Writ Jurisdiction VS Statutory Tribunals: Preserving the High Courts' Power of Judicial Review under Article 226

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ABSTRACT

The constitutional landscape of Indian public law is marked by an ongoing tension between the expanding apparatus of specialized statutory tribunals and the plenary oversight of High Courts under Article 226 of the Constitution of India. This article evaluates the limits of the policy of 'tribunalisation,' analyzing how statutory frameworks frequently attempt to abbreviate the judicial hierarchy by bypassing the High Courts. By examining foundational jurisprudence alongside real-time structural shifts—specifically within the Goods and Services Tax Appellate Tribunal (GSTAT) and the National Green Tribunal (NGT)—this paper argues that Article 226 operates as an unalterable constitutional safeguard. Rather than acting as complete replacements, tribunals serve as institutional supplements to, not substitutes for, the constitutional review powers vested in the High Courts.

Keywords: Article 226; Judicial Review; Basic Structure Doctrine; Tribunalisation; GSTAT; National Green Tribunal (NGT); Alternative Efficacious Remedy.

INTRODUCTION

The architecture of administrative adjudication in India underwent a structural shift via the Constitution (Forty-second Amendment) Act, 1976, which introduced Articles 323A and 323B. This amendment empowered the Legislature to strip traditional courts of their jurisdiction over specific administrative, tax, and environmental disputes, transferring those powers to specialized bodies. The core objective of this pivot was to combine technical expertise with accelerated resolution timelines, thereby unburdening an overstretched higher judiciary.

However, this structural design created an enduring constitutional paradox. While specialized tribunals are engineered to resolve technical disputes efficiently, their expansion has frequently encroached upon the core parameters of judicial review—a doctrine recognized as part of the basic structure of the Constitution. The contemporary problem does not center on whether tribunals should exist, but rather on how legislative bodies frame statutes to deliberately bypass or diminish the supervisory role of High Courts under Article 226.

Jurisprudential Evolution: From Exclusion to Absolute Subordination

The legal boundaries governing tribunal autonomy and High Court oversight have been shaped by a shifting series of Supreme Court rulings.

The Pre-Chandra Kumar Era

In S.P. Sampath Kumar v. Union of India (1987), the Supreme Court initially endorsed the concept of absolute jurisdictional exclusion. The Court held that if a statutory tribunal (such as the Central Administrative Tribunal) provided a viable, effective alternative that mirrored the institutional efficacy of a High Court, the total exclusion of High Court jurisdiction under Article 226 was constitutionally valid. This

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initial stance inadvertently incentivized legislative drafting that sought to insulate tribunal rulings from local constitutional supervision.

The Landmark Re-Calibration

This approach was overturned by a seven-judge Bench in the historic ruling of L. Chandra Kumar v. Union of India (1997). The Supreme Court re-anchored the constitutional hierarchy by establishing the following principles:

- **The Basic Structure Doctrine:** The power of judicial review vested in High Courts under Article 226 and the Supreme Court under Article 32 is an integral, non-negotiable feature of the basic structure of the Constitution.

- **Prohibition of Jurisdictional Exclusion:** Statutory clauses that explicitly or implicitly exclude the writ jurisdiction of High Courts over tribunal decisions are unconstitutional.

- **Supplemental Forum Designation:** Tribunals are constitutionally designated as forums of first instance within their areas of specialization. They can supplement, but never entirely supplant, the supervisory and constitutional jurisdiction of the High Courts.

Contemporary Reinforcement

This baseline has been reaffirmed in contemporary legal decisions. In cases like Madras Bar Association v. Union of India and Union of India v. Alapan Bandyopadhyay, the Supreme Court consistently ruled that any attempt by a federal or state entity to mandate direct appeals from a tribunal to the Supreme Court—thereby treating High Courts as non-entities—violates the structural hierarchy of the Indian judiciary.

The Mechanics of Conflict: Bypassing High Courts VIA Statutory Architecture

Modern legislative drafting frequently employs structured methods designed to narrow the scope of Article 226 review, shifting cases toward direct-to-Supreme Court appellate paths.

The Direct Appellate Trap

Numerous modern regulatory and commercial statutes incorporate explicit appeal provisions routing disputes directly from a National Appellate Tribunal to the Supreme Court, skipping High Court review entirely. This approach is prevalent across several key frameworks like the Insolvency and Bankruptcy Code (IBC), 2016 (Section 62), the Electricity Act, 2003 (Section 125), and the Companies Act, 2013 (Section 423).

The 'Alternative Remedy' Exception Criteria

Revenue authorities and regulatory agencies frequently counter Article 226 writ petitions by citing the availability of an 'alternative efficacious remedy' within the statutory tribunal framework. While the existence of an alternative remedy serves as a strong discretionary bar, it is not an absolute jurisdictional barrier.

