

## THE NEED FOR A NATIONAL TAX TRIBUNAL: REVIEWING THE NATIONAL TAX TRIBUNAL ACT, 2005

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### ABSTRACT

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With the intricacy that the taxation laws of India present and the overburdening of the High Courts, there was a need for a specialized tribunal to hear over matters pertaining to tax disputes. Due to this the National Tax Tribunal Act, 2005 was established by the Parliament under Article 323B of the Constitution of India with effect from December 28, 2005, and the National Tax Tribunal was created. However, the NTT Act has caused a lot of controversies and was eventually repealed for being an obsolete law by the Law Commission in its Two Hundred Forty-Eighth Report.<sup>1</sup> While the Act has now been rendered invalid and is out of operation, there is a need for a tribunal such as the NTT for the effective redressal of tax disputes. This paper will deal with the controversial provisions of the NTT Act and suggest improvements/recommendations in the enactment to allow it to reconcile with the existing rule of law in India.

**Keywords:** National Tax Tribunal, India, Tax, Disputes.

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<sup>1</sup> Obsolete Laws: Warranting Immediate Repeal, Law Commission of India, Report No. 248, September, 2014.

## INTRODUCTION

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The separation of power is recognized as an important feature of the Basic Structure of the Constitution of India.<sup>2</sup> This important feature of the Constitution revolves around the delineation of authorities between the three bodies: the legislative, the executive, and the judiciary. These are the three pillars that have their own certain set of limited powers which have been created in the Constitution of India. However, there is a difficulty for the three pillars to remain in their own domain, there is bound to be some overlapping between the three.<sup>3</sup> One example of such overlap is that of the tribunals. These tribunals are administrative bodies that have been conferred specific powers by the law and delegated by the legislature.<sup>4</sup>

With the intention to ease the existing Courts of their burden<sup>5</sup> and with a view to provide a speedier and specialized forum for dispensation of justice, the Government has established various tribunals such as the Debt Recovery Tribunal (herein referred to as DRT), Securities Appellate Tribunal (herein referred to as SAT), National Green Tribunal (herein referred to as NGT), National Company Law Tribunal (herein referred to as NCLT), Income-Tax Appellate Tribunal (herein referred to as ITAT), Customs Excise & Service Tax Appellate Tribunal (herein referred to as CESTAT), etc.

With the intricacy that the taxation laws of India present, there was a need for a specialized tribunal to hear over matters pertaining to tax disputes. Due to this the National Tax Tribunal Act, 2005 (herein referred to as the Act) was established by the Parliament under Article 323B of the Constitution of India with effect from December 28, 2005, and the National Tax Tribunal (herein referred to as NTT) was created. The NTT is an appellate structure that was established to resolve tax disputes. However, the NTT Act has caused a lot of controversies and was eventually repealed for being an obsolete law by the Law Commission in its Two Hundred Forty-Eighth Report.<sup>6</sup> While the Act has now been rendered invalid and is out of operation, there is a need for a tribunal such as the NTT for the effective redressal of tax disputes. This paper will deal with the controversial provisions of the NTT Act and suggest

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<sup>2</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>3</sup> *Bhim Singh v. Union of India*, (2010) 5 SCC 538.

<sup>4</sup> Warren H. Pillsbury, *Administrative Tribunals*, Harvard Law Review, Vol. 36, No. 4, pg. 405-425 (1923).

<sup>5</sup> Warren H. Pillsbury, *Review of Decisions of Administrative Tribunals-Industrial Accident Commission*, California Law Review, Vol. 19, pg. 282-287 (1931).

<sup>6</sup> *Obsolete Laws: Warranting Immediate Repeal*, Law Commission of India, Report No. 248, September, 2014.

improvements/recommendations in the enactment to allow it to reconcile with the existing rule of law in India.

