Tribunal's Dilemma: The Interpretive Burdens of Madras Bar Association v. Union of India

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Justice Scales and books and wooden gavel

Abstract: ***On 19th November 2025, the Supreme Court delivered its latest and sixth iteration of the Madras Bar Association series of cases. The matter specifically pertained to the constitutional status and configuration of tribunals in the judicial system. This long-standing dispute spans across ten major case laws, separate judicial opinions, and intervening legislative proposals. This case note sketches the interpretive style (doctrinal propositions) and its contextual limits (burdens) in tribunal reforms. It can be read as a general remark upon the nature of constitutional interpretation, administrative law, and judicial process.***

On 19th November 2025, the Supreme Court of India delivered its latest and sixth iteration of the *Madras Bar Association* series of cases (hereinafter *MBA* cases). The matter specifically pertained to the constitutional status, configuration, role and significance of tribunals in the judicial system. This long-standing dispute spans across ten major case laws, separate judicial opinions, and intervening legislative proposals. The long history and complex regulatory nature of this dispute, therefore, generate several implications, ranging from the technical configuration of specific tribunals (appointments, tenures, qualifications) to constitutional values, like rule of law and separation of

powers. Across this spectrum from technical specifications to constitutional values, the MBA case history also reveals significant insight on the relationship between legislation and judicial process, Basic Structure Review and judicial review of legislation, challenges of delegated legislation and legal reforms. This case note utilizes insights from philosophy of language and legal realism to sketch the interpretive style (doctrinal propositions) and its contextual limits (burdens) in the long-standing dispute over tribunal reforms. It can be read as a general remark upon the nature of constitutional interpretation, administrative law, and judicial process.

Interpretive Burden of Constitutional Adjudication

Constitutional adjudication often generates wider structural implications than limited determination of clause-bound specific dispute. Such a significant role of background context makes principles, values and political history as necessary elements of constitutional arguments. Consequently, it legitimizes the constitutional court's tendency to decouple its interpretation from the narrow imperatives of factual contingencies and 'clause-trophobia'. For instance, some of the famous cases on the meaning of "State" under Article 12 have significant disjuncture between the expansive interpretive doctrine of agency-instrumentality and the technical judicial remedy awarded under their factual contingencies. Similar doctrine-order gap could be discerned in other famous cases on dignity rights and privacy.Possibly, this interpretive gap between the doctrines ("logical-interpretive space") and their judicial order ("factual space") is less of court's failure than its intrinsic limit as a constitutional, but positivist court. As a constitutional interpreter, it must bear the standing burden of competing political values, ideologies, histories, and structures. Yet as a court, it must positively determine the factual contingency and the technical clause as a conclusive judicial process. This paradox of logical-factual space constitutes the interpretive long-context of constitutional adjudication.

Constitutional court, as an institution of judicial process, also suffers from a historical imperative. Most significant constitutional disputes involve a state of affairs, which itself stays and persists over time. This historical persistence of the specific factual contingencies is often immune to the doctrine of *stare decisis*. For instance, the saga of affirmative action and land reforms have witnessed such immunity from repeated judicial determinations. Under such conditions, judicial doctrine as the court's response is often sensitively adjusted to the prevailing realities of public policy. The case of *Madras Bar Association v. Union of India* can be framed through this twin burden of long context, in constitutional interpretation and judicial process, whereby Court's doctrinal space gets distorted and readjusted by factual contingencies. It is the sixth pronouncement of the Supreme Court in the MBA series of cases. But as a statement on tribunal reforms, its factual contingencies originate in the 42nd Amendment 1976, including Articles 323-A & B of the Indian Constitution.

