

## **REFORMING THE TRIBUNALS FRAMEWORK IN INDIA: AN INTERIM REPORT**



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## LIST OF ABBREVIATIONS

Abbreviation	Tribunal
AAIFR	Appellate Authority for Industrial and Financial Reconstruction
AAR-CS	Authority of Advance Rulings- Customs Sales
AAR-IT	Authority of Advance Rulings- Income Tax
AAT	Airport Appellate Tribunal
AERAAT	Airports Economic Regulatory Authority Appellate Tribunal
AFT	Armed Forces Tribunal
APTEL	Appellate Tribunal for Foreign Exchange
ATFE	Appellate Tribunal for Electricity
ATFP	Appellate Tribunal for Forfeited Property
CAT	Central Administrative Tribunal
CESTAT	Customs, Excise, Sales Tax Appellate Authority
COMPAT	Competition Appellate Tribunal
CSTAA	Customs Sales Tax Appellate Authority
CWDT	Cauvery Water Disputes Tribunal
CyAT	Cyber Appellate Tribunal
DRAT	Debt Recovery Appellate Tribunal
DRT	Debt Recovery Tribunal
EPFAT	Employees Provident Fund Appellate Tribunal
FCAT	Film Certification Appellate Tribunal
IPAB	Intellectual Property Appellate Board
ITAT	Income Tax Appellate Tribunal
KWDT-II	Krishna Water Disputes Tribunal- II
MWDT	Mahadayi Water Disputes Tribunal
NCDRC	National Consumers Disputes Redressal Commission
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NGT	National Green Tribunal
NHT	National Highways Tribunal
RBWDT	Ravi & Beas Water Disputes Tribunal
RCT	Railways Claims Tribunal
REAT	Real Estate Appellate Tribunal
RRT	Railway Rates Tribunal
SAT	Securities Appellate Tribunal
TDSAT	Telecom Disputes Settlement and Appellate Tribunal
VWDT	Vansadhara Water Disputes Tribunal

## SUMMARY OF RECOMMENDATIONS

This interim report on tribunals forms the basis for consultation with stakeholders to streamline the functioning of tribunals in India. It assesses the tribunals framework, traces its origins, evolution, attempts at reforms, and proposes an alternative framework that could operate with independence and uniformity.

Tribunals are statutory adjudicatory bodies that address disputes that fall within the ambit of their parent statutes. Although tribunals are supposed to reduce the backlog of cases in courts and expedite decisions in matters involving domain knowledge, in practice the intention has been defeated. This is due to the erratic and inconsistent manner in which the various central tribunals have been constituted. Two broad issues hamper the effectiveness of tribunals: (a) the absence of uniformity and coherence across the framework; (b) lack of independence. This interim report addresses both these issues and provides recommendations that can be further developed through consultations with stakeholders.

The recommendations are summarised as follows:

1. The tribunals framework can operate under an independent statutory body, provisionally called the National Tribunals Commission (NTC).
2. The existing 37 central tribunals can be merged into nine distinct subject-matter divisions.
3. The NTC can be set up by a statute of Parliament and operate through a Board that comprises sitting judges of the Supreme Court and High Courts, executive members nominated by central government and a senior advocate.
4. The senior-most Supreme Court judge will be the de facto Chairperson of the Board.
5. The NTC will appoint a Chief Executive Officer who will implement the decisions of the Board and manage the day-to-day functioning. The tenure of NTC members will be for three-years with no reappointment to ensure a dynamic and impartial body.
6. There will be no direct appeal to the Supreme Court from a tribunal. Statutory appeals to High Courts can be allowed for cases that involve substantial questions of law.
7. To ensure operational coherence, there will be uniform service conditions:

Condition	Recommendations (Read Chapter 5 for details)
Appointment of Members	<ul style="list-style-type: none"><li>• Board should appoint a selection committee; or</li><li>• Call for applications via open advertisements; or</li><li>• Hold an All-India Entrance Examination for Tribunals (AIEET)</li></ul>

## Summary of Recommendations

Qualifications of Members	<ul style="list-style-type: none"><li>• Qualifications of chairperson should be uniform across all tribunals</li><li>• Technical members should have a minimum of 15 years domain expertise</li><li>• Retired persons and members of the Indian Legal Services, Revenue Services etc. and bureaucrats should not be eligible to be appointed as judicial members</li></ul>
Reappointment	<ul style="list-style-type: none"><li>• There should be a bar on reappointment of tribunal members</li></ul>
Tenure	<ul style="list-style-type: none"><li>• There should be a tenure of 5-7 years; or a retirement age of 62-65 years, whichever is earlier (depending on mode of appointment)</li></ul>
Vacancy	<ul style="list-style-type: none"><li>• Vacancies arising in tribunals should be filled up within 6 months prior to the occurrence of a vacancy</li></ul>
Salaries and other allowances	<ul style="list-style-type: none"><li>• Salaries and other allowances should be uniform across all tribunals</li></ul>
Removal of Members	<ul style="list-style-type: none"><li>• The removal procedure should be uniform with a time bound inquiry carried out by a judge from the higher judiciary</li></ul>

## 1. INTRODUCTION

Tribunals in India have been a long-standing feature of the judicial system, beginning with the setting up of the Income Tax Appellate Tribunal as early as 1941. The 42<sup>nd</sup> Amendment in 1976, which inserted Article 323-A and 323-B in to the Constitution, empowered both the Parliament and state legislatures to establish administrative and other tribunals. With this insertion, tribunals, as an alternate method of adjudication, received constitutional legitimacy. Despite this, over the years, tribunals have been a subject of much judicial scrutiny. With successive verdicts from the Supreme Court, starting with the *S.P. Sampath Kumar v. Union of India*<sup>1</sup> (“*Sampath Kumar*”) to more recently the *Madras Bar Association v Union of India*<sup>2</sup> (“*NTT case*”), there exists considerable jurisprudence in determining the constitutional fetters of tribunals.

Recently, there have been developments in the discourse around tribunal reforms, especially with the enactment of the Finance Act, 2017. This was followed by a comprehensive analysis of the statutory framework of tribunals by the Law Commission of India.<sup>3</sup> While the Finance Act has attempted to address the question of tribunalisation by merging certain tribunals, its logical and constitutional bases have come under question before the Supreme Court. This brings the discourse to a crucial juncture by begging the question of what makes for an independent, uniform, and efficient tribunals framework.

This interim report tries to answer this question. It has been structured into five chapters that trace the history and evolution of tribunals followed by an analysis of the reformatory attempts. It recommends an alternate model for rationalising tribunals in India and a National Tribunals Commission as a statutory body responsible for the administration of tribunals.

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

<sup>2</sup> (2014) 10 SCC 1

<sup>3</sup> Law Commission of India, 272<sup>nd</sup> Report titled “*Assessment of Statutory Frameworks of Tribunals in India*”, (hereinafter “Law Commission of India, 272<sup>nd</sup> Report”) Available on: <http://lawcommissionofindia.nic.in/reports/Report272.pdf> (last accessed on 8<sup>th</sup> March, 2018)

## 2. THE TRIBUNALS FRAMEWORK IN INDIA

The issue of delays and backlog is a central theme in the discourse surrounding the judiciary and judicial reforms in India and has been one, dating back to the colonial era. Efforts have been made to address this issue: from the Justice Rankin Committee Report in 1924,<sup>4</sup> to the various reports of the Law Commission of India,<sup>5</sup> a plethora of recommendations have been made with specific emphasis on reducing the backlog of cases in the judiciary. However, delay in adjudication of cases remains an unresolved issue even today. As of 2017, more than 26 million cases are still pending across the courts in India.<sup>6</sup>

Judicial backlog and delay has also been a key reason behind the introduction of tribunals in India.<sup>7</sup> Before the creation of a parallel system of adjudication in the form of tribunals, extensive debates took place amongst various government bodies. An understanding of these debates is the first step to understanding the origin of tribunals in India.

### A. Law Commission of India Reports & Special Committees

In its 14<sup>th</sup> Report titled “*Reforms of Administration of Justice*”, the First Law Commission of India was faced with the question of whether to create tribunals for specific subject areas, to make the dispensation of justice more speedy and less expensive.<sup>8</sup> While rejecting the idea of a general system of Administrative Courts,<sup>9</sup> it stated that such a system could be only supplemental in nature and could not supplant ordinary courts of law.<sup>10</sup> The idea of a dedicated tribunal to deal with service matters was endorsed for two reasons. First, such a tribunal would provide speedy remedy in genuine cases of injustice; and second, that a speaking order of a qualified tribunal would help ordinary civil courts to summarily dispose of frivolous litigation.<sup>11</sup> These recommendations were subsequently reiterated by the High Courts Arrears Committee in 1972, which suggested the establishment of an

<sup>4</sup> Arun K. Thiruvengadam, ‘*Tribunals*’, Chapter 23, pp-412-431, in Oxford handbook of the Indian Constitution, Oxford University Press, 2016 edited by Sujit Choudhry; Madhav Khosla; Pratap Bhanu Mehta, at p. 414

<sup>5</sup> *Ibid.* at p. 414, citing Reports of the Law Commission numbered 14, 44, 45, 58, 77, 79, 80, 120, 121, 124 and 215.

