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New Tribunal Reforms Bill Promises Structural Change: Jayant K. Sud's Case

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POLITY**GS2**

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INTERVIEW ANGLE

"A statute that Parliament passed in 2021 has now been substantially rewritten because the Supreme Court struck down its core provisions in 2025. If a law is repeatedly found unconstitutional on the same institutional-independence ground, at what point does the fault lie with the drafting and at what point with the underlying intent behind the drafting?"

Source: [Original editorial](#)

Hindustan Times

 Every fact web-verified against primary sources

THE LIFT LINE

A four-year term that needs renewal teaches a tribunal member what a five-year term does not have to. The 2026 Bill is a bet that one extra year, and one fewer government touchpoint, changes that lesson.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

This is a signed op-ed by **Jayant K. Sud**, a senior advocate at the Supreme Court and former Additional Solicitor General of India, writing in Hindustan Times, not an unsigned institutional editorial. Four Ujiyari editorials today cover the same Tribunals Reforms Bill, 2026 from four angles: the government's own justification (the Law Minister's op-ed), an economic ease-of-justice reading, an institutional-skepticism reading, and this one, a practising senior advocate's legally **granular** defence of what the Bill's text actually changes. This is the version your Mains answer needs first, because most candidates who attempt a tribunals question can name Articles 323A and 323B and stop there. Very few can trace the specific provisions, tenure years, the age bar, the Commission's composition, back to the specific Supreme Court findings that made them necessary. That traceability, provision to judicial finding, is what separates a scheme-recall answer from genuine legal analysis.

GS Paper 2: Structure, organisation and functioning of the Executive and the Judiciary; separation of powers between various organs; dispute redressal mechanisms and institutions; appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies.

CONCEPT	MEANING	WHY IT IS TESTABLE
Article 323A	Empowers Parliament to create administrative tribunals for service matters of public employees	The narrower of the two tribunal-enabling articles, frequently confused with 323B
Article 323B	Empowers Parliament and state legislatures to create tribunals for tax, land reform, labour, elections and other specified matters	Covers the far larger set of tribunals, including NCLT, NCLAT, SAT and appellate tribunals
Search-cum-Selection Committee (SCSC)	The body that recommends candidates for tribunal appointment	Its composition and independence is the recurring litigation flashpoint since 2019
National Tribunals Commission	The new standing, judicially led body created by the 2026 Bill to centralise appointment, tenure and service-condition functions	The Bill's single most consequential structural change
Madras Bar Association litigation line	A sequence of Supreme Court cases, roughly a decade long, repeatedly striking down executive-heavy tribunal appointment schemes	Shows this is not a one-off dispute but a settled judicial pattern
Delegated legislation (rules)	Detailed procedural rules framed by the executive under a parent Act's rule-making power	The exact site of the Hindu's counter-argument about residual executive control

BACKGROUND AND CONTEXT

Articles 323A and 323B were inserted by the **42nd Amendment, 1976**, giving Parliament (and, under 323B, state legislatures) the power to set up tribunals outside the ordinary court hierarchy to **adjudicate** specialised categories of dispute, service matters under 323A, and a wider list including taxation, land reforms, labour disputes, elections and industrial disputes under 323B. The stated purpose was speed and specialisation: tribunals were meant to reduce the caseload burden on constitutional courts while deciding technical matters with the benefit of expert, not purely legal, membership.

That design has produced a decade-long line of litigation known collectively as the **Madras Bar Association** cases, in which the Supreme Court has repeatedly struck down government attempts to control tribunal appointments, tenure and service conditions through the administrative ministry each tribunal is attached to. The pattern repeated with the **Tribunals Reforms Act, 2021**, itself enacted after the Court had already struck down an earlier 2020 ordinance-based framework. The 2021 Act prescribed, among other things, a **four-year tenure** for tribunal members and chairpersons and a **minimum age of fifty years** for appointment, both framed by the government as measures to ensure experience and administrative discipline.