## PLACE OF FUNCTION

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Section 5 of the Act reads

**5. Constitution and jurisdiction of Benches.**—“(1) *The jurisdiction of the National Tax Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson.*

*(2) The Benches of the National Tax Tribunal shall ordinarily sit at any place in the National Capital Territory of Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:*

*Provided that the Chairperson may for adequate reasons permit a Bench to hold its temporary sitting for a period not exceeding fifteen days at a place other than its ordinary place of the seat.*

*(3) The Central Government shall notify the areas in relation to which each Bench of the National Tax Tribunal may exercise its jurisdiction.*

*(4) The Central Government shall determine the number of Benches and each Bench shall consist of two members.*

*(5) The Central Government may transfer a Member from headquarters of one Bench in one State to the headquarters of another Bench in another State or to the headquarters of any other Bench within a State:*

*2[Provided that no Member shall be transferred without the concurrence of the Chairperson.]”*

Section 5(2) mandates that the NTT would ordinarily function in the National Capital Territory (NCT) of Delhi. This sub-section further mandates that the Central Government, while consulting the Chairperson, can change the place of function upon notification.

This provision was challenged in the cases of *S.P. Sampath Kumar case v. Union of India*,<sup>7</sup> *L. Chandra Kumar v. Union of India*,<sup>8</sup> and *Madras Bar Association v. Union of India*.<sup>9</sup> The

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<sup>7</sup> (1987) 1 SCC 124.

contention was that situating the Tribunal in Delhi would cause the assesseees from far-flung areas extreme hardship and financial constraints. Furthermore, the assessee would also find it difficult to find an Advocate who would represent him/her in front of the NTT.

The abovementioned cases have also stated that there needs to be an established permanent bench, or at least a circuit bench, to substitute each High Court. This would make it easier for the assesseees.

## COMPOSITION OF THE BENCH

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Dispensation of justice is to be done by judicial members and not administrative bodies.<sup>10</sup>

Section 4 of the Act reads

**4. Composition of National Tax Tribunal.**—*“The National Tax Tribunal shall consist of a Chairperson and such number of Members as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.”*

Section 4 merely mentions that a Chairperson and Members, deemed fit by the Central Government, will be appointed. There is no mention of the bench comprising of judicial members. The logical conclusion from this provision is that judges are not required on the bench in the NTT. However, in other tribunals, there is a requirement for judicial members.

Section 4 of the National Green Tribunal Act, 2010 the composition of the Tribunal consists of a Chairperson, Judicial Members, and Expert Members.<sup>11</sup>

Section 4 of the Securities and Exchange Board of India Act, 1992 gives the composition of the SEBI Board which is to include a Chairman, two members from amongst the Ministry of The Central Government dealing with Finance, one member from the officials of the Reserve Bank of India and five other members of SEBI from which three have to be whole-time members.

The Company Law Board Regulations gives the Composition of the Company Law Board which has to include at least or more members which are to be decided by the Chairman. The definition of the member under Section 2(m) includes both technical and judicial members.

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<sup>8</sup> (1997) 3 SCC 261.

<sup>9</sup> (2015) 15 SCC 657.

<sup>10</sup> A. V. Dicey, THE RULE OF LAW: ITS NATURE AND GENERAL APPLICATIONS, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION, pg. 107-122.

<sup>11</sup> Section 4, The National Green Tribunal Act, 2010.

Now Section 6 of the Act states:

**6. Qualifications for appointment of Chairperson and other Members.**—“(1) *The Chairperson of the National Tax Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court.*

(2) *A person shall not be qualified for appointment as Member unless he—*

(a) *is, or has been, or is eligible to be, a Judge of a High Court; or*

(b) *is, or has been, a Member of the Income-tax Appellate Tribunal or of the Customs, Excise and Service Tax Appellate Tribunal for at least 1[five years].”*

This provision sets out the minimum qualifications for the appointment of the Chairperson and the Members. Section 6(2) (b) sets out that a member who has been a part of the ITAT or of the CESTAT for at least five years can be appointed as a Member. This brings in a problem as a Chartered Accountant who has practiced accountancy for a minimum of ten years or has been a registered accountant for a minimum of ten years meets the eligibility requirement to become an Accountant Member for the ITAT. Similarly, a person who has been a member of the Indian Customs and Central Excise Service and has held the post of Collector of Customs or Central Excise or equivalent or a higher post for a minimum of three years meets the eligibility requirement to become a Technical Member for the CESTAT.