<sup>6</sup> National Judicial Data Grid, Available at: [http://njdg.ecourts.gov.in/njdg\\_public/main.php#](http://njdg.ecourts.gov.in/njdg_public/main.php#) (last accessed on 20<sup>th</sup> December, 2017)

<sup>7</sup> Arun K. Thiruvengadam, (n 4) at p. 413

<sup>8</sup> Law Commission of India, 14th Report titled “*Reform of Judicial Administration*”, 1958, Available at: <http://lawcommissionofindia.nic.in/1-50/Report14Vol2.pdf> (last accessed on 20<sup>th</sup> December, 2017) at pp. 671-698

<sup>9</sup> *Ibid.* at p. 693

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* at p 692; Service matters were defined as: *Disputes between “government servants and the government, where the servants seek redressal for real or fancied violations of their constitutional safeguards for the breach of rules regulating their conditions of service.”*

independent tribunal to deal with service matters, in a bid to reduce the congestion of cases in the High Courts.<sup>12</sup>

The Sixth Law Commission took a contrasting stand on tribunals and suggested against the creation of separate tribunals or courts for service matters.<sup>13</sup> In their opinion, curtailing the power of supervisory and appellate<sup>14</sup> jurisdictions of the High Courts and the Supreme Court was necessary to reduce the arrears in these Courts.<sup>15</sup> However as it was not feasible to curtail these powers, it found the existing system of grievance redressal to be adequate.<sup>16</sup>

Subsequently, the emergency period saw a push for the establishment of tribunals.<sup>17</sup> The Swaran Singh Committee was set up to revisit the Constitution and suggest amendments to it.<sup>18</sup> The Committee acknowledged the mounting arrears in the High Courts and introduced the 42<sup>nd</sup> Amendment to the Constitution while inserting Part XIV-A.<sup>19</sup> It consisted of two new provisions: Article 323A and 323B, which empowered the Parliament and state legislatures to establish administrative tribunals and tribunals for other matters respectively. Furthermore, it recommended that the decisions of the tribunals should only be subject to Article 136 of the Constitution, to the exclusion of all other courts.<sup>20</sup> Notably, while this recommendation discussed the exclusion of writ jurisdiction of the High Courts under Article 226, it offered no rationale for the exclusion of the Supreme Court's writ jurisdiction.<sup>21</sup>

## B. Constitutionality of Tribunals

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Post the 42<sup>nd</sup> Amendment, the Administrative Tribunals Act, 1985 was enacted by the Parliament to provide speedy and inexpensive justice to aggrieved government servants. However, the enactment of the Act also gave rise to the first challenge regarding the constitutionality of tribunals.

In *Sampath Kumar*, a five-judge bench of the Supreme Court had to determine the constitutionality of Section 28 of the Act, which ousted the power of judicial review of the Supreme Court and High

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<sup>12</sup> The High Court Arrears Committee under the Chairmanship of J.C. Shah,. Available at: <http://bombayhighcourt.nic.in/libweb/comitrep/HighCourtArrearsCommittee1972.pdf> (last accessed on 20<sup>th</sup> December, 2017) at p. 70

<sup>13</sup> Law Commission of India, 58<sup>th</sup> Report titled "*Structure and Jurisdiction of the Higher Judiciary*", 1974, Available at: <http://lawcommissionofindia.nic.in/51-100/Report58.pdf> (last accessed on 20<sup>th</sup> December, 2017), at p. 102

<sup>14</sup> The High Court exercises supervisory jurisdiction under Article 226 of the Constitution of India. The Supreme Court exercises Appellate Jurisdiction under Articles 132, 133 and 136 of the Constitution of India.

<sup>15</sup> Law Commission of India, 58<sup>th</sup> Report, 1974, at p. 102

<sup>16</sup> *Ibid.* at p. 103

<sup>17</sup> Arun K Thiruvengadam suggests that "*a part of hostility towards the idea of tribunals can be attributed to their insertion into the constitutional scheme during the Emergency imposed by the Indira Gandhi government.*" For a detailed analysis please refer (n 4) at pp. 416-420

<sup>18</sup> Swaran Singh Committee Report, (1976) 2 SCC (Jour) 45

<sup>19</sup> Please see: the Statement of Objects and Reasons appended to the 42<sup>nd</sup> Amendment to the Constitution of India.

<sup>20</sup> Swaran Singh Committee Report, Part IV, Item V

<sup>21</sup> It has been understood that the ouster of the writ jurisdictions of the Supreme Court and the High Court in regard to decisions of the tribunals was a way to restrict the power of the respective Courts, as the judiciary was the only institution which opposed the curtailment of the freedoms guaranteed to the citizens during the Emergency Period.

Courts. The bench concluded that the creation of ‘alternative institutional mechanisms’, which were as competent as High Courts, would not violate the basic structure of the Constitution.<sup>22</sup> It also passed directions with respect to qualifications of tribunal members, manner of appointment, etc.<sup>23</sup> With regard to the appointment process, the court stated that the recommendations of a High Powered Selection Committee (chaired by the Chief Justice of India or his/her designate) must be ordinarily followed, unless reasons for not following them are furnished.<sup>24</sup>

However, a decision by the High Court of Andhra Pradesh in *Sakinala Harinath and Ors. v State of Andhra Pradesh and Ors.*<sup>25</sup> offered a different approach and stated that a provision ousting the power of judicial review of High Courts and Supreme Court, would be violative of the basic structure doctrine.<sup>26</sup> Subsequently, the Supreme Court, in *R.K. Jain v Union of India (“R.K. Jain”)*,<sup>27</sup> criticised the rationale behind the decision in *Sampath Kumar* and emphasized that the power of judicial review of the High Court under Article 226 cannot be excluded even by a constitutional amendment.<sup>28</sup>

Finally, a 7-judge bench of the Supreme Court in *L. Chandra Kumar v Union of India*<sup>29</sup> (“*L. Chandra Kumar*”) conclusively held that the power of the High Courts under Article 226 and 227 to exercise judicial superintendence over the decisions of all courts and tribunals, is a part of the basic structure of the Constitution.<sup>30</sup> It also stated that “*all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the writ jurisdiction of the High Courts under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular tribunal falls.*”<sup>31</sup> In the opinion of the court, it would serve two purposes: First, frivolous claims will be filtered by tribunals before they reach the High Court; and second, the High Court will have the benefit of a reasoned decision on merits which will assist in finally deciding the matter.<sup>32</sup> However, whether the creation of tribunals has indeed served these purposes, remains a question for further research.

The court also suggested remedying the issue of malfunctioning of tribunals by setting up an independent agency for their administration, preferably in the form of a single nodal ministry.<sup>33</sup> The Union Ministry of Law and Justice was considered to be the appropriate ministry, with the additional

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<sup>22</sup> *Ibid.* at para 4 (J. Bhagwati’s judgment)

<sup>23</sup> *Ibid.* at paras 5-7 (J. Bhagwati’s Judgment); For the post of Chairman, the court stated that the person should be only from the judiciary and has to have the rank of a Judge or Chief Justice of the High Court. They also specifically stated that a Secretary to the government, who has no legal or judicial experience, will not be an effective substitute, leading to the violation of Article 226 and 227 of the Constitution. In regard to Vice Chairman, the qualification necessary were that of a District Judge or advocate who is qualified to be a judge of the High Court.

<sup>24</sup> *Ibid.* at para 8 (J. Bhagwati’s judgment)

<sup>25</sup> 1993 (3) ALT 471

<sup>26</sup> *Ibid.* at paras 68 and 69

<sup>27</sup> AIR 1993 SC 1769

<sup>28</sup> *Ibid.* at para 89

<sup>29</sup> AIR 1997 SC 1125

<sup>30</sup> *Ibid.* at para 91

<sup>31</sup> *Ibid.* at paras 93,94 and 95

<sup>32</sup> *Ibid.* at para 91

<sup>33</sup> *Ibid.* at para 97

power given to the ministry to appoint an independent supervisory body to oversee the working of the tribunals.<sup>34</sup>

It also addressed issues in relation to appointments to administrative tribunals, where it emphasized that the tribunals needed to have a judicious mix of both special members and judicial members.<sup>35</sup> The court recommended the inclusion of a Supreme Court judge in the constitution of selection committee for appointment of members to the tribunal as a means to maintain the independence of tribunals.<sup>36</sup> Finally, it stated that the tribunals performed a ‘*supplemental*’ role as opposed to a ‘*substitutional*’ role to the High Courts and the Supreme Court of India.<sup>37</sup>

The early phase of litigation on tribunals focussed on the constitutionality of setting up tribunals without affecting the inherent powers of the High Courts and the Supreme Court. The decision of *L. Chandra Kumar* marked the end of this phase, by upholding the constitutional validity of tribunals if certain conditions were met. The most important of these conditions was the non-exclusion of the writ jurisdiction of the High Courts under Articles 226/227 and the Supreme Court under Article 32 of the Constitution.