Making of Tribunal's Identity

Parliament introduced these clauses for speedy and effective adjudication on service and other enumerated matters. Pursuant to Article 323-A, the Administrative Tribunals Act 1985 instituted a new dispute resolution process for the civil services. Consequent ouster of the High Court jurisdiction (Article 226) was challenged in the case of Sampath Kumar. The constitutionality of composition and appointment for tribunal members was also challenged. The Supreme Court cast the baseline institutional identity of the tribunal by situating it as part of the judicature, whereby its design composition must reflect judicial discipline through the Chairperson being an ex-Chief Justice or HC judge. Other members were to be appointed through a high powered committee under a Supreme Court judge. Sampath Kumar constructs, therefore, a proto-collegium design logic to secure judicial independence for the tribunals by insulating their composition from executive influence. This formula of judicial independence as judicial appointments was being simultaneously applied in the collegium system of appointment (The Judges' Cases).

Another early challenge under Article 323-B against the Customs, Excise and Gold Control Appellate Tribunal led the Supreme Court to articulate and specify the quasi-judicial nature of such bodies. As statutory bodies determining rights and liabilities of affected persons, these tribunals were under the "duty to act judicially". These two cases plotted judicial composition and judicial process as the

institutional limits of tribunal design. Membership and procedure conferred the tribunals with the moral and epistemic identity of courts. These twin propositions produced the third postulate of the tribunal's institutional identity as domain expert in various fields, like Constitution, administrative law, taxation, and company law. This claim to technical expertise serves as the primary distinction between the judicial and administrative members of a tribunal. Therefore, two of the core justifications can be identified across the MBA series of cases, despite severe polyphony in judicial opinions and legislative proposals over these years. These pertain to claims of constitutional morality (logical-interpretive space of tribunal dispute) and regulatory expertise (factual contingency space). Read together, the constitutional logic and the regulatory contingency forge the identity and structure of the tribunal system.

Burdens of constitutional design and morality

The interpretive burden of constitutional context in separation of powers, rule of law, Basic Structure, and judicial independence is discharged, in principle, by firmly situating the tribunal system within the judicial superintendence of High Courts under Articles 226 and 227. Consequently, the Court invalidated the ouster clauses in Articles 323-A & B. In the present case of MBA-VI, this argument of constitutional design was framed through the principle of constitutional supremacy as opposed to the English doctrine of parliamentary sovereignty. This contrast has three interpretive implications. Firstly, it denies absolute and complete power to any of the three branches. Secondly, judicial review as a basic feature "is intended to ensure that every institution acts within its bounds and limits." This primacy of judicial review is confidently articulated by the Court as "the Constitution is what the Court says it is… as a necessary corollary of the Court's role as the final arbiter of constitutional meaning."

Final word-final arbiter in standing disputes

The "final word-final arbiter" thesis modifies the practical meaning of "three branches" in the first implication. Judicial review (read constitutional courts) act as external authority to deny absolute power to the other two branches of the legislature and the executive. As this power is read under the constitution, the Court is conceived as acting within its constitutional limits. Though this thesis itself is the product of "what the Court says it is". Ignoring the tautology, the interpretive upshot of this reasoning is to cast the constitutional burden of shrugging "absolute power" upon the other two branches. This asymmetric rendering of the separation of power doctrine has led the political realists to criticize the interpretive hegemony of judicial review as a moral as well as practical inadequacy of legal constitutionalism. Final word-final arbiter claim is, perhaps, the most significant collision of the logical and factual space in constitutional interpretation. This collision between the interpretive doctrine and the contingent practice is addressed by the Court in the third implication as a strict relationship between legislation and judicial process.

> *Consequently, once the Court has struck down a provision or issued binding directions after identifying a constitutional defect, Parliament cannot simply override or contradict that judicial decision by reenacting the very same measure in a different form. What Parliament may legitimately do is to cure the defect identified by the Court, whether by altering the underlying conditions, removing the constitutional infirmity, or restructuring the statutory framework in a manner consistent with the Court's reasoning.*

The "final arbiter" thesis has, however, a much sobering factual space. It has not prevented Parliament from consistently superseding the Supreme Court on social policies, like affirmative action and land reforms. Neither has it produced any significantly adverse order against the Union executive on disputes of territoriality and reorganisation under Part I of the Constitution. The "final arbiter" logic mostly sustains within a very specific factual space, which involves regulatory matters of procedural compliance or criminal procedure. In other contingencies, this judicial logic becomes more open-ended and flexible. In this context, the MBA series of cases can be understood as the Supreme Court's attempt to map the tribunal dispute within the space of regulatory compliance and institutional design. "Final arbiter" logic is the common tongue across the polyphonic narration of tribunal disputes in these case laws spanning over almost four decades.