From Section 6(2)(b) it is evident that such members can also be appointed as a Member of the NTT. However, the question that now arises is whether such members satisfy the requirements to be appointed as a member of the NTT. The cases of *L. Chandra Kumar v. Union of India*,<sup>12</sup> and *Madras Bar Association v. Union of India*,<sup>13</sup> have held that the independence of the judiciary would be compromised and there would be an encroachment upon the rule of law when such non-judicial members get appointed.

The complication arises as non-judicial members would not be able to formulate or adjudge upon the complicated questions on various questions of law. They would be well-versed in accounts but that would be the limit while the NTT would be confronted with intertwined disputes of tax conjunctive with areas such as Family Law, Law of Partnership, Contract Law, Law of Transfer of Property, Interpretation of Statutes and Rules, etc.

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<sup>12</sup> *Supra* 7.

<sup>13</sup> *Supra* 8.



In furtherance of this Section 24 of the Act has to be read as well.

**24. Appeal to Supreme Court.**—*“Any person including any department of the Government aggrieved by any decision or order of the National Tax Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the National Tax Tribunal to him:*

*Provided that the Supreme Court may if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within such time as it may deem fit.”*

With the abovementioned provision, any order passed by the NTT will directly be heard by the Supreme Court. This would mean that matters from the Appellate Tribunals regarding statutory law would be taken up by the NTT and would then be heard in front of the Supreme Court. With the competence of the Members of the Tribunal and the criteria for its composition in question, this would become an issue. As such the composition of the NTT should be similar to the parameters used to select judges for the High Court.<sup>14</sup>

The Composition of the NTT would have to be on the same parameters as the High Court. Now reading Section 7 of the Act gives a different method of appointing the members. It reads:

**7. Appointment of Chairperson and other Members.**—*“(1) Subject to the provisions of sub-section (2), the Chairperson and every other Member shall be appointed by the Central Government.*

*(2) The Chairperson and the other Members shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—*

*(a) the Chief Justice of India or a Judge of the Supreme Court nominated by him;*

*(b) the Secretary in the Ministry of Law and Justice (Department of Legal Affairs);*

*(c) the Secretary in the Ministry of Finance (Department of Revenue).*

*(3) No appointment of the Chairperson or of any other Member shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.”*

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<sup>14</sup> Article 217 of the Constitution of India, 1949.

The NTT is under the administrative control of the Ministry of Law, Government of India. The Members' appointment, removal, and terms and conditions of appointment are different from that of Judges of High Court.

As previously mentioned the composition of the NTT should be similar to the parameters used to select judges for the High Court. According to Section 7(2), there would be two members from the executive and one member from the judiciary and hence the executive would have control over the outcome of the selection processes.<sup>15</sup> The manner of appointment of the Chairperson and Members, the conditions of service, tenure of appointments, and the manner of transfers and removal should be similar to that of High Courts.

Reading Sections 4, 6, 7, and 24 together it is seen that the composition of the NTT and the requirements to become a Member is inadequate. It is not disputed that the NTT should have Technical Members, but it should also constitute Judicial Members. Therefore, the qualifications to become a Member should be altered and a precise provision regarding the Composition of the Members of the NTT should be given. Also, the appointment of such Members and the Chairperson needs to be done as is done with the High Courts. This way these provisions could be brought back into operation.

## **POWER OF THE CENTRAL GOVERNMENT**

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Section 4 read with Section 7 of the Act confers on the Central Government the power to decide the Chairperson and the Members. Furthermore, reading Section 5 sub-section (3) and sub-section (5) of the Act gives the Central Government the power to transfer members of the bench from one bench to another. This gives the Central Government an important role in which they could exercise jurisdiction and alter the composition and constitution of the benches.<sup>16</sup>

Furthermore, Section 8 of the Act reads

**8. Terms of office of Chairperson and other Members.**—*“The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office but shall be eligible for re-appointment:*

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<sup>15</sup> *State of Maharashtra v. Labour Law Practitioners' Association*, (1998) 2 SCC 688.

<sup>16</sup> *Supra* 8.