In its **November 2025** ruling on the latest round of *Madras Bar Association v. Union of India*, a Supreme Court bench led by the Chief Justice struck down these core appointment, tenure and service-condition provisions of the 2021 Act, holding that they were contrary to the principles of separation of powers and judicial independence. The Court found that the short, renewable tenure created a structural incentive for members to decide cautiously in the government's favour, and reiterated its position, first taken in earlier rounds of the litigation, that the fifty-year age bar was arbitrary. Crucially, the Court also **directed the Union Government to establish a National Tribunal Commission** within four months, restoring the institutional design the Court's own earlier *Madras Bar Association* judgments (referred to as the MBA IV and V line) had called for and government had resisted implementing in full. The **Tribunals Reforms Bill, 2026** is Parliament's legislative response to that direction, repealing the 2021 Act and replacing its appointment and service-condition architecture.

INSTRUMENT	YEAR	WHAT IT DOES
42nd Amendment (Articles 323A, 323B)	1976	Constitutional basis for Parliament to create tribunals
Tribunals Reforms Act, 2021	2021	Prescribed four-year tenure, fifty-year minimum age, and a government-administered Search-cum-Selection Committee process
Madras Bar Association v. Union of India	November 2025	Struck down the 2021 Act's appointment, tenure and service-condition provisions; directed creation of a National Tribunal Commission within four months
Tribunals Reforms Bill, 2026	2026	Repeals the 2021 Act; creates the National Tribunals Commission; extends tenure to five years; drops the fifty-year age bar

THE ANALYSIS

1. The tenure extension targets a specific, named incentive problem. The *Madras Bar Association* petitioners argued that a four-year term, renewable at the government's discretion, made tribunal members vulnerable to a simple calculation: decide in ways that keep the appointing authority satisfied, or risk not being reappointed. Extending the term to five years does not eliminate the reappointment question, members remain eligible for reappointment under the 2026 framework, but it lengthens the interval over which that pressure operates and reduces how frequently a member must weigh a pending decision against a looming renewal date. This is a narrow, mechanical fix aimed precisely at the incentive structure the Court identified, not a general statement about judicial independence.

2. Dropping the fifty-year age bar corrects an eligibility defect the Court had already flagged as arbitrary. The age requirement excluded advocates and judicial officers who might be highly qualified in their late thirties or forties, for no reason connected to competence, while doing nothing to screen for the qualities, subject expertise, judicial temperament, that actually determine fitness for tribunal office. Its

removal widens the eligible pool without touching the **substantive** qualification requirements, which remain tied to judicial or equivalent professional experience. This is a case where removing a restriction expands independence indirectly, by enlarging the pool of candidates who are not dependent on a single, late-career appointment for their livelihood.

3. The National Tribunals Commission is the structural centrepiece, and its judicial leadership is the load-bearing element. Chaired by a former Chief Justice of a High Court or a former Supreme Court judge, with judicial and technical members, the Commission centralises functions, appointment recommendations, tenure administration, transfers, infrastructure and disciplinary oversight, that were previously distributed across each tribunal's sponsoring ministry. This matters because the Madras Bar Association line of cases has consistently identified the sponsoring-ministry model as the core defect: a ministry that is itself frequently a litigant before a tribunal should not simultaneously control that tribunal's staffing and discipline. Concentrating these functions in a single, judicially chaired body answers that specific objection directly.

4. Appointment timelines are now bound, closing a delay loophole that had previously undermined tribunal functioning. Search-cum-Selection Committee recommendations under the 2026 framework carry a fixed window within which the central government must act, addressing a long-standing complaint that governments sat on recommended names for months, leaving tribunals understaffed and forcing litigants to wait. A bound timeline converts a discretionary executive power into a largely ministerial one, since indefinite delay was itself a form of informal control over who ultimately served.

