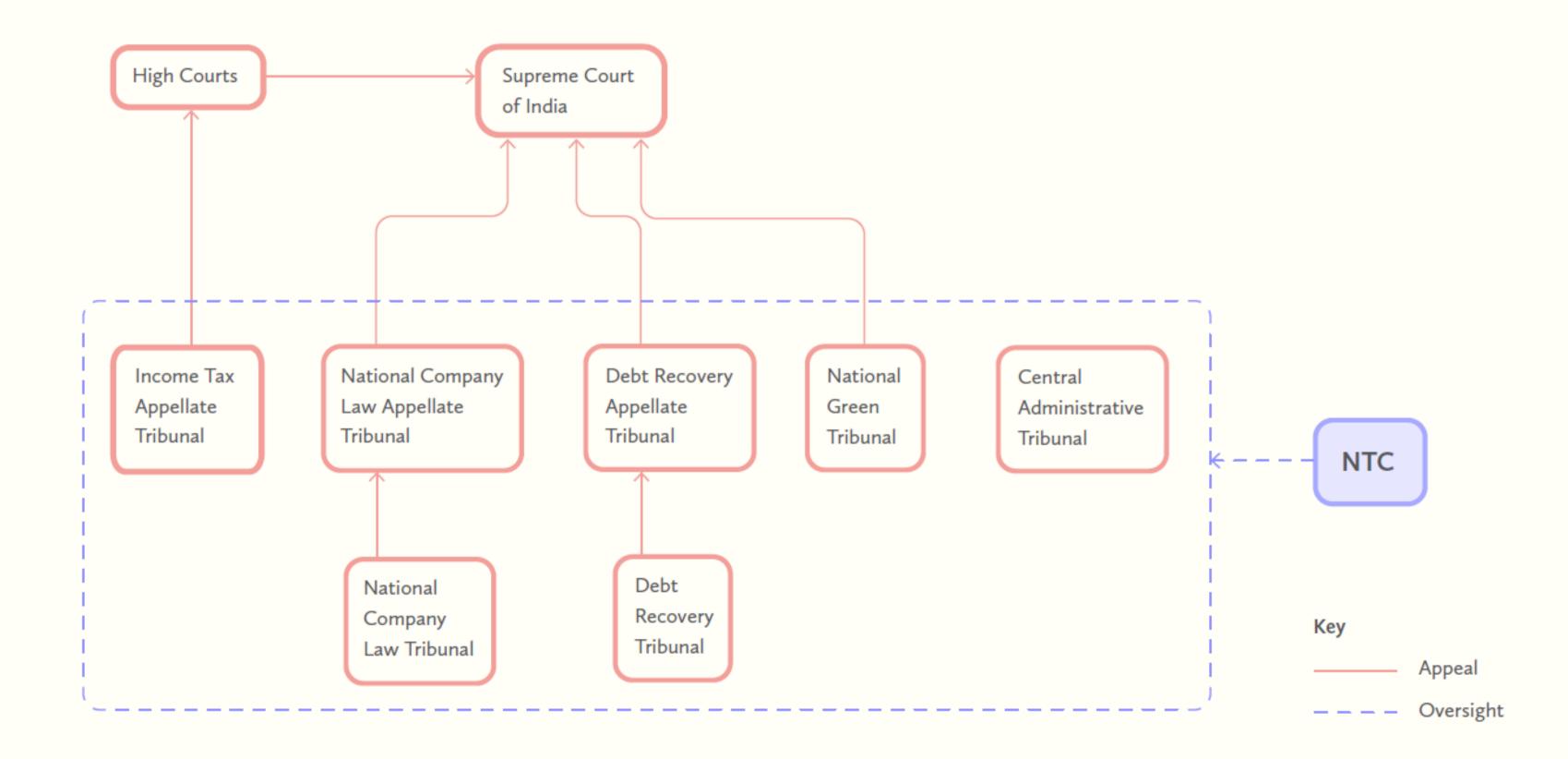


Before NTC





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.