3.2 ***Tribunal's dilemma & family resemblance***

In the first MBA case challenging NCLT (tribunal) and NCALT (appellate tribunal), the amendments to Companies Act 1956 were held to be violative of constitutional provisions inheriting rule of law, separation of powers, and independence of judiciary. The Court applied the "final arbiter" logic to recognize the legislature's power to create tribunals with judicial powers, but such tribunal power did not include inherent powers of the constitutional courts, like judicial review. In the standard hierarchy of courts, the subordinate body is a statutory authority deriving its powers from a statute, while the superior court retains the inherent power (read constitutional or common law) of judicial review over such subordinate authority. Administrative agencies perform a mix of quasi-legislative (rulemaking) and quasi-judicial (directions/ orders) functions. Their rulemaking power is subject to the doctrine of delegated legislation. Their directions and orders (quasi-judicial acts) are subject to doctrines of *ultra vires,* natural justice, and legitimate expectations.

This settled legal framework meets its factual or institutional design contingency in the tribunal set up. Tribunals are strictly not identical to subordinate courts, because they have technical members or civil servants. But tribunals are also strictly not identical to a standard administrative agency or department, because they also have judicial members. The Court acknowledged this factual space of tribunals in the NCLT case-

> *…unfortunately tribunals have not achieved full independence. The Secretary of the 'sponsoring department' concerned sits in the Selection Committee for appointment. When the Tribunals are formed, they are mostly dependant on their sponsoring department for funding, infrastructure and even space for functioning. The statutes constituting Tribunals routinely provide for members of civil services from the sponsoring departments becoming members of the Tribunal and continuing their lien with their parent cadre.*

The logical and doctrinal shorthand for this complication is to model the tribunal in the same basket as administrative agency and subordinate courts for the purposes of judicial review by superior courts. In this functional sense of a coherent judicial process, tribunals have family resemblance with subordinate courts and administrative agencies.

> *In order to make such independence a reality, it is fundamental that the members of the Tribunal shall be independent persons, not civil servants. They should resemble courts and not bureaucratic Boards. Even the dependence of Tribunals on the sponsoring or parent department for infrastructural facilities or personnel may undermine the independence of the tribunal (vide Wade & Forsyth: Administrative Law, 10th Edn., pp. 774 and 777).*

Faced with ouster clause-like exclusion of jurisdiction, the Supreme Court has historically responded with strict interpretation. This strict compliance standard serves to preserve the institutional domain of constitutional courts and retain its status as the "final word-final arbiter" authority. Ouster-hedging is, therefore, another common tongue in the polyphonic nature of tribunal dispute saga. For instance, in MBA-II case, the National Tax Tribunal (NTT) Act 2005 was declared unconstitutional for "diluting independence of judiciary and tribunals" by empowering the Central Government to determine the jurisdiction, composition, and transfer of NTT benches.

Regulatory contingencies: burdens of expertise and efficiency

As the doctrinal logic meets its factual habitat (complex of regulatory practice), it accommodates concessions and relaxations, thereby acknowledging paradoxes and confusions of the doctrine. MBA-VI sketches first of such regulatory contingencies in the original limitation of legislative power to undermine judicial process. This limitation upon legislative power, not to override a judicial decision by reenactment, is different from a valid abrogation as-

> *Such a legislative device which removes the vice in the previous legislation which has been declared unconstitutional is not considered to be an encroachment on judicial power but an instance of abrogation recognised under the Constitution of India… it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be removed, thereby resulting in a fundamental change of the circumstances upon which it was founded.*

The override-abrogation schism reframes the "final word-final arbiter" standard as an ongoing dialogue over a long-standing constitutional dispute between the three branches. It brings the third branch (judiciary) within the original scheme of co-equal separation of powers and compels it to

interface with the other two branches. This interpretive picture is substantially different from the legal constitutionalism portrayal of the court as an external reviewing authority.