5. Removal grounds have been widened, which cuts both ways and needs to be read carefully. The 2026 framework expands removal grounds beyond the 2021 Act to include incompetence, inefficiency and undertaking incompatible paid engagements. For offences like **insolvency** or a moral-turpitude conviction the Central Government retains direct removal power, but removal on grounds of misbehaviour or incapacity requires a formal inquiry by a committee headed by a sitting or retired Supreme Court judge, a separate and distinct safeguard from the Chief Justice of India's consultative role in appointing the Commission's Chairperson and Judicial Members. Widened removal grounds can strengthen accountability, but they also create a larger surface for a future government to argue that a member should be removed on performance grounds that are more subjective than misconduct. The judge-headed inquiry requirement is the safeguard meant to prevent that surface from being used politically, and its real-world adequacy will only be tested when a removal is actually attempted.

6. The response is targeted at the Court's specific findings, which is exactly what distinguishes structural reform from cosmetic reform. A cosmetic response to the 2025 judgment would have retained the sponsoring-ministry model while adjusting peripheral details, a longer notice period, a revised fee schedule, without touching tenure, age or the appointment authority itself. The 2026 Bill instead rewrites the three provisions the Court's judgment turned on. That correspondence between the judicial finding and the legislative fix is the strongest evidence for reading this as genuine structural change rather than rebranding.

7. Sud's specific test for genuine reform, does the Bill cure the defect or merely repackage the same rejected features under a new label, is a sharper analytical tool than a general "is independence secured" question. He argues the 2026 Bill passes this test because the NTC is a **permanent body listed in the Bill's First Schedule**, not a discretionary committee the government could dissolve or reconstitute at will, and because it is accountable through **CAG audit and a mandatory annual report to Parliament** rather than through purely internal executive oversight. His underlying principle, that independence should protect adjudication from interference rather than institutions from scrutiny, and that government involvement in appointments, expenditure and rule-making is inevitable and does not by itself amount to domination, is a distinct and more **permissive** standard than a demand for complete institutional isolation from the executive, worth flagging explicitly as his own analytical position rather than a settled constitutional test.

8. The panel-and-waitlist fix to the Search-cum-Selection Committee process addresses a specific administrative-delay mechanism, distinct from the independence question. Under Sud's account, requiring the committee to recommend more names than there are vacancies, so the government can appoint from a standing panel without reconvening the whole selection process for every single seat, targets exactly the kind of prolonged-vacancy problem the Supreme Court has separately criticised as making tribunals ineffective through empty benches, a mechanical efficiency fix that operates alongside, not instead of, the independence provisions.

DATA AND INSTITUTIONS VAULT

PRELIMS-GRADE FACTS:

Article 323A: administrative tribunals for service matters, inserted by the 42nd Amendment, 1976

Article 323B: tribunals for tax, land reform, labour, elections and other specified matters, same amendment

Tribunals Reforms Act, 2021: prescribed four-year tenure and a minimum age of fifty years for tribunal appointment

Madras Bar Association v. Union of India (November 2025): Supreme Court, bench led by the Chief Justice, struck down the 2021 Act's appointment, tenure and service-condition provisions; directed the Union Government to set up a National Tribunal Commission within four months

Tribunals Reforms Bill, 2026: repeals the 2021 Act; tenure extended from four to five years; fifty-year minimum age requirement dropped; creates the National Tribunals Commission, chaired by a former Chief Justice of a High Court or former Supreme Court judge

The Madras Bar Association litigation line is often referenced by its sequence, commonly cited as running through MBA IV and MBA V as the immediate precedents restored by the 2025 judgment

Appointment of the National Tribunals Commission's Chairperson and Judicial Members requires consultation with the Chief Justice of India; removal on grounds of misbehaviour or incapacity instead requires a formal inquiry by a committee headed by a Supreme Court judge

NTC listed in the Bill's First Schedule as a permanent body; subject to Comptroller and Auditor-General (CAG) audit; must place an annual report before Parliament

Search-cum-Selection Committee reform: recommends more names than vacancies for a standing panel, avoiding a fresh selection process for every single seat; appointment timeline converted from "preferably within three months" to a binding three-month window

Author: Jayant K. Sud, senior advocate, Supreme Court, and former Additional Solicitor General of India