As synthesized in landmark cases like Whirlpool Corporation v. Registrar of Trade Marks (1998) and reinforced in contemporary decisions like Godrej Sara Lee Ltd. v. Assistant Commissioner of State Tax (2023), a High Court can legitimately entertain an Article 226 writ petition despite an active tribunal framework under four specific conditions:

- Enforcement of Fundamental Rights
- Principles of Natural Justice Violated
- Complete Lack of Jurisdictional Authority
- Statutory or Executive Acts Ultra Vires the Constitution

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Case Studies in Contemporary Constitutional Conflict

Case Study 1: The GSTAT Activation and the Recalibration of Tax Writs

The relationship between Article 226 and statutory tribunal frameworks is clearly illustrated by the operational rollout of the Goods and Services Tax Appellate Tribunal (GSTAT). For nearly a decade following the launch of the CGST Act, 2017, the non-constitution of GSTAT created an institutional vacuum. Consequently, High Courts across India were transformed into de facto first appellate courts for indirect tax disputes, routinely entertaining writ petitions against Section 107 appellate orders to prevent a systemic backlog and stall coercive revenue recovery.

Empirical Workload and Docket Displacements

Empirical data gathered from institutional legal databases, CBIC synthesis reports, and the central GSTAT portal highlights the extensive judicial workload and the subsequent shift in dockets before and after the operationalization of GSTAT benches:

- **Accumulated Backlog Overflow:** Prior to the launch of the GSTAT Procedure Rules, the accumulated volume of unconfirmed legacy GST disputes masquerading as Article 226 petitions across High Courts reached an estimated 8,000+ active cases.

- **Downstream Backlog Vulnerability:** At the first appellate stage (Commissioner of Appeals), the un-adjudicated manual and electronic dispute pool climbed to over 350,000 cases, heavily threatening to overflow directly into constitutional courts.

- **Percentage Allocation of Civil Dockets:** In major commercial High Courts (such as Delhi, Gujarat, Bombay, and Telangana), routine tax challenges standardly belonging to a fact-finding forum accounted for 25% to 35% of all newly admitted civil writ petitions on a monthly basis.

- **Electronic GSTAT Portal Intake:** Following the operational deployment of 31 State Benches across 45 regional locations, the centralized portal tracker logged an immediate direct absorption of 75,155 active statutory appeals.

- **Post-Activation Writ Drop-Off:** In jurisdictions where this structural alternative remedy has been actively enforced, the rate of admitting routine GST writ petitions has dropped by over 80%, with registries summarily declining threshold entertainment.

With the functional activation of GSTAT benches, the judiciary has initiated a strict recalibration of its discretionary boundaries. In contemporary rulings, such as the Gauhati High Court's decision in Sri Nishitendu Das v. Union of India (2026), High Courts have declined to entertain writ petitions when a statutory remedy under Section 112 remains available within the limitation period, reinforcing that writ jurisdiction cannot be used as an escape route to bypass statutory pre-deposits. Similarly, in M/s Tata Projects Limited v. Union of India (2026), courts have underscored those complex factual determinations—such as whether fraud, willful misstatement, or tax evasion occurred under Sections 73 or 74—cannot be appropriately resolved in summary proceedings under Article 226. Instead, these queries must be navigated through the specialized, fact-finding forum of the tribunal.

However, this transition does not erode the foundational baseline of Article 226. While GSTAT handles routine factual evaluations regarding inputs and calculations, it lacks the authority to determine the constitutional validity of the tax statute itself. GSTAT stands as an institutional supplement to, rather than a replacement of, constitutional judicial review.

Case Study 2: The National Green Tribunal (NGT) and the Dispute Over Suo Motu Powers

The National Green Tribunal (NGT), established under the NGT Act, 2010, represents a different dimension of this constitutional dynamic, focusing on environmental jurisprudence rather than commercial

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law. The conflict here centers on the extent of the tribunal's autonomous power and its relationship with the supervisory authority of the High Courts.

In Municipal Corporation of Greater Mumbai v. Ankita Sinha (2021), the Supreme Court confirmed that the NGT possesses suo motu powers to initiate environmental proceedings, citing the tribunal's role in protecting the right to a clean environment under Article 21. However, this expansion of power led to situations where the NGT issued wide-ranging directives that frequently conflicted with infrastructure mandates or municipal actions.

This expansion created a jurisdictional knot, as the NGT Act under Section 22 provides for a direct appeal route exclusively to the Supreme Court, skipping the High Courts entirely. This structure was designed to ensure fast-track environmental adjudication, but it inadvertently marginalized the High Courts' regional oversight.

To resolve this imbalance, the Supreme Court in Madhya Pradesh High Court Bar Association v. Union of India (2022) clarified the constitutional hierarchy. The Court ruled that despite the direct appeal provision to the Apex Court under Section 22, the remedy of judicial review under Article 226 and 227 before the respective High Courts remains completely intact. The NGT remains structurally subordinate to the High Courts' constitutional writ jurisdiction. When the NGT exceeds its statutory mandate or passes orders affecting local administrative actions without providing a fair hearing, the aggrieved parties can approach the High Court under Article 226.

