A Framework for the National Tribunals Commission -
Draft White Paper

DAKSH
April 2021
A timeline of the creation, merging, and abolition of tribunals

- GST Appellate Tribunal
- National Company Law Tribunal
- Film Certification Appellate Tribunal
- Income Tax Appellate Tribunal
- Customs Excise & Service Tax Appellate Tribunal
- Central Administrative Tribunal
- National Consumer Dispute Redressal Commission
- Securities Appellate Tribunal
- Debt Recovery Appellate Tribunal
- Debt Recovery Tribunal
- Customs Authority for Advance Rulings
- Railway Claims Tribunal
- Railways Rates Tribunal
- Central Government Industrial Tribunals cum Labour Courts
- Employees Provident Fund Appellate Tribunal
- Appellate Tribunal for Forfeited Property
- Appellate Tribunal for Foreign Exchange
- Airport Appellate Tribunal
- National Highways Tribunal
- Telecom Dispute Settlement & Appellate Tribunal
- Cyber Appellate Tribunal
- Airports Economic Regulatory Authority Appellate Tribunal
- Intellectual Property Appellate Board
- Copyright Board
- National Company Law Appellate Tribunal
- Competition Appellate Tribunal

Key:
- Current Tribunals
- Tribunals merged under the Finance Act, 2017
- Tribunals abolished under Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021

Year:
- 1947
- 1957
- 1967
- 1977
- 1987
- 1997
- 2007
- 2017
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)

1986
S.P. Sampath Kumar v. UoI
SC Recommended independent appointment mechanism for tribunals

1997
L. Chandra Kumar v. Union of India
SC recommended Independent agency to oversee tribunals

2010
Union of India v. R. Gandhi
SC recommended an umbrella agency to unify administration, implement reforms

2014/2017
Parliamentary Committee Report/272nd Law Commission Report
Idea of National Tribunals Commission endorsed

2019
SC directed that Tribunals' expenditure should be charged, impact assessment to be conducted before creation, Minority opinions recommended NTC

2020
Madras Bar Association v. UoI
SC directed Central Govt. to create NTC, consolidate administration under Union Finance Ministry in interim
After NTC

- High Courts
- Supreme Court of India
- Income Tax Appellate Tribunal
- National Company Law Appellate Tribunal
- Debt Recovery Appellate Tribunal
- National Green Tribunal
- Central Administrative Tribunal
- NTC

Key:
- Appeal
- Oversight
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

Legal Framework - Independence (pg. 28)
Accountability and other institutions (pg. 34)

- President
- Judiciary
  - Knowledge sharing and collaboration
  - Judicial Review
- Parliament/stage legislatures
  - Legislative powers, impeachment, review of reports.
- Citizens
  - Publication of reports and performance evaluation, public consultation
- Comptroller and Auditor General
  - Audits
- NTC
  - RTI Jurisdiction
    - Co-operation in inquiries
  - Central Information Commissioner
    - Facilitate NTC's needs in response to requests
- Central Vigilance Commission

Ministries
Organisational structure (pg. 41)

Judicial members nominated by the Chief Justice of India
- Judge of the Supreme Court of India (senior most to be chairperson)
- Judge of the Supreme Court of India
- Chief Justice or Judge of a High Court

Nominated by the Government
- Secretary to the Government of India (ex-officio convener)
- Other Union Government nominee

Nominated by the Government in consultation with the CJI
- Independent expert
- Independent expert

Chief Executive Officer

Secretariat
- Recruitment and Appointments Branch
  - Officers and staff
- Administrative Branch
  - Officers and staff
- Budgeting and Resource Allocation Branch
  - Officers and staff
- Human Resources Branch
  - Officers and staff

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

<table>
<thead>
<tr>
<th>Authority to recruit and appoint tribunal members</th>
<th>NTC/State Tribunals Commissions</th>
<th>Tribunals themselves</th>
<th>Parliament/ State Legislature (via parent statute or through constitutional amendment)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Authority to appoint staff</th>
<th>Yes</th>
<th>No</th>
<th>No</th>
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</thead>
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<table>
<thead>
<tr>
<th>Full control of adjudicatory decision-making</th>
<th>No</th>
<th>Yes</th>
<th>No</th>
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<table>
<thead>
<tr>
<th>Demarcation of jurisdiction of tribunals</th>
<th>No</th>
<th>No</th>
<th>Yes</th>
</tr>
</thead>
</table>

| 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 |
|--------------------------------------------------------------------------------------------------------------------------------------------------|

<table>
<thead>
<tr>
<th>Scheduling of hearings</th>
<th>No</th>
<th>Yes</th>
<th>No</th>
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## Institutional division of functions

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

1. 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).

2. 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.

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

4. Passing of legislation

5. Appointment of heads of NTC, and project management team

6. In parallel, make transitional arrangements for:
   1. Creating plans to disengage tribunals from their respective sponsor departments, making arrangements for funding, staffing, contracts, and interfaces with users
   2. Developing training plans for members of NTC, and conducting discussions between tribunals, sponsor government departments, user groups, and others.

7. Move a few core tribunals to NTC under transitional arrangement

8. In parallel,
   1. 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
   2. Plan and secure funding for creation of unified, modernised IT system
   3. Train Members

9. In parallel, finalise arrangements for
   1. Agency structure, covering management, staffing, and support functions
   2. Funding
   3. Liaison arrangements with stakeholders
   4. Performance measures
   5. User interfaces
   6. Contracts and supplies
   7. IT development

10. In parallel,
    1. Make arrangements for management, reporting, and training of staff
    2. Create vision document and framework to achieve the vision
    3. Make arrangements for members, regarding management, reporting, recruitment, jurisdictional divisions, appointments, among others.

11. Merge more tribunals
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?

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

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

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