...Court's intervention should not be seen as opposing parliamentary or executive wisdom. Instead, each judgement on tribunals contributes to the constitutional dialogue among the three branches of governance.

Tribunal Commission & Committee: logic of tribunal appointments

The identity confusion of tribunals was recognized in L. Chandra Kumar v Union of India as causing functional inefficiency. This led the Court to propose an umbrella supervisory authority to oversee tribunal design and functioning. Such authority needs to be a regulatory commission, like SEBI or Election Commission. In Roger Mathew, the Court recommended forming of independent statutory body as National Tribunals Commission to oversee the selection, appointment, salaries, functioning, and disciplinary matters. The Commission would undertake the administrative and infrastructural (read efficiency) needs of the tribunals. MBA-VI has granted four months to the Central Government for establishing the National Tribunals Commission. This efficiency-as-expertise argument also led to a long tussle between the executive and the Court over Search-cum-Selection Committees responsible for constituting each tribunal. In the first case of Sampath Kumar, this task of selecting tribunal members was conceived for a high-powered committee under a Supreme Court judge.

MBA-I (NCLT case) configured the Selection Committee as four members' body, with two each from the judicial and executive branch. One of the two judicial members acts as the Chairperson with the casting vote. It is interesting to note that in the parallel legal universe, the Supreme Court was applying similar appointment principles for the collegium system of judges. Since tribunal has a mixed identity between a proper court and an administrative authority, its appointing body was configured with a similar mixed character. MBA-III challenged the validity of the new Companies Act 2013, where Section 412(2) was invalidated due to the statute's non-compliance with this 4-members model of Selection Committee for NCLT (tribunal) and NCALT (appellate tribunal). Parliament intervened in this long series of tribunal cases with providing a comprehensive legislative proposal in the Finance Act 2017 for all major tribunals. Part XIV of the Act provided for amendments, mergers, services of members etc. for these tribunals. Schedule 8 of the Act listed the 19 tribunals along with their parent statutes. Section 184 of the Act delegated with the power to frame relevant rules in this regard to the Central Government.

While the legislative provision of 2017 Act was upheld in *Roger Mathew*, yet the Court invalidated the Central Government rules for non-compliance with Search-cum-Selection Committee (SCSC) guidelines of the previous judgments. SCSC was held to be dominated by executive nominees with minimal judicial representation. Interestingly, the Court referred to the Fourth Judges' Case (NJAC) to exclude executive control from appointment processes of bodies performing judicial or quasi-judicial functions. Therefore, the logic of collegium meets that of the tribunals in *Roger Mathew*. But this family resemblance between courts and tribunals should not collapse the regulatory and administrative distinction between a tribunal and an administrative agency, despite both performing quasi-judicial functions. Consequently, the invalidated 2017 Rules were reframed by the Central Government as 2020 rules. In MBA-IV case, these rules pertaining to the Selection Committee were held as violative of MBA-I and *Roger Mathew* directions.

MBA-IV guidelines for SCSC became the stable standard for tribunal design. Under this framework, the CJI or their nominee is to act as Chairperson, joined by Tribunal Chairperson (judicial member) and two government secretaries (executive members). The Secretary of the parent department shall serve only as a member with non-voting rights. Recommendations of the SCSC shall be final, without any executive discretion in tribunal appointments. In this context, Section 184(7) of the new Tribunal Reforms Ordinance 2021 was invalidated in MBA-V case to the extent that it conferred limited discretion upon the executive to "preferably" decide upon SCSC recommendations within a three month deadline.

