

# **REFORMING THE TRIBUNAL SYSTEM IN INDIA**

This news update provides an overview of the recently enacted Tribunals Reforms Act, 2021. This Act was enacted to replace the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 and is deemed to have come into force on 4<sup>th</sup> April, 2021.

Under the Indian legal system, the courts (at the district level, high courts at the state level and the Supreme Court), are the primary bodies entrusted with the function of adjudication. A tribunal is an adjudicating authority created under law, and vested with the responsibility of resolving disputes in specialized areas. Tribunals have been in existence in India since the 1950s. The purpose of establishing tribunals is to provide a forum with experts having specialized subject knowledge on technical matters, reduce the workload of the general courts, and to expedite disposal of cases on specific matters. For instance, the National Green Tribunal is a dedicated environmental court, under the National Green Tribunal Act, 2010, which was formed as a special fast-track, quasi-judicial body comprising of judges and environment experts to ensure expeditious disposal of cases. Similarly, the Income Tax Appellate Tribunal established under the Income-tax Act, 1961 is a quasi-judicial body comprising judges with expertise in accountancy and law to deal with the Direct tax cases and provide justice to the aggrieved party.

It is important to note that the right to appeal from the rulings of tribunals is available to the Supreme Court, since this is the institution established under the Constitution to have the ultimate ability to interpret and apply law.

However, over a period of time, some of these tribunals have been perceived to not have necessarily led to faster justice delivery. They have also been seen as constituting considerable expense to the exchequer, without performing any meaningful role.<sup>1</sup>

#### **I. Abolition of 9 Tribunals**

Based on an assessment of the functioning of tribunals in India, the Parliament had introduced the Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 in February 2021; but since this could not be passed in the Parliament, the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 (“Ordinance”) was promulgated by the President in April 2021. In August 2021, the Tribunals Reforms Bill, 2021 was introduced to replace the Ordinance; and once this was passed by the Parliament, it received presidential assent on 13<sup>th</sup> August 2021.

The Tribunals Reforms Act, 2021 (“the Act”) abolishes Tribunals and appellate authorities constituted under 9 laws and transfers their function to Commercial Court or the High Court, as the case maybe. The table below provides an overview of the 9 tribunals/ appellate authorities that have been abolished, and the new forum which will now deal with the disputes arising under the relevant statutes:

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\* Authored by Manali Joshi, Associate, Clarus Law Associates.

<sup>1</sup> Statement of Objects and Reasons, the Tribunals Reforms Bill, 2021.

**Table: Tribunals Abolished under the Tribunal Reforms Act, 2021**

S. No.	Appellate Body/Tribunal abolished	Law under which the Tribunal existed	The New Forum which will deal with the disputes under the relevant law
1.	Tribunal	Cinematograph Act, 1952	High Court
2.	Appellate Board	Copyright Act, 1957	Commercial Court <sup>2</sup>
3.	Appellate Authority	Customs Act, 1962	High Court
4.	Appellate Board	Patents Act, 1970	High Court
5.	Tribunal	Airports Authority of India Act, 1994	<ul style="list-style-type: none"> <li>• Central Government regarding dispute relating to amount received on disposal of properties left on airport premises by unauthorised occupants by eviction officer</li> <li>• High Court for appeals against orders of an eviction officer</li> </ul>
6.	Appellate Board	Trademarks Act, 1999	High Court
7.	Appellate Board	Geographical Indications of Goods (Registration and Protection) Act, 1999	High Court
8.	Tribunal	Protection of Plant Varieties and Farmers' Rights Act, 2001	High Court
9.	Tribunal	Control of National Highways (Land and Traffic) Act, 2002	Court <sup>3</sup>

## **II. Amendment to Term, Selection process and Eligibility of Chairperson and Members of Tribunal**

There are several other tribunals that continue to exist under various other laws in India. In respect of 16 such tribunals, the Act also seeks to amend various provisions relating to aspects such as minimum age requirement for appointment of Chairperson or Members of Tribunal as 50 years<sup>4</sup>; term of office of Chairperson and Members of Tribunal to 4 years<sup>5</sup> and establishment of selection committee who shall recommend panel of 2 names for appointment of Chairperson or Member of Tribunal to the Central Government<sup>6</sup>. These tribunals include the National Green Tribunal, Debt Recovery Tribunal, Income-Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal.

These provisions of the Act are identical to the Ordinance that had preceded the Act. The Supreme Court had upheld the constitutional challenge to these provisions and had struck them down<sup>7</sup>. In striking down these provisions, the Supreme Court made the following observations:

- i. a short tenure would be a disincentive for competent persons to seek appointment and that Members of the Tribunals shall hold office for a term of 5 years;<sup>8</sup>

<sup>2</sup> Constituted under Commercial Courts Act, 2015

<sup>3</sup> Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction.

<sup>4</sup> Proviso to Section 3(1) of the Act

<sup>5</sup> Section 5 of the Act

<sup>6</sup> Section 3(7) of the Act

<sup>7</sup> *Madras Bar Association vs. Union of India & Anr.* 2021 SCC Online SC 463 ("Madras Bar Association case")

<sup>8</sup> Para 56 of the Madras Bar Association case

- ii. the selection committee shall recommend one person for appointment in each post in place of a panel of two or three persons to avoid executive influence in the matter of appointments to Tribunals;<sup>9</sup> and
- iii. fixing a minimum age for recruitment of Members of Tribunals as 50 years would act as a deterrent for competent advocates to seek appointment to the Tribunals.<sup>10</sup>

However, despite the aforementioned holding of the Supreme Court, the Act has simply reintroduced the provisions relating to term, selection process and minimum age qualification of Chairperson and Members of Tribunal. As a result, soon after the Act was introduced, another case was filed at the Supreme Court challenging the constitutional validity of the Tribunals Reforms Act, 2021, stating that it has re-enacted the very same provisions struck down by the Supreme Court in Madras Bar Association case.<sup>11</sup> When this matter was listed before the Supreme Court on 6<sup>th</sup> September, 2021, the Union Government was criticized for passing the Act which simply replicates the provisions struck down by the Court.<sup>12</sup> The Central Government is yet to file its counter affidavit in the matter, pursuant to which the Supreme Court would hear the matter.

Clarity and resolution on the issue of appointment of the members of the tribunals is crucial in order to restore the credibility of this important quasi-judicial specialized organs for dispute resolution.

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<sup>9</sup> Para 53 and 54 of the Madras Bar Association case

<sup>10</sup> Para 49 of the Madras Bar Association case

<sup>11</sup> 'Unconstitutional Legislative Overriding of Judgment': Jairam Ramesh moves Supreme Court challenging Tribunals Reforms Act, 2021, Live Law -

<https://www.livelaw.in/top-stories/tribunal-reforms-act-2021challenged-before-supreme-court-by-jairam-ramesh-179667?infinitemscroll=1>;

Plea in Supreme Court against Tribunals Reforms Act, The Hindu-  
<https://www.thehindu.com/news/national/plea-in-sc-against-tribunal-reforms-act/article35943112.ece>

<sup>12</sup> The Supreme Court has been reported to have observed that: *"You are testing the patience of Court; No respect for our judgments"*: Supreme Court Raps Centre Over Tribunals Reforms Act, Live Law - <https://www.livelaw.in/top-stories/tribunals-reforms-act-supreme-court-raps-centre-says-no-respect-for-judgment-180976> Cases: Jairam Ramesh v. Union of India WP(C) No. 000910/2021; Delhi Bar Association v. Union of India WP(C) No. 000906/2021; and State Bar Council of MP v. Union of India WP(C) No. 010911/2021