### C. The NCLT and the NTT Cases

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With the constitutionality of tribunals entrenched, the focus has shifted to the efficient and effective functioning of tribunals. Being recognized as a parallel system of adjudication has ensured that the tribunals enjoy same level of independence as courts. These two themes have recurred in all litigation post *L. Chandra Kumar*. Two cases are particularly relevant, i.e. *Union of India v R. Gandhi*<sup>38</sup> (“NCLT Case”) in 2010 and the *NTT Case* in 2014.

#### a) Independence of Tribunals

In the *NCLT Case*, a constitution bench of the Supreme Court had to deal with the constitutional validity of the NCLT and the NCLAT. The judgment listed out 14 major defects in the law establishing these tribunals, which needed to be remedied to stand the test of constitutionality.<sup>39</sup> In particular, the court focussed on the issue of the independence of these tribunals.<sup>40</sup>

The court observed that the independence of the tribunals was compromised by the inclusion of the secretary of the ‘sponsoring department’ in the selection committee. Additionally, tribunals were dependent on these departments for funding, infrastructure, working space, etc., which created a

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.* at para 96

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.* at para 94

<sup>38</sup> (2010) 11 SCC 1; The judgment in *NCLT Case* has been reiterated in *Madras Bar Association v Union of India (Madras Bar Association-II)* (2015) 8 SCC 583, which is a sequel to the *NCLT Case*. It dealt with the amendments brought to the Companies Act, 1956 by the Companies Act, 2013.

<sup>39</sup> *Ibid.* at para 56

<sup>40</sup> *Ibid.* at para 15

scope for interference by the department. Civil servants who became members of tribunals often retained lien with their parent cadre, leading to further executive interference.

In order to maintain the independence of the tribunals, the court suggested a four-member selection committee chaired by the Chief Justice of India or his/her nominee, a senior judge of the Supreme Court or Chief Justice of High Court, Secretary in the Ministry of Finance and Company Affairs, and Secretary in the Ministry of Law and Justice as members.<sup>41</sup> Furthermore, for the removal/suspension of the President/Chairperson of tribunals, the concurrence of the Chief Justice of India was mandated to ensure the independence of tribunals.

Subsequently, a five-judge bench of the Supreme Court in *NTT Case* struck down the National Tax Tribunal Act, 2005 (*NTT Act*) as unconstitutional. While doing so, the court enumerated certain principles that dealt with the issue regarding independence. First, the court struck down the provision<sup>42</sup> empowering the central government to decide the location, jurisdiction and constitution of benches, transfer of members, etc. as excessive executive interference. As the government was itself a stakeholder before the tribunal, such powers were seen to be compromising the independence of the tribunal.<sup>43</sup>

Similar to the criticism in the *NCLT Case*, the provision<sup>44</sup> for the composition of the selection committee for Chairpersons/Members of the NTT, was also struck down as it consisted of more executive members than judicial members. A majority of executive members in the selection committee would, in the opinion of the court, compromise the independence of the tribunal.<sup>45</sup> Also, the reappointment provision<sup>46</sup> was seen as undermining the impartiality of the tribunals. It was speculated that such a provision would constrain the decision-making ability of the Chairpersons/Members in way that would favour them to get reappointed.<sup>47</sup>

### b) Efficiency of Tribunals

From *R.K. Jain* to *L. Chandra Kumar*, the courts have tried to shed light on the issue of malfunctioning of tribunals and have offered recommendations. A consistent recommendation has been to entrust the Ministry of Law and Justice with the duty to administer tribunals.

This suggestion was reiterated in the *NCLT Case*, where the court additionally suggested that no facilities should be provided from the respective sponsoring or concerned departments or parent ministries.<sup>48</sup> Non-uniformity in relation to appointment process, qualifications required, service conditions, removal procedure etc., was also highlighted as a cause for malfunction. This issue of non-uniformity has been recognized by the central government by the tabling of The Tribunals,

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<sup>41</sup> *Ibid.* at para 56 (ix)

<sup>42</sup> Section 5 of the *NTT Act*

<sup>43</sup> *NTT Case*, at para 81 (J. Khehar's judgement)

<sup>44</sup> Section 7 of the *NTT Act*

<sup>45</sup> *NTT Case*, at para 88 (J. Khehar's judgement)

<sup>46</sup> Section 8 of the *NTT Act*

<sup>47</sup> *NTT Case* at para 89 (J. Khehar's judgement)

<sup>48</sup> *NCLT Case*, at para 56 (xiii)

Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014 and the notifying of The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017, enacted under the Finance Act, 2017.

The growth of tribunals and its consolidation in the Indian legal system can be understood through the lens of various precedents that have been laid down overtime. From the issues of constitutionality, the discourse on tribunals has now shifted to make them a more efficient system of adjudication, while ensuring that they retain the same amount of independence as regular courts. As certain attempts have been made in the past decade to remedy the problems, the next part critically analyses these attempts made to reform the tribunals framework in India.

## D. Attempts at Reforming the Tribunals Framework

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In this part, three recent attempts at reforming the tribunal system have been analysed. These are:

1. 74<sup>th</sup> Parliamentary Standing Committee Report on the “*The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014*”.
2. Finance Act, 2017.
3. 272<sup>nd</sup> Law Commission of India Report on “*Assessment of Statutory Frameworks of Tribunals in India*”.

### a) 74<sup>th</sup> Parliamentary Standing Committee Report

In 2014, The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014 was tabled to standardise the conditions of service of members across tribunals. Although the Bill was withdrawn on 11th April, 2017,<sup>49</sup> the analysis of the provisions of the Bill carried out by the Parliamentary Standing Committee needs to be mentioned. In its 74<sup>th</sup> Report titled on the Bill,<sup>50</sup> the following recommendations made are relevant:

1. Regulatory bodies should not be included in the definition of tribunals.<sup>51</sup>
2. The retirement age of Chairperson and Members of all tribunals should be uniformly set at 70 years.<sup>52</sup>
3. Tenure of members should be for a period of 7 years or more so that they develop adequate expertise in the domain area.<sup>53</sup>

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<sup>49</sup> PRS Legislative Research, status of the Bill, available at: <http://www.prsindia.org/billtrack/the-tribunals-appellate-tribunals-and-other-authorities-conditions-of-service-bill-2014-3141/> (last accessed on 1st March, 2018)

<sup>50</sup> Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, “74<sup>th</sup> Report, The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014”, Available on: <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/74.pdf> (last accessed on 27th February, 2018)

<sup>51</sup> *Ibid.* at para 13

<sup>52</sup> *Ibid.* at para 18

<sup>53</sup> *Ibid.* at para 18

4. In order to induct younger and dynamic members, a regular appointment model should be adopted. This would also remedy the issue of tribunals becoming a “safe haven” for retired judges.<sup>54</sup>
5. Uniform grounds of removal should be enumerated in law.<sup>55</sup>
6. A National Tribunal Commission should be set up to oversee the administration of tribunals and standardise the selection process, removal, eligibility criteria for appointment, etc.<sup>56</sup>

However, none of the recommendations were implemented. Post the withdrawal of the Bill, the next attempt by the Government to reform the tribunals framework was through the enactment of the Finance Act, 2017.

#### b) The Finance Act, 2017 & Rules

In an unprecedented move, the Finance Act of 2017 merged eight tribunals according to functional similarity. Such a move being instituted in the form of a Money Bill raises questions of constitutional legitimacy which falls outside the scope of this interim report. However, these questions have been challenged by way of writ petition in front of the Supreme Court and is currently pending.<sup>57</sup> The list of the tribunals that have been merged are given below:

1. The Employees Provident Fund Appellate Tribunal with The Industrial Tribunal
2. The Copyright Board with The Intellectual Property Appellate Board
3. The Railways Rates Tribunal with The Railways Claims Tribunal
4. The Appellate Tribunal for Foreign Exchange with The Appellate Tribunal (Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
5. The National Highways Tribunal with The Airport Appellate Tribunal
6. The Cyber Appellate Tribunal and The Airports Economic Regulatory Authority Appellate Tribunal with The Settlement and Appellate Tribunal (TDSAT)
7. The Competition Appellate Tribunal with the National Company Law Appellate Tribunal

With the aim of bringing uniformity to service conditions of Chairpersons, Members, etc., the Finance Act, 2017 amended the provisions of the parents statutes of 19 central tribunals.<sup>58</sup> Additionally, it empowered the central government, through notification, to make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms of conditions of service of the tribunal members.<sup>59</sup>

<sup>54</sup> *Ibid.* at paras 21, 22 & 23

<sup>55</sup> *Ibid.* at para 30

<sup>56</sup> *Ibid.* at para 38

<sup>57</sup> *Jairam Ramesh v. Union of India*, Writ Petition (Civil) No. 558 of 2017; *Central Administrative Tribunal (Principal Bench) Bar Association through its President v. Union of India*, Writ Petition (Civil) No. 640 of 2017; *All India Lawyers Union v. Union of India*, Writ Petition (Civil) No. 778 of 2017; and *Social Action for Forest and Environment v. Union of India*, Writ Petition (Civil) No. 561 of 2017

<sup>58</sup> Please refer to: Part XIV of the Finance Act, 2017 Sections 158-182, also see: Eighth Schedule of the Finance Act, 2017

<sup>59</sup> Section 184, Finance Act, 2017

Subsequently, the central government notified the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 ( “new rules”).<sup>60</sup> However, these rules raise several constitutional questions regarding independence of the tribunals. They also violate Supreme Court precedents with regard to doctrine of separation of powers and freedom from executive interference. An analysis of the rules is provided below:

#### (a) Qualification for Appointment of Members

As per the Schedule attached to the new rules, column three provides for the qualifications for the appointment of members to the tribunals, including judicial and expert members. The qualifications enumerated in the new rules, are more or less similar to the qualifications prescribed by the parent statutes of the 19 tribunals.