WATCH THE TRAP: DO NOT WRITE THAT THE 2026 BILL IS THE FIRST ATTEMPT AT TRIBUNAL APPOINTMENT REFORM. IT IS THE THIRD, FOLLOWING A 2020 ORDINANCE-BASED FRAMEWORK AND THE 2021 ACT, BOTH OF WHICH WERE ALSO CHALLENGED AND PARTLY STRUCK DOWN. SECOND TRAP: THE FIFTY-YEAR AGE BAR WAS NOT NEWLY DISCOVERED AS ARBITRARY IN 2025, THE COURT HAD FLAGGED IT IN EARLIER ROUNDS OF THE SAME LITIGATION; 2025 IS WHEN THE COURT FINALLY STRUCK IT DOWN AS PART OF THE 2021 ACT SPECIFICALLY. THIRD TRAP: ARTICLES 323A AND 323B ARE THE SOURCE OF PARLIAMENT'S POWER TO CREATE TRIBUNALS, THEY SAY NOTHING ABOUT APPOINTMENT OR TENURE, WHICH IS ENTIRELY A MATTER OF THE PARENT STATUTE, HERE THE TRIBUNALS REFORMS ACT, 2021 AND NOW THE 2026 BILL.

THE DEBATE

Argument FOR the 2026 Bill as genuine structural reform. Each of its three central provisions, the tenure extension, the dropped age bar, the National Tribunals Commission, maps directly onto a specific defect the Supreme Court identified in November 2025. This is not a government issuing a general statement of commitment to judicial independence; it is a legislature rewriting the exact clauses a court found unconstitutional, within the timeline the court itself set. The shift from a ministry-administered appointment process to a judicially chaired Commission is a genuine transfer of control, not a relabelling of the same officials under a new letterhead.

Argument AGAINST, as the Hindu's reading of the same Bill frames it. The Commission's independence on paper can be narrowed by the rules that govern its daily functioning, and those rules remain delegated legislation the executive alone frames. The practice of routing complaints against tribunal members through the administrative ministry before they reach the Commission is a specific, concrete channel through which the ministry that used to control appointments directly can still shape outcomes indirectly, through the discipline and complaint process rather than the selection process. A structural reform that leaves the procedural plumbing in executive hands has not fully closed the gap it claims to close.

Balanced verdict. Both readings can be true at once, and largely are. The 2026 Bill's headline provisions are real, verifiable, and traceable to specific judicial findings, which makes this materially different from earlier cosmetic responses to Madras Bar Association rulings. But the Hindu's objection about delegated rule-making and complaint-routing identifies a genuine, specific residual risk rather than a vague suspicion, and it is a risk located precisely where the earlier reforms also failed, in the procedural detail beneath the headline structure. The honest assessment is that the Bill has done the hard legislative work; whether it delivers independence in practice depends on rules not yet written and appointments not yet made.

