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Q12

How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India. (15).

UPSC Civil Services Mains 2018 · GS II · 15 marks · Separation of Powers

Separation of powers between various organs; dispute redressal mechanisms and institutions.

Core demand of the question

- How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India

Revision summary

Tribunals divert original disputes from ordinary courts but cannot oust High Court judicial review.

Articles 323A and 323B give Parliament (and in 323B, States where listed) power to create tribunals.

L. Chandra Kumar (1997) held **Articles 32, 226 and 227** to be basic structure; tribunals are courts of first instance.

Sampath Kumar and the Madras Bar Association line require court-like independence.

Competency exists; exclusion of constitutional courts does not.

Introduction

Tribunals are specialised forums created by statute to hear service, tax, environment, company and other disputes with speed and technical skill. They do take work away from the original side of High Courts and district courts. They do not, if the Supreme Court's basic-structure cases are obeyed, take away the High Court's power of judicial review or the Supreme Court's power under **Article 32**.

Body**How far tribunals curtail ordinary courts**

- **Articles 323A and 323B**, inserted by the Forty-second Amendment, allow administrative tribunals and other tribunals and even speak of excluding the jurisdiction of all courts except the Supreme Court.
- In practice, CAT, SAT, ITAT, NGT, NCLT/NCLAT and similar bodies hear first-instance disputes that once went to High Courts or civil courts. That is a real curtailment of ordinary original jurisdiction.
- The gain claimed is expertise, fewer adjournments, and relief for a crowded High Court roster.
- The cost is forum shopping, uneven quality of members, and a citizen who must travel to a tribunal Bench instead of the local district court.

- **Agreement with the view should therefore be partial:** tribunals curtail ordinary original jurisdiction by design; they must not curtail constitutional jurisdiction.

Constitutional validity

- **S.P. Sampath Kumar v. Union of India (1987)** first treated a tribunal as a possible substitute for a High Court if independence and judicial character were secured.
- **L. Chandra Kumar v. Union of India (1997)** is the controlling case. A seven-judge Bench held that judicial review by High Courts under **Articles 226 and 227**, and by the Supreme Court under **Article 32**, is part of the basic structure. A tribunal is a court of first instance; its orders are open to a Division Bench of the High Court.
- Exclusion clauses that try to shut out the High Court are therefore invalid even if 323A or 323B use the word "exclude".
- **Madras Bar Association cases** on the National Tax Tribunal and later on appointments held that a tribunal which replaces a court must have a court-like independence: tenure, selection, and freedom from the parent ministry.
- **Roger Mathew v. South Indian Bank (2019)** and later Tribunal Reforms litigation struck or read down rules that gave the Union excessive say in appointment and short tenure. Validity of the tribunal idea survived; invalidity attached to dependent, short-term Benches.

Competency

- Parliament is competent under **Article 323A** to make administrative tribunals for Union and State services, and under 323B, with States where the entry allows, to make tribunals on the listed fields (tax, industrial and labour, land reforms, urban ceiling, elections to the legislature except Parliament and State legislatures' own elections in some clauses, and other named heads).
- Competency is also drawn from the relevant **Seventh Schedule** entries (for example tax, environment, company law) plus **Articles 245-246**.
- Competency does not include ousting **Articles 32, 226 and 227**, nor creating a tribunal that is an administrative wing of the ministry whose orders it reviews.
- The **Law Commission** and several Benches have asked for a **National Tribunals Commission** so that appointments, infrastructure and disciplinary control sit outside the parent department.

Balanced view

- Tribunals are constitutionally valid specialised first-instance courts, not a parallel judiciary that replaces High Courts.
- They curtail ordinary courts only in the narrow sense of original fact-finding; they fail the Constitution when they become a wall against judicial review or a parking place for post-retirement patronage.

Flow diagram

Articles 323A and 323B -> First instance expert forum
 First instance expert forum -> Curtails ordinary original side
 Articles 323A and 323B -> L Chandra Kumar 1997
 L Chandra Kumar 1997 -> HC 226 227 and SC 32 saved
 First instance expert forum -> Independence of members

Conclusion

The view is right that tribunals take original work away from ordinary courts, and wrong if it means they may shut the High Court door. **Articles 323A and 323B**, read with Chandra Kumar, make tribunals competent and valid as first-instance expert forums whose orders remain under Division-Bench review. Independence of appointment and tenure is the condition of that validity.

Facts & figures

Articles 323A and 323B

Inserted by the 42nd Amendment, 1976; basis of administrative and other tribunals.

L. Chandra Kumar v. Union of India (1997)

Seven-judge Bench: High Court judicial review is basic structure; tribunal orders go to a High Court Division Bench.

S.P. Sampath Kumar (1987)

Early case treating CAT as a possible substitute for High Court service jurisdiction if independence is real.

Madras Bar Association cases

Struck or limited tribunal designs that lacked judicial character, including the National Tax Tribunal experiment.

Rojer Mathew (2019)

Examined tribunal rules packed into the Finance Act, 2017, and stressed independent appointment and tenure.

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