#### (b) Method of Appointment

Rule 4 provides for the method of appointment. It states that the appointing body is the central government which will carry out the appointments on the recommendation of a ‘Search-cum-Selection Committee’. Additionally, it states that the secretary to the Government of India in the Ministry/Department, shall be the ‘convener’ of the Search-cum-Selection Committee.<sup>61</sup> With regard to the Search-cum-Selection-Committee, the rules distinguish between the committee for Presiding Officer/Chairman/ President/Vice President and the committee for judicial and expert members. However, the composition of the committees for the 19 tribunals suggests that it violates the precedent laid down in *NCLT Case*, wherein a selection committee should comprise of two judicial members and two members from the Executive, with the casting vote to be exercised by the Chief Justice of India or his nominee.<sup>62</sup> A breakdown of the composition of the Search-cum-Selection Committee for the 19 tribunals is provided in Annexure-A (Search-cum-Selection Committee Compositions (under Finance Act, 2017)) to the report.

Out of the 19 tribunals, 16<sup>63</sup> of them are not in line with the precedent of the Supreme Court in the *NCLT Case*. Such composition of Search-Cum-Selection Committees where members of the Executive or nominations made by the Executive are in majority, would be seen as to compromising the independence of those respective tribunals.

#### (c) Term of Office

For all the 19 tribunals, the term of office has been fixed at three years. In the *NCLT Case*, the Supreme Court stated that a term of seven or five years should be prescribed, as a term of three years was considered to be too short a time for the members to achieve the required knowledge, expertise and efficiency.<sup>64</sup>

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<sup>60</sup> Available at: <http://dor.gov.in/sites/default/files/Rules%202017.pdf> (last accessed on 12<sup>th</sup> November, 2017)

<sup>61</sup> Rule 4 (2) of the New Rules

<sup>62</sup> *NCLT Case*, at para 56 (ix)

<sup>63</sup> Only CAT, AFT and NCLT are in consonance with the Supreme Court’s precedent.

<sup>64</sup> *NCLT Case*, at para 56 (x)

#### (d) Maximum Age for Holding Office

The maximum age of holding office varies from 62 to 70 years across all the 19 tribunals. However, this defeats the purpose of bringing in uniformity in service conditions.

#### (e) Reappointment

Rule 9 of the new rules makes all the members of the tribunal eligible for reappointment. As the provision regarding reappointment has been struck down in the *NTT Case* for having a direct bearing on the independence of tribunals, Rule 9 can be deemed to be violating the precedent of the Supreme Court.

#### (f) Removal of Member from Office

Rule 7 of the new rules empowers the central government to remove a member on the recommendation of a committee which will be constituted by the central government. The grounds for removal are the same as had been provided previously in the parent statutes of the 19 tribunals.

However, empowering the central government to constitute a committee, which would recommend the removal of a member of the tribunal can have a direct bearing on the independence of the tribunals. Such unfettered power given to the government, can lead to a situation where the decisions passed by the tribunal members can be influenced for the fear of being removed if it is adversarial to the government policy involved. Additionally, for the removal of a chairperson or member of the NCLAT, the new rules mandates a consultation with Chief Justice of India. However, no rationale has been provided for differential treatment afforded to NCLAT in comparison to the other 18 tribunals.

As is evident, the amendments brought through the Finance Act is problematic and do not adhere to the constitutional standards laid down by the Supreme Court. This has been recognized in the discourse on tribunals, as a result of which, the constitutionality of the rules has been challenged along with the challenge to the Finance Act, 2017. In a recent development on the pending matter, the Supreme Court has stayed the applicability of the new rules enacted under the Finance Act, 2017. The order states that all appointments made to the tribunals will be on the basis of the old acts and the rules.<sup>65</sup>

#### c) The 272<sup>nd</sup> Law Commission of India Report

In October, 2017, the Law Commission of India released its 272<sup>nd</sup> Report titled “*Assessment of Statutory Frameworks of Tribunals in India*”. The report examined questions relating to appointment process, provisions of direct appeals to the Supreme Court and other issues.<sup>66</sup> The Law Commission made the following recommendations:

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<sup>65</sup> *Kudrat Sandhu v Union of India*, Writ Petition(s) (Civil) No(s). 279/2017, order dated 9<sup>th</sup> February, 2018

<sup>66</sup> *Ibid.* at para 43

1. The members of tribunals should have similar qualifications to that of judges of the High Court.<sup>67</sup>
2. Conditions on appointment, tenure and service conditions of members of the tribunals needs to be standardised.<sup>68</sup>
3. The Selection Board/Committee responsible for appointing members should be headed by the Chief Justice of India or a sitting judge of the Supreme Court or his nominee.<sup>69</sup>
4. Vacancy arising in the tribunals should be filled within six months prior to the occurrence of vacancy.<sup>70</sup>
5. Every order emanating from the tribunal or its appellate forum should attain finality. Such orders can be challenged before the Division Bench of the High Court having territorial jurisdiction over the tribunal or its appellate forum.<sup>71</sup>
6. The Central Government should bestow the function of monitoring the working of the tribunals to a single nodal agency to ensure uniformity in all affairs of the tribunals. The nodal agency should preferably be the Ministry of Law and Justice.<sup>72</sup>

To sum up, over the last decade, both the judiciary as well as the legislature have tried to reform the tribunals framework in India. While the objective of this chapter was to highlight the existing discourse on tribunals at present, the next chapter tries to carry out an exhaustive analysis of the problems that exist in the central tribunals in India.

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<sup>67</sup> Law Commission of India, 272<sup>nd</sup> Report, Recommendation A

<sup>68</sup> *Ibid.* Recommendation B

<sup>69</sup> *Ibid.* Recommendations C, D and E

<sup>70</sup> *Ibid.* Recommendation F

<sup>71</sup> *Ibid.* Recommendation H

<sup>72</sup> *Ibid.* at para 10.10

### 3. PROBLEMS WITH TRIBUNALS

As the Finance Act, 2017 is under challenge, the parent statutes, rules and regulations of all the central tribunals prior to the enactment of the Act have been analysed in this chapter. A table analysing these statutes and rules has been compiled and attached as Annexure-B (Statutory Framework of Central Tribunals). We highlight the overarching criticisms levelled against tribunals since their inception and try to illustrate the problems that exist, which are:

- a) Lack of independence
- b) Administrative concerns: Non-uniformity in regulation
- c) Jurisdiction of the High Courts

A list of central tribunals<sup>73</sup> is provided below:

1. Airports Appellate Tribunal (AAT)
2. Airports Economic Regulatory Authority Appellate Tribunal (AERAAT)
3. Appellate Tribunal Benami Transactions (ATBT)
4. Appellate Tribunal for Electricity (APTEL)
5. Appellate Tribunal for Foreign Exchange (ATFE)
6. Appellate Tribunal for Forfeited Property (NDPS Act) (ATFP-NDPS)
7. Appellate Tribunal for Forfeited Property (SAFEMA Act) (ATFP-SAFEMA)
8. Appellate Tribunal for Prevention of Money Laundering (ATFP-ATPML)
9. Armed Forces Tribunal (AFT)
10. Authority for Advance Rulings (Central Excise, Customs and Service Tax) (AAR-CCS)
11. Authority for Advance Rulings (Income Tax) (AAR-IT)
12. Cauvery Water Disputes Tribunal (CWDT)
13. Central Administrative Tribunal (CAT)
14. Central Excise Service Tax Appellate Tribunal (CESTAT)
15. Central Sales Tax Appellate Authority (CSTAA)
16. Competition Appellate Tribunal (COMPAT)
17. Cyber Appellate Tribunal (CyAT)
18. Debts Recovery Tribunal (DRT)
19. Debts Recovery Appellate Tribunal (DRAT)
20. Employees Provident Fund Appellate Tribunal (EPFAT)
21. Film Certification Appellate Tribunal (FCAT)
22. Income Tax Appellate Tribunal (ITAT)
23. Intellectual Property Appellate Board (IPAB)
24. Krishna Water Disputes Tribunal- II (KWDT-II)

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<sup>73</sup> This list consists of 37 tribunals, as they existed prior to the Finance Act, 2017, which is currently under judicial review by the Supreme Court.