HOW TO THINK ABOUT THIS

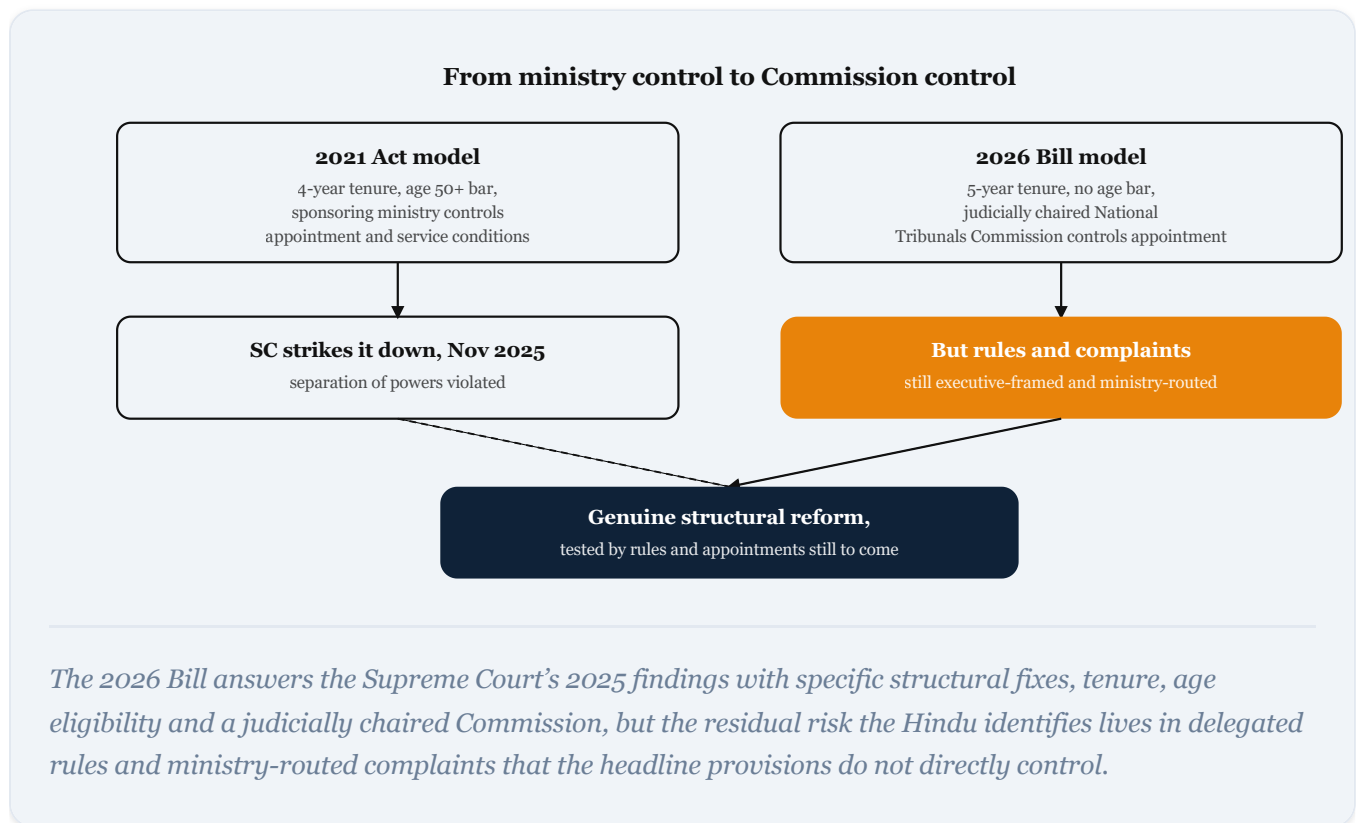
The transferable pattern here is: evaluate institutional reform by its specific mechanical provisions, not by its stated intent or its title. A bill can be titled a "reforms" bill and still leave the underlying control mechanism untouched if the operative clauses do not actually relocate power. The correct method is to identify the precise defect a prior ruling or prior failure diagnosed, then check whether the new provision structurally removes the mechanism that produced that defect, rather than merely renaming the body responsible for it.

Apply this three-step test to any institutional reform question. *First, what was the specific, named defect?* Here it was the sponsoring ministry's dual role as litigant and controller of tenure. *Second, does the new provision remove the mechanism, or just relabel the actor operating it?* A Commission chaired by a former judge, with fixed appointment timelines, removes the mechanism; a renamed committee still staffed by the

same ministry officials would only relabel it. *Third, where does residual discretion survive, and who holds it?* Here it survives in delegated rule-making and complaint-routing, which is exactly where the Hindu's counter-argument focuses.

This pattern recurs across the GS2 syllabus. The **Election Commissioners Appointment Act, 2023** reform of the Chief Election Commissioner and Election Commissioners' selection panel raised an identical question, whether replacing one committee composition with another actually reduced executive weight in the panel. The **Lokpal's** functional independence has faced the same test, since a statutorily independent body can still depend on the executive for staff **deputation** and budget. The **CBI Director's** fixed two-year tenure, introduced after repeated controversies over abrupt removals, is a narrower example of the same tenure-extension logic seen here, a fixed term used specifically to reduce an appointee's dependence on the appointing authority's continued goodwill.