*Provided that no Chairperson or other Member shall hold office as such after he has attained,—*

*(a) in the case of Chairperson, the age of sixty-eight years; and*

*(b) in the case of any other Member, the age of sixty-five years.”*

According to this provision, the Chairperson and the Members are appointed for a duration of five years. They can be reappointed for another five years. This further reappointment undermines the independence of the Chairperson and the Members as they would be constrained from deciding upon the matters as they would try to ensure their reappointment. Since the NTT is a substitute for the High Court it should be shielded from executive involvement: matters relating to appointment and removal and the extension of tenure. Furthering the reasoning given above this provision should be held unconstitutional and scrapped off entirely. Such a provision should not exist in any of the upcoming legislation regarding Tribunals.

Accordingly, Section 4, 5, and 7 should be amended and the process used to appoint High Court judges should be used in this present circumstance as well. There should be no intersection between the Central Government and the NTT and its composition, with regard to administrative dealings.

## **RIGHT TO REPRESENT**

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Section 13 of the Act reads

**13. Appearance before National Tax Tribunal.**—“(1) A party to an appeal other than Government may either appear in person or authorize one or more chartered accountants or legal practitioners <sup>1\*\*\*</sup> to present his or its case before the National Tax Tribunal.

(2) The Government may authorize one or more legal practitioners or any of its officers to present its case before the National Tax Tribunal.

*Explanation.*—For the purposes of this section,—

(a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and



*who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;*

*(b) "legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice."*

This provision allows the assessee to be represented by a legal practitioner or a Chartered Accountant. Reading Section 2 sub-section (b) and subsection (e) of the Chartered Accountants Act, 1949 together the definition of a chartered accountant is any person who is a member of the Institute of Chartered Accountants of India.

In the case of *Delhi Pradesh Registered Medical Practitioners v. Director of Health, Delhi Administration Services*,<sup>17</sup> the Court had held that such decisions are in the realm of policy and such decisions need to be handled by the proper authority who have the requisite knowledge in such an area. In the present legislation that would be the individuals as given under Section 13. Further, in the case of *State of Rajasthan v. Lata Arun*,<sup>18</sup> the Court held that the policy decision is beyond the court's jurisdiction. Chartered Accountants are allowed to appear before numerous tribunals/fora. It has been entitled to appear before various tribunals and for under the Income Tax Act, 1961, the Central Excise Act, 1944, the Customs Act, 1962, the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Telecom Regulatory Authority of India Act, 1991, the Companies Act, 2013, the Company Law Board Regulations, 1991, the Competition (Amendment) Act, 2007, and the Special Economic Zone Rules, 2006 and the Central Electricity Regulatory Commission.

However, as the NTT would only hear substantial questions of law from the ITAT and the CESTAT it is derived that Chartered Accountants would not be able to represent an appeal before the NTT properly as it would include intertwined disputes of tax conjunctive with areas such as Family Law, Law of Partnership, Contract Law, Law of Transfer of Property, Interpretation of Statutes and Rules, etc. Due to such reasons Section 13 needs to be removed as an assessee has the right to be represented by a legal practitioner but it is not possible to be represented by a Chartered Accountant.

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<sup>17</sup> (1997) 11 SCC 687.

<sup>18</sup> (2002) 6 SCC 252.

## THE POWER TO REVIEW THE DECISIONS OF THE TRIBUNALS

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Section 23 of the Act reads

**23. Transfer of pending cases from High Court.**—“(1) *On and from such date as the Central Government may, by notification, specify, all matters and proceedings including appeals and references under the direct taxes and indirect taxes pending before any High Court immediately before that date shall stand transferred to the National Tax Tribunal.*

(2) *Where any matter or proceeding including appeals and references stand transferred from the High Court to the National Tax Tribunal under sub-section (1),—*

(a) *the High Court shall, as soon as may be after such transfer, forward the records pertaining to such matter or proceeding to the National Tax Tribunal;*

(b) *the National Tax Tribunal shall, on receipt of such records, proceed to deal with such matter or proceeding from the stage at which it is transferred or from an earlier stage or de novo as it may deem fit;*

(c) *the Chairperson shall constitute a Bench consisting of such number of Members as he deems fit for hearing cases transferred under this section”*

With the NTT in place according to the proposed system of statutory appeals, the Supreme Court is the only judicial body that can entertain an appeal against the NTT order.<sup>19</sup> The High Courts have lost their jurisdiction to hear matters relating to direct and indirect taxes with the NTT being vested with the jurisdiction to hear such matters on appeal from the decision from the respective, namely the ITAT and the CESTAT.