25. Mahadayi Water Disputes Tribunal (MWDT)
26. National Company Law Tribunal (NCLT)
27. National Company Law Appellate Tribunal (NCLAT)
28. National Consumers Disputes Redressal Commission (NCDRC)
29. National Green Tribunal (NGT)
30. National Highways Tribunal (NHT)
31. Railways Claims Tribunal (RCT)
32. Railways Rates Tribunal (RRT)
33. Ravi & Beas Water Disputes Tribunal (RBWDT)
34. Real Estate Appellate Tribunal (REAT)
35. Securities Appellate Tribunal (SAT)
36. Telecom Disputes Settlement and Appellate Tribunal (TDSAT)
37. Vasandhara Water Disputes Tribunal (VWDT)

### A. Lack of Independence with Tribunals

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The principle of judicial independence traces its origins from the doctrine of separation of powers.<sup>74</sup> Often, ministries are parties before the very tribunals whose staff, finances, and administration they handle. This is further problematised by a revolving door between ministry bureaucracy and tribunal posts. Therefore, it is crucial to assess tribunal independence based on the following parameters: (a) Appointment of members; (b) Removal of members; (c) Reappointments; (d) Nodal ministry; (e) Proclivity to appoint judges/bureaucrats.

#### a) Appointment

While tribunal chairpersons are appointed after consulting the Chief Justice of India, members are typically recommended by a selection committee. *NCLT Case* observed that selection committees are often not independent, since secretaries of the sponsoring department are a part of them.<sup>75</sup> Moreover, several department bureaucrats are appointed as tribunal members, continuing their lien with the parent cadre.<sup>76</sup> Since departments also fund and assist with the day to day administration of these tribunals, it creates a clear conflict of interest when decisions by these departments are challenged in the tribunals they administer.<sup>77</sup> In order to ensure independence, the say of the executive needs to be reduced. Otherwise members may become biased in order to ensure re-appointment and would be less inclined to take bold decisions. *NCLT Case* also held that selection committees should have an equal number of judicial and executive members, with the casting vote reserved for the senior-most judicial member.<sup>78</sup> Of 37 tribunals analysed (excluding the five inter-

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<sup>74</sup> The principle of separation of powers was held to be a part of the basic structure of the Constitution in *His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala*, (1973) 4 SCR 225; *NCLT Case*, at para 17

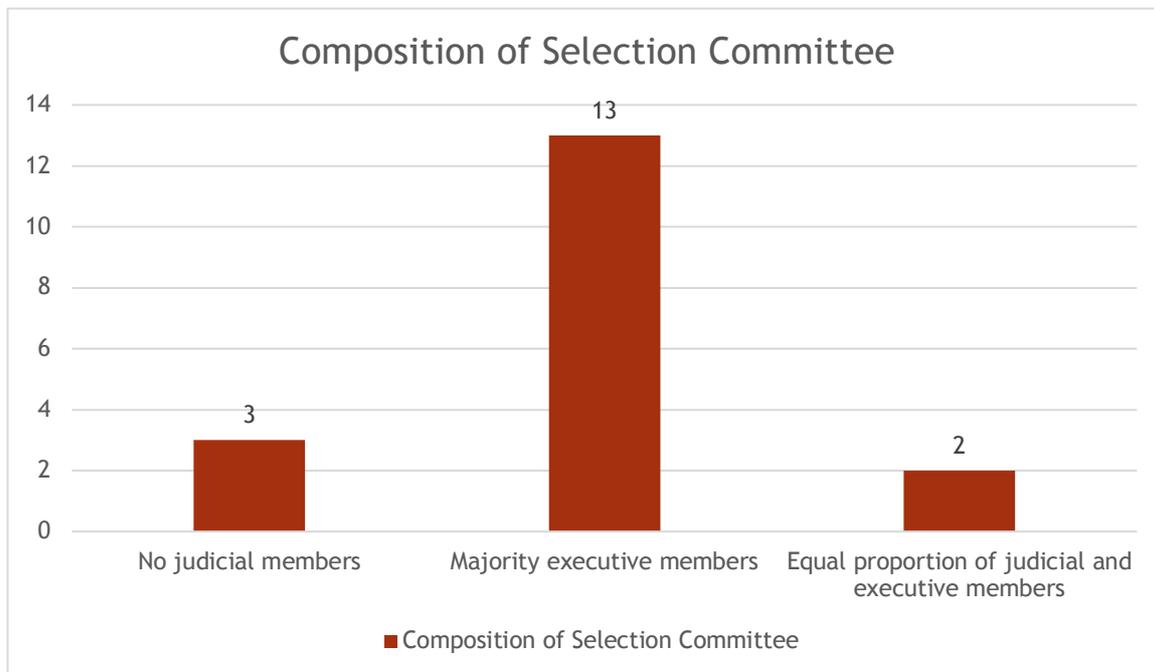
<sup>75</sup> *NCLT Case*, at para 23

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

state water dispute tribunals), 18 tribunals have selection committees, while 14 do not. Amongst the 18 tribunals, three do not have any judicial members in their selection committees. 13 tribunals have selection committees where executive members are more than judicial members. The CAT and AFT are the only tribunals that have an equal number of judicial and executive members. The variance in compositions have been illustrated in *Figure 1*.



*Figure 1: Composition of Selection Committee*

#### b) Removal of Members

Removal procedure of members have a direct bearing on the independence of tribunals. Since the procedure for removal of members lies with the executive, there exists a possibility of influencing the decisions passed by the tribunals. While judges in the Supreme Court and High Courts need to be impeached (which requires an absolute majority in each house of Parliament), no such safeguard exists for tribunal members. This is despite certain tribunals supplanting the role of High Courts. In this regard, both the grounds and manner of removal are equally important.<sup>79</sup> The 74<sup>th</sup> Parliamentary Standing Committee recommended that there must be uniformity not only in the grounds of removal but also in the procedure of removal.<sup>80</sup>

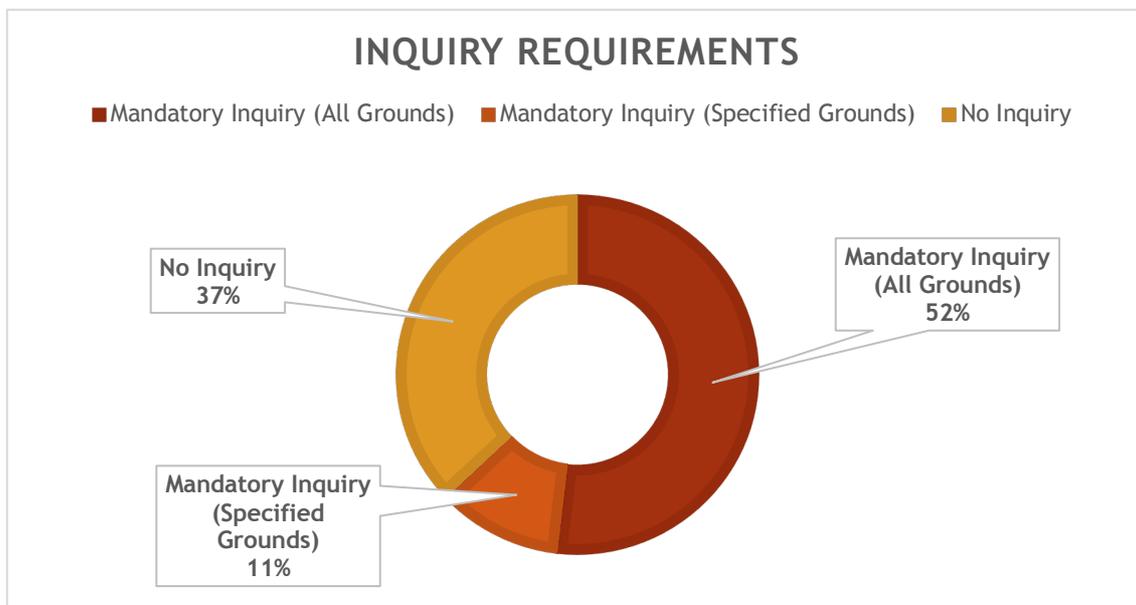
This is not the case with the current system. For instance, some statutes do not have any provision on removal itself, such as the AFTP-SAFEMA, AAR-CCS, AAR-IT, CESTAT and ITAT. Not having any procedure or grounds for removal paves the way for arbitrariness. Judicial inquiry before removal

<sup>79</sup> The grounds of removal are fairly consistent across tribunals. These are: insolvency; committing an offence of moral turpitude; becoming mentally or physically incapable; acquiring financial or other interest that is likely to prejudicially affect the member's functions; and abusing his position so as to render his continuance in office prejudicial to public interest. Some tribunals prescribe only "proved misbehaviour or incapacity" as the ground for removal.