Technical v. Judicial Member: knowledge-expertise as identity crisis

The internal design logic of tribunals makes them a peculiar authority in public law. The mix of technical (bureaucratic) and judicial (legal) members substantively differentiates a tribunal from a standard court, special courts, or administrative agencies performing quasi-judicial functions. Interpretive settlement of the constitutional logic, which places these tribunals within the power of judicial review by constitutional courts, is not conclusive of their internal working and practice conventions. In explaining this regulatory contingency of tribunal membership, *MBA-I* seems to be the most vocal of all *MBA* series and other tribunal judgments. Perhaps, this is because *MBA-I* was directly dealing with the corporate law domain. In *Sampath Kumar*, the Court suggested an implicit hierarchy between the judicial and technical members inter-se. By this claim of superior expertise in law, the position of tribunal Chairperson cannot be held by a government Secretary, because it requires "judicial temperament". While this framing clearly establishes legal knowledge above bureaucratic expertise, the subsequent cases have not been able to maintain such clarity on law v. policy paradigm of administrative law.

This membership differential and hierarchy is based upon a significant ideological debate upon the nature of administrative law. "Red Light" or control model of judicial review is often contrasted with the "Green Light" or service-provider model of welfare state. By court's logic, legal knowledge is the master domain for tribunal's efficacy. So even the technical members must possess "judicial approach with adequate knowledge and expertise in relevant branches of constitutional, administrative, and tax law." Yet, if "judicial temperament" or legal knowledge was the only currency of expertise, there would be no rationale for including technical members in the tribunal design. This proposition of knowledge hierarchy modifies, recalibrates, and becomes more uncertain in *MBA-I*. The Court draws distinction between two categories of cases. In the first category, technical members are justified in those disputes which require special knowledge or expertise. In the second category are those tribunals created only to expedite judicial process and decrease courts' workload. For instance, Rent Tribunals, Motor Accident Claims Tribunals, Special Courts under various statutes. In such cases there is no need for any non-judicial Technical Member.

This distinction between specialized matters and general administrative efficiency indicates that legal knowledge is not the only domain of expertise in tribunal design. Else even specialized disputes should also have only judicial members. The justification for Technical Members in such cases implies their expertise in a specialized domain of regulatory governance, which is not reducible to judicial aptitude or training. This makes sense since these tribunals exist within the operational circle of their respective departments, in terms of workflow and conceptual universe. The Court further cautioned that mere long administrative experience of generalist nature would not be sufficient for appointment of Technical Members. Civil service officials may serve in Administrative Tribunals due to their knowledge of government functioning. But that does not qualify them for tribunals requiring specialized technical experience, like Company Law Tribunals.

> *Tribunals should not become posts of convenience for civil servants lacking domain knowledge. The Court [in MBA-I] emphasized that only experts relevant to the tribunal's field, such as engineers in technical tribunals or military officers in armed forces tribunals, should serve as Technical Members.*

The propositional logic of domain expertise is further convoluted when this examination turns upon the judiciary. Suddenly the Company Law Tribunal, which was exemplary of such specialized knowledge loses its domain status, as the Court-

> *...rejected the assumption that judges lack the necessary skills or that civil servants or professionals from unrelated fields like science or medicine are qualified. The inclusion of technical experts is justified only in areas requiring specialized professional knowledge, not in purely **legal domains like company law**. [emphasis added]*

Conclusion

MBA-VI rejected the Central Government's plea to refer this long-drawn tribunal dispute to another larger bench. It invoked its common law heritage to sustain the *stare decisis* in previous larger benches of *MBA-I* and *Roger Mathew* cases. It reiterated the constitutional supremacy over parliamentary

sovereignty as the ground for judicial review of legislation. In this context, subsequent legislative and ordinance measures were deemed as cases of overriding established *stare decisis*, and therefore colourable legislation. The Court did not consider this long disagreement between the Union and the Court as a case of compelling the Parliament to legislate in a specific manner, akin to issuing a writ. It distinguished between “directing legislation” and “reviewing legislation”, and the valid latter power of the Court was not about prescribing the content of legislation. This logic does not possibly sustain if we firmly place this dispute in its long context of four decades legal history. The Court’s specific reliance on a series of cases for technical design and specific functioning of tribunals is not substantively different from enacting a legislative policy for tribunals. The claim, here, is not that the Court lacks such power. It is rather to reveal that in such complex narratives of constitutional adjudication, formal and neat propositional categories and logic melt away when facing the real factual space of the problem.

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