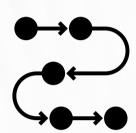


NTC as statutory authority may be adequately independent



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



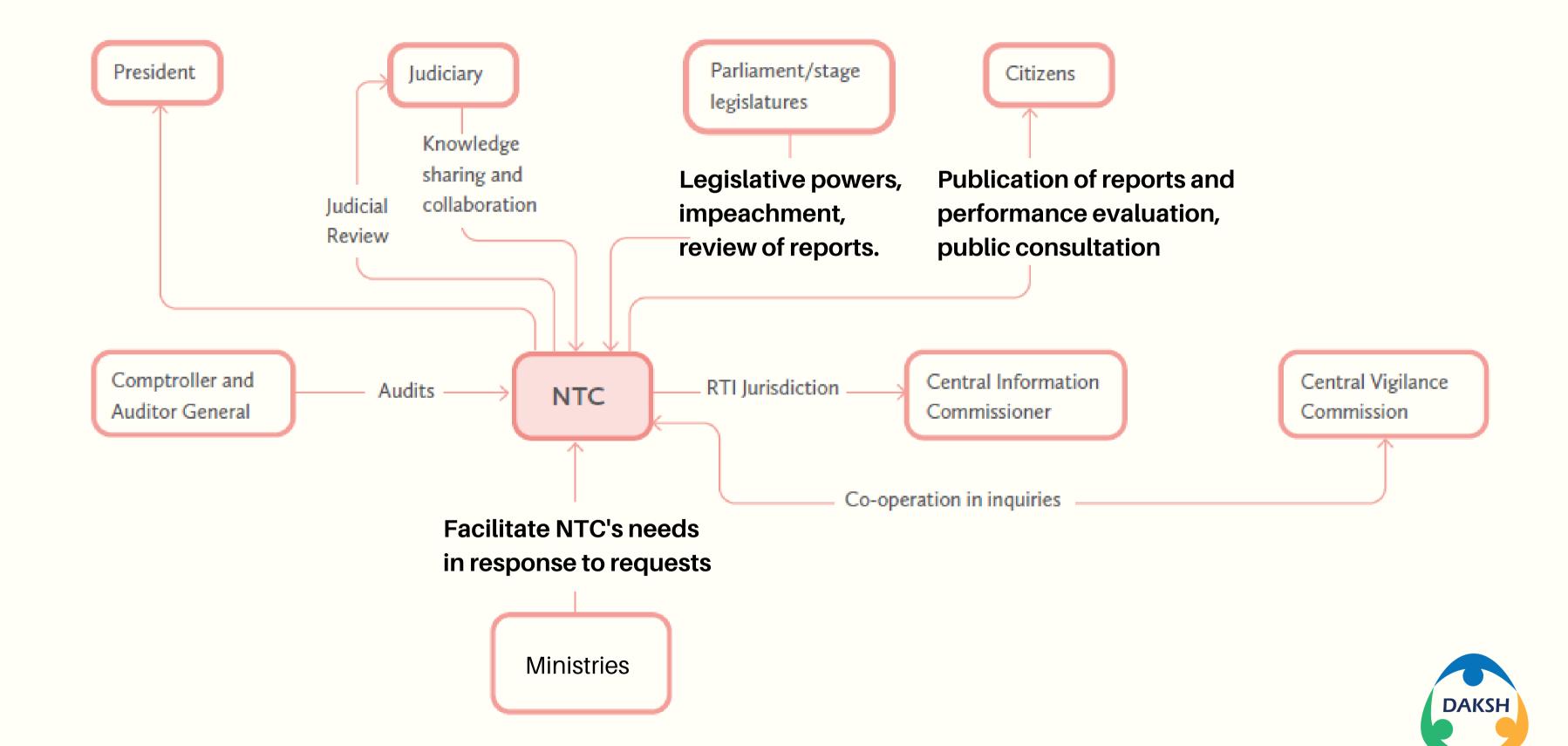
Expenditure should be charged to the Consolidated Fund of India.