<sup>80</sup> Parliamentary Standing Committee, 74<sup>th</sup> Report, at para 30

ensures that members are not removed arbitrarily by the executive in case of unfavourable decisions passed by them. However, the requirement for judicial inquiry is not present uniformly across tribunals. While some provide for a consultation with the Chief Justice of India followed by an inquiry by a Supreme Court judge nominated by him/her,<sup>81</sup> others such as the FCAT have a procedure where a member may be removed after a consultation/on the recommendation of the Chairperson.<sup>82</sup> For some tribunals, such as the AERAAT and TDSAT, procedure of inquiry is only required for some grounds and not all. In other cases an inquiry is discretionary and not mandatory. For example, in AFT and CAT, when there is a complaint pertaining to a member, the central government sets up a committee comprising senior bureaucrats, which undertakes a preliminary scrutiny of the complaint. Thereafter, the committee submits its findings to the President, who may make a reference to the CJI based on whether she/he believes that there are reasonable grounds for an inquiry. Therefore, there is scope for executive discretion on whether inquiry can be conducted or not.

In *Figure 2*, the inquiry requirements are highlighted. Out of the 37 tribunals analysed, 10 tribunals do not have mandatory inquiry requirement.



*Figure 2: Inquiry requirements for central tribunals*

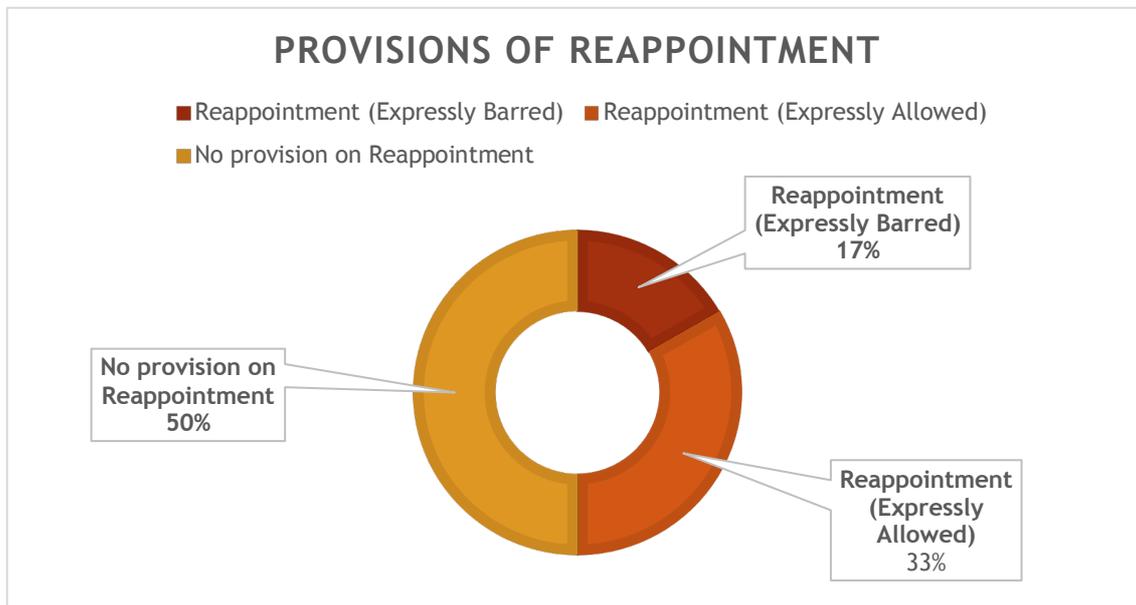
### c) Reappointment

Statutory provisions on reappointment are generally framed in three ways: (i) reappointment is specifically barred; (ii) reappointment is specifically provided for; (iii) no provision on reappointment. Out of the 37 tribunals analysed, only five tribunals have expressly barred

<sup>81</sup> Some examples are: National Green Tribunal (Section 10(1)& 10(2) of the National Green Tribunals Act, 2010; National Company Law Tribunal and Appellate Tribunal (Section 419(1)& 419(2) of the Companies Act, 2013); Appellate Tribunal for Benami Transactions (Section 35(1) & 35(2) of the Benami Transactions Prohibition (Amendment) Act, 2016); Prevention of Money Laundering Appellate Tribunal. (Section 32, The Prevention of Money Laundering Act, 2002).

<sup>82</sup> Such a procedure is prescribed for the Film Certification Appellate Tribunal (Rule 43(8), Cinematographer (Certification) Rules, 1983).

reappointment. However, 15 tribunals contain no provision on reappointment. Arguably, this creates a situation of ambiguity where reappointment of members is potentially possible. This information is graphically represented in *Figure 3*.



*Figure 3: Provisions on reappointment*

#### d) Nodal Ministry

Tribunals are entirely dependent on their nodal ministries for their day to day functioning. These ministries can compromise the functioning of the tribunal by providing inadequate resources with the aim of arm-twisting the tribunal into passing favourable orders or not able to function at all. For example, the apathy of central government in filling up the vacancies in the NGT has compromised the functioning of the tribunal severely. Since 2017, the lack of adequate judicial and expert members in the principal and zonal benches of the NGT has either resulted in those benches being shut down, or has rendered them incapable of passing decisions.<sup>83</sup> This is in the backdrop of numerous pending litigations relating to environmental clearances provided by the ministry for big investment projects like dams, power plants, mining etc.<sup>84</sup> The incapability of the tribunal to functional properly or pass decisions on matters that challenge the policies of the ministry, thus, remains heavily reliant on the ministry that sponsors it, and has a direct bearing on the independence of a tribunal.

<sup>83</sup> Geetanjoy Sahu, "Ecocide by Design? Under Modi, Vacancies At National Green Tribunal Reach 70%", *The Wire*, 15<sup>th</sup> February, 2018, available at: <https://thewire.in/politics/ngt-political-apathy-vacancies> (last accessed on 21st April, 2018)

<sup>84</sup> *Ibid.*

Table 1 depicts the central tribunals administered by different ministries:

Nodal Ministry	Tribunals
Ministry of Civil Aviation	AAT, AERAT
Ministry of Finance	ATBT, ATFE, AFTP-PMLA, AFTP-SAFEMA, AAR-CCS, AAR-IT, CSTAA, CESTAT, DRT, DRAT, SAT
Ministry of Power	APTEL
Ministry of Defence	AFT
Ministry of Water Resources	CWDT, KWDT-II, MWDT, RBWDT, VWDT
Ministry of Corporate Affairs	COMPAT, NCLT, NCLAT,
Ministry of Electronics and Information Technology	CyAT
Ministry of Personnel, Public Grievances and Pensions	CAT
Ministry of Labour and Employment	EPFAT
Ministry of Information and Broadcasting	FCAT
Ministry of Law and Justice	ITAT
Ministry of Commerce	IPAB
Ministry of Consumer Affairs, Food and Public Distribution	NCDRC
Ministry of Environment, Forest and Climate Change	NGT
Ministry of Road Transport	NHT
Ministry of Railways	RRT, RCT
Ministry of Housing and Urban Affairs	REAT
Ministry of Communication	TDSAT

Table 1: Tribunals under respective nodal ministries

e) Proclivity to Appoint Retired Judges and Bureaucrats

A particularly worrying trend noticed in the staffing of tribunals is the proclivity of the central government to select retired judges and bureaucrats to head these institutions. Such a trend has been criticised since it is seen as having the potential to compromise the independence of the judiciary.<sup>85</sup> Dangling post-retirement benefits for judges in the form of lucrative job opportunities in

<sup>85</sup> Avijit Chatterjee, 'Stormy Sinecures' 24<sup>th</sup> November, 2014, The Telegraph, available at [https://www.telegraphindia.com/1140924/jsp/opinion/story\\_18866574.jsp](https://www.telegraphindia.com/1140924/jsp/opinion/story_18866574.jsp) (last accessed on 14<sup>th</sup> February, 2018); Apoorva Mandhani, 'CJI Dattu may be offered the post of NHRC Chairperson; Ms. Indira Jaisingh says independence of judiciary undermined by post retirement benefits', 27<sup>th</sup> November, 2015 Livelaw, available at

tribunals raises questions regarding the impartiality of the judges. This is because such post retirement options act as 'perverse incentives' to toe the executive line when deciding high stake cases against the government.<sup>86</sup> In addition they cast doubt on the institutional integrity of the tribunals to which such judges are appointed.

## B. Administrative Concerns: Non-Uniformity in Regulation

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Three kinds of concerns fall under the ambit of administration: (a) Discrepancies in qualifications, tenure and age of retirement; and (b) Nodal Ministries.

### a) Qualifications, Tenure and Age of Retirement

#### (a) Qualifications

Different qualification requirements lead to varying competencies, maturity and status of members, which is problematic since tribunals often operate in place of High Courts. The most common qualifications for judicial members in different tribunals are: (i) a retired or serving judge of the Supreme Court, Chief Justice of a High Court; or (ii) a person who is or has been a High Court judge or having the qualifications to be a judge of the High Court; or (iii) a person who is or has been or is qualified to be a District Judge; (iv) a member of the Indian Legal Services (Grade I or Grade II); or (v) a person at the secretary level (Joint Secretary or Additional Secretary) in any ministry or department of the central government. Variance of qualification and experience also exists amongst technical/expert members.<sup>87</sup>

#### (b) Tenure

Short tenure of 3-5 years precludes the cultivation of domain expertise, which can impact the efficacy of tribunals. This was highlighted both in the *NCLT Case*<sup>88</sup> and the 74<sup>th</sup> Parliamentary Standing Committee report.<sup>89</sup> The former recommended a 5-7 year tenure, while the latter suggested regular system of appointment (where the tenure terminates at the age of retirement).<sup>90</sup> The following tribunals provide for a 3 year tenure and therefore do not follow the Supreme Court recommendation: AAT, AERAAT, APTEL, ATPF-SAFEMA, AAR-CCS, AAR-IT, CESTAT, FCAT and TDSAT.