DIAGRAM-IN-WORDS



TAKEAWAY BOX

A tribunal member on a four-year renewable term learns to decide carefully. The 2026 Bill's bet is that a fifth year, and one fewer ministry in the loop, teaches something different.

Article 323A (service tribunals) and **Article 323B** (tax, land reform, labour, election and other tribunals), inserted by the **42nd Amendment, 1976**; **Tribunals Reforms Act, 2021** prescribed **four-year tenure** and a **fifty-year minimum age**; **Madras Bar Association v. Union of India, November 2025** struck these down and directed a **National Tribunal Commission within four months**; **Tribunals Reforms Bill, 2026** extends tenure to **five years**, drops the age bar, and creates the **National Tribunals Commission**, chaired by a former Chief Justice of a High Court or former Supreme Court judge; Commission appointments require **consultation with the Chief Justice of India**, while removal for misbehaviour or incapacity requires a **Supreme Court judge-headed inquiry**.

A statute that Parliament passed in 2021 has now been substantially rewritten because the Supreme Court struck down its core provisions in 2025. If a law is repeatedly found unconstitutional on the same institutional-independence ground, at what point does the fault lie with the drafting and at what point with the underlying intent behind the drafting?

UPSC has repeatedly examined tribunalisation of justice, the constitutional basis under Articles 323A and 323B, and the tension between administrative efficiency and judicial independence in tribunal design. This editorial supplies the precise provision-to-judgment mapping, tenure, age, Commission structure, that most Mains answers on tribunals lack, and it should be read alongside the day's other tribunal-reform editorials for the fuller institutional and economic picture.

"The Tribunals Reforms Bill, 2026 answers the Supreme Court's findings on paper, but independence is decided in the rules beneath the Act." Examine this statement with reference to the Bill's tenure, eligibility and Commission provisions.

Sources: *Hindustan Times*, "New tribunal reforms bill promises structural change" by Jayant K. Sud, PRS Legislative Research

Source: New Tribunal Reforms Bill Promises Structural Change: Jayant K. Sud's Case — Ujjayari.com | Free UPSC & State PCS Editorial Analysis

● KEY ARGUMENTS AT A GLANCE

Senior advocate and former Additional Solicitor General Jayant K. Sud argues, in Hindustan Times, that the Tribunal Reforms Bill 2026 is genuine structural reform rather than a cosmetic relabelling of the 2021 Act, because it replaces the earlier framework with an architecture built around a permanent National Tribunals Commission listed in the Bill's First Schedule, subject to CAG audit and a mandatory annual report to Parliament, on the premise that independence should protect adjudication from interference, not institutions from scrutiny.



SUPPORTING

- The tenure extension from four to five years removes the precise incentive structure the Madras Bar Association had identified as coercive: a member serving a short term who wants reappointment has reason to decide cases in ways that will not displease the government that reappoints them, and a longer, less frequently renewed term reduces that pressure.
- Dropping the fifty-year minimum age requirement removes a bar the Supreme Court had already flagged as arbitrary and exclusionary, since it kept out qualified younger advocates and judicial officers for no functional reason connected to competence, and its removal widens the eligible pool without lowering the qualification bar itself.
- The National Tribunals Commission replaces ad hoc, government-administered Search-cum-Selection Committees with a standing body led by a former Chief Justice of a High Court or Supreme Court judge, which centralises appointment, tenure, transfer, discipline and infrastructure decisions in a mechanism structurally insulated from the sponsoring ministry that used to control these functions in each tribunal's parent department.
- Sud points to a specific mechanical fix in the appointment process itself: instead of requiring the Search-cum-Selection Committee to reconvene separately for every single vacancy, the 2026 Bill lets it recommend more names than there are vacancies, so the government can appoint from a standing panel and fill future vacancies without repeating the entire selection process each time, and it converts an earlier "preferably within three months" appointment timeline into one the government must actually meet.
- Accountability, in Sud's reading, is what makes the Commission's independence credible rather than undermining it: the NTC is subject to Comptroller and Auditor-General audit and must place an annual report before Parliament, since, in his words, independence should protect adjudication from interference, not institutions from scrutiny, and government

involvement in appointments, expenditure, administration and rule-making is inevitable and need not amount to domination.