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

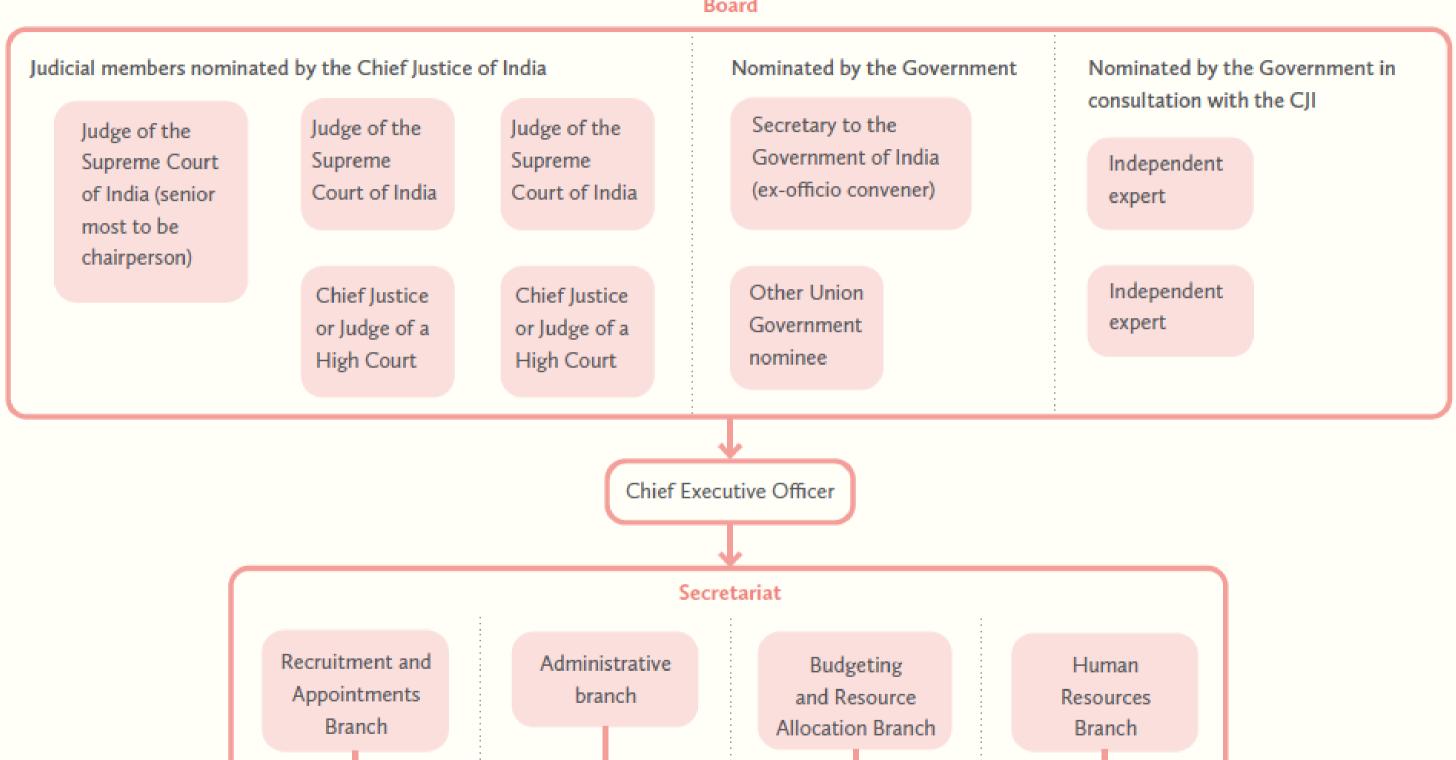


Accountability and other institutions (pg. 34)



Organisational structure (pg. 41)

Officers and staff



Officers and staff

Officers and staff



* Derived from minority

opinion authored by Justice

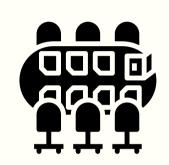
D.Y. Chandrachud in Rojer

Matthew

Officers and staff

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 statefor 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



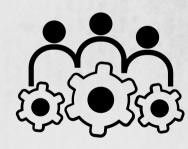
Appoint staff with expertise in public budgeting to implement **effective**, **efficient budgeting practices**.



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 of if decisions are appealed to a High Court directly		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

Overtribunalisation

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

Create an inter-departmental committee in the Finance Ministry to handle matters relating to tribunals till the creation of NTC as directed in Madras Bar Association (2020) Create an inter-ministerial committee with the assistance of experts to come up with a white paper on the structure of, resource plan, and legal framework for NTC after consultation with stakeholders

Create a committee of legal experts to draft the legal framework for NTC based on the inter-ministerial white paper after public consultation

Passing of

legislation

Appointment of heads of NTC, and project management team

<u>6</u>

In parallel, make transitional arrangements for:

- Creating plans to disengage tribunals from their respective sponsor departments, making arrangements for funding, staffing, contracts, and interfaces with users
- Developing training plans for members of NTC, and conducting discussions between tribunals, sponsor government departments, user groups, and others

Move a few core tribunals to NTC under transitional arrangement

8

In parallel,

- Development of policy, particularly with regard to any legislation requiring amendment to revise statutory powers and duties, formulating procedural rules, making arrangements regarding appointments and pay
- Plan and secure funding for creation of unified, modernised IT system
- 3. Train Members

9

In parallel, finalise arrangements for

- Agency structure, covering management, staffing, and support functions
- 2. Funding
- Liaison arrangements with stakeholders
- 4. Performance measures
- 5. User interfaces
- 6. Contracts and supplies
- 7. IT development

10

In parallel,

- Make arrangements for management, reporting, and training of staff
- Create vision document and framework to achieve the vision
- Make arrangements for members, regarding management, reporting, recruitment, jurisdictional divisions, appointments, among others.

Merge more tribunals



Further discussion



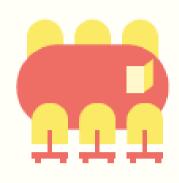
Should NTC be established through statute or constitutional amendment?



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



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



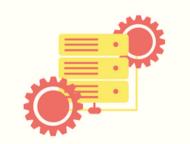
How can the legal framework ensure that the Board has judicial and technical expertise, and represents tribunals' needs?



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



Thank you