#### (c) Age of retirement

Retirement age hover between 62-70 years for Chairpersons and 62-65 years for other members (and is 60 years for members from the bureaucracy), resulting in uneven tenures in benches. Such uneven

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<http://www.livelaw.in/cji-dattu-may-be-offered-the-post-of-nhrc-chairperson-ms-indira-jaising-saysindependence-of-judiciary-undermined-by-post-retirement-benefits/> (last accessed on 14<sup>th</sup> February, 2018)

<sup>86</sup> Madhav S. Aney, Shubhankar Dam & Giovanni Ko, 'Jobs for Justice(s): Corruption in the Supreme Court of India' available at <https://www.isid.ac.in/~epu/acegd2016/papers/MadhavSAney.pdf> (last accessed on 14<sup>th</sup> February, 2018)

<sup>87</sup> Section 53D, The Competition Act, 2002

<sup>88</sup> *NCLT Case*, at para 55

<sup>89</sup> Parliamentary Standing Committee, 74<sup>th</sup> Report, at para 19

<sup>90</sup> *Ibid.*

tenures also hamper the lack of institutional continuity. Uniformity on this count has been recommended by the Law Commission's 232<sup>nd</sup> Report, which suggested 70 years and 65 years for Chairpersons and other members respectively.<sup>91</sup> The 74<sup>th</sup> Parliamentary Standing Committee report suggested that the age of retirement should be uniform across the same post (i.e. Chairperson, Vice-Chairperson, members) rather than differ on the basis of the source of appointment (i.e. whether appointee is a retired High Court judge, Supreme Court judge, district judge etc.), since the latter would amount to treating the same class of persons differently.<sup>92</sup> The 272<sup>nd</sup> Law Commission Report recommended 70 years for judicial members and 67 years for other members.<sup>93</sup>

#### b) Nodal Ministry

There is a degree of variance in the appointment process, qualification of members, age of retirement, resources and infrastructure of different tribunals. L. Chandra Kumar<sup>94</sup> criticised these inconsistencies that occur due to tribunals operating under different ministries stating that there needs to be a single nodal authority or ministry for the administration of tribunals in order to improve efficiency. Annexure-C (Subject Matter and Jurisdiction of Tribunals) illustrates this lack of consistency and how tribunals that cover similar subject-matter operate under different ministries. For instance, the ITAT operates under the Department of Legal Affairs (under the Ministry of Law and Justice), while other tax tribunals such as the AARs and CESTAT operate under the Ministry of Finance.

### C. Pendency and Vacancy in Tribunals

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#### a) Pendency

The 272<sup>nd</sup> Law Commission Report highlighted worrying pendency figures for the CAT (44,333 cases), CESTAT (90,592 cases), ITAT (90,538 cases)<sup>95</sup> and the AFT (10,222 cases).<sup>96</sup> The high pendency figures exist despite a high disposal rate.<sup>97</sup> These figures are often high due to systemic issues. For instance, it was observed that the DRT had 58% failed hearings (avoidable adjournments that are not penalised)<sup>98</sup> and condonations were often given on account of filing delays and absenteeism.<sup>99</sup> This accounted for over half the time taken by cases.<sup>100</sup> Another significant cause behind delays is

<sup>91</sup> Law Commission of India, 232<sup>nd</sup> report, at para 2.1

<sup>92</sup> Parliamentary Standing Committee, 74<sup>th</sup> Report, at para 17

<sup>93</sup> Law Commission of India, 272<sup>nd</sup> Report, Recommendation G

<sup>94</sup> L. Chandra Kumar, at para 97

<sup>95</sup> Law Commission of India, 272<sup>nd</sup> Report at para 3.35

<sup>96</sup> Justice Rajesh Bindal, National Judicial Academy, "Tribunalisation of Justice in India: Boon or Bane?", available at: [http://nja.nic.in/Concluded\\_Programmes/2017-18/P-1048\\_PPTs/4.Tribunalisation%20of%20Justice%20In%20India.pdf](http://nja.nic.in/Concluded_Programmes/2017-18/P-1048_PPTs/4.Tribunalisation%20of%20Justice%20In%20India.pdf) (last accessed on 3<sup>rd</sup> March, 2018)

<sup>97</sup> Law Commission of India, 272<sup>nd</sup> Report, at p. 33. The figure of 94% disposal rate is quoted without any mention for which tribunal it applies to

<sup>98</sup> Prasanth V Regy and Shubho Roy, "Understanding Judicial Delays in Debt Tribunals", NIPFP Working Paper Series No. 159, May, 2017, available at: [http://www.nipfp.org.in/media/medialibrary/2017/05/WP\\_2017\\_195.pdf](http://www.nipfp.org.in/media/medialibrary/2017/05/WP_2017_195.pdf) (last accessed on 20<sup>th</sup> April, 2018), at p.15

<sup>99</sup> *Ibid.* at p.18

<sup>100</sup> *Ibid.*

absenteeism by tribunal members.<sup>101</sup> Presiding Officers themselves were overworked and since there is generally no extra capacity available, it results in delay, as was observed in the CAT.<sup>102</sup>

#### b) Vacancy

The problem of vacancies with regard to the judiciary in India is neither new nor exclusive to the courts. Tribunals in particular, also suffer from the same problems of shortage of personnel. The 74<sup>th</sup> Parliamentary Standing Committee Report highlighted its concern over vacancy being a cause of the dysfunctional nature of tribunals. The report analysed a list of 13 tribunals wherein out of a sanctioned strength of 352 posts across these tribunals, 138 posts were lying vacant as of 31st December, 2014. More recently, vacancies in tribunals have come to the forefront of public discourse with the Supreme Court demanding an explanation for vacancies in the APTEL.<sup>103</sup> Senior advocate Mukul Rohtagi demanded the scrapping of the NGT for lack of judicial members to hear cases.<sup>104</sup> The latest figures on the vacancies at the NGT is already pegged at 70%. The last time vacancy figures were compiled and made available publicly was when the 74<sup>th</sup> Parliamentary Standing Committee Report was released in 2015.<sup>105</sup> However, such figures were compiled for only thirteen tribunals. There is therefore an urgent need to make a comprehensive compilation of the total number of vacancies for all central tribunals listed above.

### D. Jurisdiction of the High Courts

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The constitutionality of setting up tribunals has always revolved around the question of establishing them, without affecting the inherent powers of the constitutional courts, i.e. the High Courts and the Supreme Court. Provisions allowing for direct appeals to the Supreme Court thereby by-passing the jurisdiction of the High Court have been scrutinized by the judiciary in multiple cases. The decision of the seven-judge bench in *L. Chandra Kumar* comprehensively lays down the law in this regard.

While dealing with the constitutionality of exclusion of jurisdiction of High Courts in service matters against the orders of the CAT, the court highlighted two primary issues with statutory appeals directly to the Supreme Court. Firstly, a direct appeal to the Supreme Court was too costly and inaccessible for litigants; and secondly, such a provision of appeal would lead to congestion of the docket of the

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<sup>101</sup> Varun Chirumamilla, “*The Aches and Pains of India’s Armed Forces Tribunals*” Bar and Bench 17<sup>th</sup> November, 2017 available at <https://barandbench.com/armed-forces-tribunals/>, (last accessed on 15<sup>th</sup> February, 2018)

<sup>102</sup> Amita Shah, “*The Other Story of Justice Delayed*” Open Magazine, 17<sup>th</sup> November, 2017, available at <http://www.openthemagazine.com/article/law/the-other-story-of-justice-delayed>, (last accessed on 15<sup>th</sup> February, 2018)

<sup>103</sup> Press Trust of India, “*Govt. Creating Problems By Not Filing Vacancies in APTEL: Supreme Court*”, Livemint, June 28<sup>th</sup>, 2017, available at <https://www.livemint.com/Politics/Mu76wqxMumB0ni5XszUlcJ/Govt-creating-problems-by-not-filing-vacancies-in-Aptel-Sup.html> (last accessed on 18<sup>th</sup> April, 2018)

<sup>104</sup> Press Trust of India, “*No Single Judge Bench Can Hear Cases At NGT: Supreme Court*” The Indian Express, January 31, 2018 <http://indianexpress.com/article/india/no-single-judge-bench-can-hear-cases-at-ngt-supreme-court-5046408/> (last accessed on 18<sup>th</sup> April, 2018)

<sup>105</sup> Parliamentary Standing Committee, 74<sup>th</sup> Report, Annexure III

Supreme Court.<sup>106</sup> To remedy this problem, the court stated that from all the decisions of the tribunals, an aggrieved party should be allowed to move to the High Court under Articles 226/227, before a division bench. It also stated that no appeal from a decision of tribunal would lie before the Supreme Court under Article 136 of the Constitution.<sup>107</sup> More recently, in *Gujarat Urja Vikas Nigam Ltd. v Essar Power Limited*,<sup>108</sup> (“*Gujarat Urja Vikas Nigam Case*”), the Supreme Court stated that direct appeals to it from tribunals resulted in denial of access to the High Courts thereby becoming a substitute for them.<sup>109</sup>

The Law Commission of India has also deliberated on the issue of direct appeals to the Supreme Court and recommended that an appeal from the decision of tribunals, should necessarily lie before a division bench of the High Court within whose jurisdiction the tribunal is located.<sup>110</sup> Despite the existing precedent and Law Commission of India recommendations, there exist tribunals which allow for a direct appeal to the Supreme Court in their parent statutes. These are: NGT, SAT, NCDRC, AFT<sup>111</sup>, APTEL, COMPAT, AERAAT, TDSAT, NCLAT and CAT.