Institutional Shortcomings & Appointment Mechanics: The Vulnerability of Tribunals

The necessity of preserving the High Courts' power of judicial review under Article 226 is further underscored by the persistent institutional vulnerabilities that impact the tribunal system.

Statutory Amendments and Judicial Overreach Protections

Unlike High Court judges, who enjoy robust constitutional protections under Article 217, tribunal members are often subject to appointment processes, tenure structures, and service conditions heavily influenced by the Executive. This administrative dependence creates an acute conflict of interest when a tribunal operates under the direct control of the parent Ministry whose regulatory policies it is tasked with reviewing.

The statutory mechanics governing these setups have been a source of intense legal battle between Parliament and the judiciary. Through the Tribunals Reforms Act, 2021 (specifically Sections 4 and 5), the Central Government attempted to establish a truncated four-year tenure for tribunal chairpersons and members, alongside an arbitrary minimum age limit of 50 years for eligibility. This legislative framework was met with direct constitutional challenges. In Madras Bar Association v. Union of India (2026) 2 SCC 1, the Supreme Court struck down these core appointment criteria, ruling that short tenures and restrictive age limits severely undermine judicial independence and violate the doctrine of separation of powers. The Apex Court held that such provisions amounted to an impermissible legislative override of previous binding directives without fixing underlying constitutional defects, and reinstated a minimum five-year tenure, mandating a maximum superannuation threshold of 67 years for members and 70 years for chairpersons to insulate tribunals from executive overreach. To fully resolve this friction, the legislative trajectory has pivoted toward the Tribunals Reforms Bill, 2026, which proposes the official establishment of an independent, judicially dominated National Tribunals Commission (NTC) to permanently manage appointments, tenures, and performance evaluations outside of parent ministry interference.

The Composition Dilemma: Technical vs. Judicial Members

The value of a tribunal lies in its specialized knowledge, achieved by pairing technical experts with judicial members. However, the equal voting power granted to technical members on complex legal questions, statutory interpretations, and fundamental rights often leads to structural imbalances. A technical member

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lacks the training required to interpret constitutional principles, meaning their assessments must remain subject to the review of constitutional courts.

Geographical Centralisation and Access to Justice

While High Courts are physically distributed across states, principal benches of major national tribunals are frequently clustered in major metropolitan hubs. Forcing a litigant from a remote region to approach a centralized tribunal bench—or to file a direct appeal to the Supreme Court—imposes significant financial and logistical burdens. Article 226 ensures that an accessible, localized constitutional remedy remains available to citizens through their regional High Court.

Preserving the Constitutional Balance: The Way Forward

To maintain a functional balance between administrative specialization and constitutional oversight, the legal system should incorporate several key principles:

1. Mandatory Intermediary Review: Legislative frameworks should avoid bypassing the High Courts via direct-to-Supreme Court appeal routes. Adopting a structured path where tribunal decisions face initial supervisory review before a Division Bench of the High Court preserves the local judicial hierarchy and reduces the case burden on the Supreme Court.

2. Strict Jurisdictional Separation: Benches within specialized tribunals like GSTAT or NGT must focus their review on factual analysis, regulatory compliance, and sector-specific applications. Challenges regarding constitutional validity, the vires of delegated legislation, or systemic violations of fundamental rights must be systematically routed to the High Courts.

3. Institutional and Financial Independence: Tribunals should be placed under an independent, centralized administrative body, such as the proposed National Tribunals Commission, rather than individual parent ministries. This structural separation helps shield tribunal appointments and tenures from executive influence.

Table 1: Statutory Framework Bypassing High Court Oversight

Statute	Specialized Tribunal	Primary High Court Challenge Area	Direct Statutory Appeal Route
Insolvency and Bankruptcy Code (IBC), 2016	NCLAT	Writs against arbitrary liquidations or structural IBC processes.	Section 62 (Direct Appeal to the Supreme Court)
Electricity Act, 2003	APTEL	Regulatory pricing overreaches and tariff-setting disputes.	Section 125 (Direct Appeal to the Supreme Court)
Companies Act, 2013	NCLAT	Shareholder oppression, structural mismanagement, and corporate restructuring.	Section 423 (Direct Appeal to the Supreme Court)
Central Goods and Services Tax Act, 2017	GSTAT	Statutory validity of tax provisions, anti-profiteering, and systemic due process failures.	Section 112 / 118 (Direct Route for National Bench Rulings)

CONCLUSION

The introduction of specialized tribunals has provided the Indian legal system with the technical expertise and capacity required to navigate complex commercial and environmental disputes. However, the expansion of these bodies cannot occur at the expense of constitutional guardrails. The power of judicial review vested in High Courts under Article 226 is not a negotiable administrative feature; it is an essential structural baseline.

As demonstrated by the operationalization of GSTAT and the evolving jurisprudence surrounding the NGT, tribunals function best as specialized forums of first instance rather than final arbiters of public law. By maintaining the High Courts' supervisory authority intact, the legal system ensures that administrative efficiency is consistently balanced with constitutional compliance and the rule of law.

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