While the High Courts have the powers of judicial review under Article 226 and 227 of the Constitution of India, the Supreme Court in the case of *Madras Bar Association v. Union of India* stated that there would be implicit limitations on that power. The NTT will hear and decide appeals from orders and decisions of Tribunals but its decision and orders will be subject to judicial supervision of the jurisdictional High Courts as given under the Constitution.

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<sup>19</sup> Section 24 of the National Tax Tribunal Act, 2005.

The Supreme Court in the case of *S. P. Sampath Kumar vs. Union of India*<sup>20</sup> introduced the ‘theory of alternative institutional mechanism’. The theory purports that the Parliament can make any authority/tribunal which substitutes the High Court in judicial review. However, the Supreme Court did also mention that “*such an authority or tribunal must be a worthy successor and real substitute of the High Court, not only in form and de jure but in content and de facto so as to be effective and efficient as also capable of upholding the constitutional limitations.*” Such tribunals are to substitute the High Court and not supplement it.

In the One Hundred and Twenty Fourth Report by the Law Commission of India titled "The High Court Arrears - A Fresh Look" the wide jurisdiction of the High Courts was seen as the cause for the growing number of cases and their pendency. This was seen as “*catastrophic, unmanageable, imposing an immeasurable burden on the system.*” As such the recommendation by the Law Commission was to restrict the jurisdiction of the High Courts and set up special tribunals and eliminate the jurisdiction of the High Courts in these matters.

Other Tribunals, such as the NGT<sup>21</sup> and the NCLAT,<sup>22</sup> have similar provisions in which their orders are to be heard by the Supreme Court itself. As the Tribunals consist of both Technical Members and Judicial Members there is no reason to doubt the validity of such orders. As such this provision should remain untouched.

## THE SUBSTANTIVE QUESTION OF LAW

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Section 15 of the Act reads

**15. Appeal to National Tax Tribunal.**—“(1) An appeal shall lie to the National Tax Tribunal from every order passed in appeal by the Income-tax Appellate Tribunal and the Customs, Excise, and Service Tax Appellate Tribunal, if the National Tax Tribunal is satisfied that the case involves a substantial question of law.

(3) Where an appeal is admitted under sub-section (1), the National Tax Tribunal—

(a) shall formulate the question of law for hearing the appeal; and

(b) may also determine any relevant issue in connection with the question so formulated—

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<sup>20</sup> [1987] 1 SCC 124.

<sup>21</sup> Section 22 of the National Green Tribunal Act, 2010.

<sup>22</sup> Section 423 of the Companies Act, 2013.

*(i) which has not been so determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal; or*

*(ii) which has been wrongly determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal,*

*and shall decide the question of law so formulated and the other relevant issue so determined and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.*

An appeal to the NTT only arises when there is a substantial question of law to be solved. A *substantial question of law is when more than one argument can be made for the interpretation of the law and its consequences.*<sup>23</sup> It is the judiciary's duty to adjudicate or clarify matters relating to the substantial question of law. This provision takes us back to the preliminary question of whether the legislature can delegate its power to interpret laws to administrative tribunals. While the ITAT and CESTAT had a minimum of one judicial and one technical member, the NTT, according to Section 6, could have a bench of all technical members. The ITAT and CESTAT have the provision to refer a substantial question of law to a higher court, which in this case is the NTT. According to Section 15, the NTT can decide upon substantial questions of law. However, could a bench that could comprise only technical members decide upon such substantial questions of law? The Supreme Court in the Madras Bar Association case answered in the negative.

To understand the issue and come to a decision this question needs to be dealt with in detail. The Indian Courts have defined "substantial question of law" as something "*of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.*" This shows the difference between a substantial question of law and a question of applying a law.

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<sup>23</sup> Louis L. Jaffe, Judicial Review: Question of Law, Harvard Law Review, Vol. 69, No. 2, pp. 239-276 at 269 (1955).