COUNTER

The Hindu's skeptical reading deserves to be taken seriously rather than dismissed: even under the 2026 Bill, the rules governing the Commission's working, and important operational details of the Search-cum-Selection process, are left to delegated legislation framed by the executive, and the practice of routing complaints against tribunal members through the administrative ministry before they reach the Commission preserves a channel of executive influence that a truly independent Commission should not need. A commission that is independent on paper can still be shaped, in its daily functioning, by rules the government alone writes and complaints the government alone screens.



WAY FORWARD

The genuine test of the 2026 Bill will be in its subordinate legislation and its first cohort of appointments, not its statement of objects. Parliament's Standing Committee should insist that the Commission's procedural rules, including complaint-handling and the operational detail of Search-cum-Selection Committees, be framed by the Commission itself and merely notified by government, not drafted by the ministry and approved by the Commission after the fact.

A statutory requirement that the Commission publish reasoned selection and removal orders, along with a sunset review after the National Tribunals Commission's first full appointment cycle, would let the Supreme Court, the Bar and Parliament assess whether the structural provisions have actually delivered independence in practice or merely relocated the point of executive contact.


MAINS ANSWER FRAMEWORK
QUESTION

The Tribunals Reforms Bill, 2026 replaces the Tribunals Reforms Act, 2021 in response to the Supreme Court's ruling in Madras Bar Association v. Union of India. Examine the specific structural provisions of the 2026 Bill and assess whether they adequately secure the independence of tribunals from executive influence. (250 words)

INTRODUCTION

Tribunals occupy a constitutionally awkward space: created under Articles 323A and 323B to relieve regular courts of specialised adjudication, they perform judicial functions while their members have historically been appointed, retained and removed through processes controlled by the very executive whose actions many tribunals are called upon to review. The Tribunals Reforms Bill, 2026 is Parliament's response to the Supreme Court's November 2025 judgment in Madras Bar Association v. Union of India, which struck down core appointment, tenure and service-condition provisions of the Tribunals Reforms Act, 2021 as violating separation of powers and judicial independence.

BODY

The 2026 Bill makes three structural changes that respond directly to the Court's findings. First, it extends member tenure from four to five years, addressing the Court's concern that a short, renewable term makes members dependent on government goodwill for reappointment and therefore cautious in deciding against the government.

Second, it drops the fifty-year minimum age requirement for appointment, a bar the Court had already found arbitrary because it excluded qualified younger advocates and judicial officers without any link to competence. Third, and most significantly, it establishes an independent National Tribunals Commission, chaired by a former Chief Justice of a High Court or a former Supreme Court judge, to take over appointment, tenure, transfer, service conditions, infrastructure and disciplinary functions that were previously scattered across each tribunal's administrative ministry.

This last change matters because Madras Bar Association's central objection was never any single defective provision but the structural fact that the executive, as a litigant before many tribunals, also controlled the conditions of service of the judges deciding against it. A standing, judicially led Commission is designed to break that link.

The credible counter-argument, raised in the Hindu's reading of the same Bill, is that important operational detail, the Search-cum-Selection Committee's procedural rules and the routing of complaints against members through the administrative ministry before they reach the Commission, remains governed by delegated legislation the executive alone frames, meaning the insulation the Bill promises on paper could still be diluted in its rules.

CONCLUSION

The Bill is best read as necessary but not sufficient reform. The tenure extension, the dropped age bar and the Commission's creation are genuine, verifiable structural changes that respond to specific judicial findings, not cosmetic relabelling.

Whether they deliver independence in practice will depend on whether the Commission, not the sponsoring ministry, ultimately controls the subordinate rules and the complaint-handling process that determine how appointment and removal actually work on the ground.

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