In the Indian Legal System questions of law are answered solely by the judiciary or its representatives in the Tribunal. While the High Courts and the Supreme Courts have the statutory powers to review and deal with substantial questions of law, we see that in India administrative bodies do not have such an authority.<sup>24</sup> As such we have not been able to move ahead with the Red Light model of administrative law which treats administrative bodies with suspicions and does not allow them to interpret laws.<sup>25</sup>

However, other legal jurisdictions have a different standard that they apply.

In the United Kingdom, the stance of answering the question of law had started from the Court's overruling the Tribunal's decision as it interpreted a question of law<sup>26</sup> to the Courts acknowledging the existence of administrative bodies and their authority to answer certain questions of law.<sup>27</sup>

The United States of America has adopted the Chevron deference which gives Congress the power to define the law, failing which the Court checks if the Agency's definition is based on a *permissible construction of the statute*.<sup>28</sup> This has been upheld in subsequent cases adding that there lies no difference between a jurisdictional question of law and a non-jurisdictional question of law.<sup>29</sup>

Earlier the Canadian Courts applied deference when a tribunal tries to interpret or exercise discretion.<sup>30</sup> This has changed now changed with the tribunal being able to exercise discretion as long as it maintains the threshold of reasonableness, with no deference in jurisdictional questions of law and the Court's ruling prevailing over the Tribunal's.<sup>31</sup>

These jurisdictions show a gradual shift in the perception of the functioning of administrative bodies and their ability to exercise jurisdiction and interpret questions of law. India denies the administrative bodies this power that was to be inherent in them.

In light of the Indian legal structure, it is seen that a change in perception is required. Other jurisdictions show that judicial review can be retained despite conferring the same powers on

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<sup>24</sup> *Supra* 8.

<sup>25</sup> *Supra* 9.

<sup>26</sup> *Anisminic Ltd vs Foreign Compensation Commission*, [1969] 2 WLR 163.

<sup>27</sup> *R (Cart) v Upper Tribunal*, [2011] UKSC 28.

<sup>28</sup> *Chevron USA Inc v NRDC*, 467 US 837 (1984).

<sup>29</sup> *City of Arlington, Texas v. FCC*, 133 US SC 1863 (2013).

<sup>30</sup> Paul Daly, *Canada's Bi-Polar Administrative Law: Time for Fusion*, Vol 40 No. 1, Queen's Law Journal, pp. 213 (2014).

<sup>31</sup> *Dunsmuir vs New Brunswick*, [2008] 1 SCR 190.



administrative bodies. There needs to be a change in the way the Indian legal system looks at administrative bodies and they should be given the power to exercise jurisdiction and interpret questions of law.

## CONCLUSION

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In the case of *Madras Bar Association v. Union of India*,<sup>32</sup> the Court decided that

- The basic structure of the constitution is violated as the administrative tribunals were not in tandem with the standards and salient characteristics of the courts they sought to substitute.
- The Westminster model constitutional conventions will be breached if the enacting legislations differ from the transfer of judicial power, conventions, and salient features of the courts they sought to substitute
- Section 5, 6, 7, 8, and 13 of the NTT Act are to an extent unconstitutional and since this renders the remaining provisions of the NTT Act ineffective, the entire enactment is deemed to be unconstitutional

On the 12<sup>th</sup> of September, 2014, the Two Hundred Forty-Eighth Report by the Law Commission of India was with regard to the warranting of the immediate repeal of obsolete laws. This report was undertaken by the Nineteenth Law Commission *suo motu* and one of the Acts that was listed on the Report was the National Tax Tribunal Act, 2005.

Subsequently, on the 14<sup>th</sup> of May, 2015, Schedule 1 of the Repealing and Amending (Second) Act, 2015 repealed the whole of the National Tax Tribunal (Amendment) Act, 2007 as well.

While the Court deemed the entire Act to be unconstitutional, it did not address the larger question at hand, “How can the burden of the High Court be reduced in specific areas such as taxation in this case?” The Act has been scrapped but the cases still remain. The burden of the High Courts has increased again and there are no Technical Members in the High Court that can deal with the intricacies of this area. While the Act did have provisions that needed to be repealed, the remaining provisions should have been amended as there is a need for the NTT. The NTT should be re-enacted and the suggestions/recommendations provided above should be incorporated into it.

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<sup>32</sup> *Supra* 8.