Problems pertaining to the lack of independence, ad-hoc regulation and by passing the jurisdiction of High Courts have been the major criticisms against the tribunal system in India. Therefore, any attempts at reform must adequately address these issues. The next chapters, explore the possible ways to reform the tribunals system in India.

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<sup>106</sup> *L. Chandra Kumar*, at para 92

<sup>107</sup> *Ibid.* at paras 92, 93 & 94

<sup>108</sup> (2016) 9 SCC 103

<sup>109</sup> *Ibid.* at paras 33 & 44

<sup>110</sup> Please see: Law Commission of India, 162<sup>nd</sup> Report, 1998, available at: <http://lawcommissionofindia.nic.in/101-169/Report162.pdf> (last accessed 9th November, 2017), Conclusion, 7.2 (c); Also see: Law Commission of India, 272<sup>nd</sup> Report, at paras 8.21, 8.22 & 8.23, Recommendation-H

<sup>111</sup> The provision regarding direct appeal to the Supreme Court from AFT (Section 30), was challenged in the Supreme Court in the matter of *Union of India v Shri Kant Sharma* (AIR 2015 SC 2465). The Court stated that High Courts should refrain from exercising their writ jurisdiction in this case, as a statutory appeal to the directly Supreme Court exists as an ‘alternate remedy’.

## 4. RATIONALISATION OF TRIBUNALS

Through the course of previous chapters, this interim report establishes that India's tribunals framework is inadequate in supplementing the judiciary, due to multiple concerns. Problems such as lack of independence and incoherent administration require a constructive and holistic response that reimagines this framework. This chapter and the next attempt to provide a preliminary response to these issues. It is vital to note that chapters 4 and 5 attempt to offer such an alternative disregarding the piecemeal changes introduced by the Finance Act, 2017. The methodology and rationale for merger carried out by the Finance Act, 2017 have been criticised for compromising the independence of 19 tribunals (discussed previously under *The Finance Act, 2017 and Rules*). Therefore, this interim report has not relied on those changes.

### A. Tribunals Framework in the United Kingdom

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In order to offer an alternative, this interim report relies on the methodology of merger adopted by the United Kingdom since it also suffered from similar issues of tribunalisation in its justice system. Annexure-D (Tribunals in Foreign Jurisdictions) briefly outlines the evolution of the United Kingdom's tribunals framework, culminating with the Tribunals for Users- One System, One Service : Report of the Review of Tribunals by Sir Andrew Leggatt ("Leggatt Report"). The Leggatt Report heralded a new era for tribunals in the United Kingdom, starting with the enactment of the Tribunals, Courts and Enforcement Act, 2007. The merger of tribunals has since been employed by Australia to remedy the problems of their tribunals framework as well.

India and the United Kingdom have similar administrative frameworks and issues faced by tribunals, in terms of constitutionality and operation. This has been highlighted by the Supreme Court in the *NCLT Case*<sup>112</sup> and *NTT Case*.<sup>113</sup> The bench in *NCLT Case* drew specific recommendations from the Leggatt Report, noting that the United Kingdom also had too many tribunals, some of which were defunct, and that the problems this created were similar to the problems faced in India. In addition to the similarity in systemic issues, the Court agreed with the recommendations offered by the Leggatt Report, which was to have a single tribunals service and nodal agency, in order to bolster independence and streamline operation. The 74th Parliamentary Standing Committee Report in 2015 examined the Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014. The Report recommended that, in order to ensure uniformity in all the affairs of the tribunals, the central government may consider bestowing the function of monitoring tribunals to a single nodal agency, under the Ministry of Law and Justice. While criticising the bill for being "half-baked"<sup>114</sup> the Report stated that tribunals must have synonymous service conditions and a coherent classification

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<sup>112</sup> *NCLT Case*, at para 19

<sup>113</sup> *NTT Case*, at para 70

<sup>114</sup> Parliamentary Standing Committee, 74<sup>th</sup> Report, at para 4

based on “intelligible differentia.”<sup>115</sup> This opinion has since been endorsed by the Law Commission of India in its 272<sup>nd</sup> Report in 2017. Notably, besides Indian judgements and reports, this Report referred to the Leggatt Report recommendations and the Tribunals, Courts and Enforcement Act, 2007. The important takeaways from this analysis are as follows:

1. There is a constitutional and operational similarity between the tribunals frameworks of the United Kingdom and India, making the United Kingdom reforms a relevant blueprint.
2. Rationalising the framework must involve two important features:
  - a. Operational coherence by merging tribunals on the basis of subject matter.
  - b. Oversight by a single, independent, statutory body.
3. Ensuring operational coherence and uniform oversight has a positive impact on judicial independence and the separation of powers.

## B. Rationalising Tribunals

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In order to introduce uniformity and coherence, this interim report proposes the merger of central tribunals on the basis of subject-matter, similar to the Leggatt Report recommendations. Since tribunals are court equivalents, created to channel domain expertise, this interim report has identified domain/subject-matter and jurisdiction as the appropriate rationale for merging tribunals, identical to the approach in United Kingdom. Tribunals have been merged into a single subject-matter division with separate benches for original and appellate jurisdictions.

In rationalising the tribunals framework, the following subject-matters emerge: (a) Tax; (b) Environment; (c) Services; (d) Public Utilities & Infrastructure; (e) Licensing; (f) Finance (Bank); (g) Finance (Company); (h) Finance (Property); (i) Inter-State Water Dispute. The Finance division have been sub-divided into Finance (Company), Finance (Bank) and Finance (Property) as the nature of disputes differ across these subject-matters.

The tribunals have been rationalised with the current framework in mind, leading to a total of nine subject-matter divisions. Within these divisions, separate benches can be constituted for different statutes, keeping in mind original or appellate jurisdiction. In certain cases, before an adjudication by tribunals, there is an inquiry/investigation by a regulator or an officer, whereas in other cases, the Board or Tribunal acts as a forum of first instance and there is no prior inquiry/ investigation by any authority. A combination of these factors contribute to administrative, resource and operational inefficiency.

A tribunal that exercises appellate jurisdiction hears matters after a quasi-judicial authority has already addressed questions of fact and law. For example, an appeal from Commissioner (Appeals)

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<sup>115</sup> *Ibid.* at paras 21-24

or Deputy Commissioner (Appeals) will lie to the ITAT and further to the High Court (as per the Income Tax Act, 1961).

In the proposed model, this nature of original or appellate jurisdiction under a tribunal's statutory framework has been preserved. For example, the Tax division can have five types of benches, two exercising original jurisdiction, substituting the AAR-CS and AAR-IT, and three that exercise appellate jurisdiction, substituting the ITAT, CSTAA, and CESTAT. The benefit of such a model is that depending on the subject-matter and the nature of cases being filed, judicial and technical/administrative/expert members can be transferred across verticals within each subject matter division after authorisation. With a dedicated tribunals service and examination (explained in the next chapter), augmented with training support, a more dynamic tribunals framework that addresses the present deficiencies can be developed. This flexibility can address the volume of cases at any given time more realistically.

RATIONALISATION OF TRIBUNALS			
SR. NO.	DIVISION	ORIGINAL JURISDICTION <sup>116</sup>	APPELLATE JURISDICTION
1	Environment	NGT	NGT
2	Licensing	IPAB, FCAT	-
3	Tax	AAR-CCS, AAR-IT	ITAT, CSTAA, CESTAT
4	Finance (Bank)	DRT	DRAT
5	Finance (Company)	NCLT	NCLAT, COMPAT <sup>117</sup>
6	Finance (Property)	-	ATFP, ATBT
7	Services	AFT, CAT	AFT, EPFAT
8	Public Utilities and Infrastructure	TDSAT, AERAAT, RCT, AAT, RRT	TDSAT, AERAAT, NCDRC, NHT, REAT, SAT, APTEL, ATFE, CyAT
9	Inter-State Water Dispute <sup>118</sup>	CWDT, KWDT-II, MWDT, RBWDT, VWDT	-

Table 2: Rationalisation of Tribunals

Therefore, this framework envisages two sets of benches under each subject-matter division. The following figure illustrates Public Utilities and Infrastructure as an example of these two sets. In the

<sup>116</sup> This categorisation corresponds to each tribunals' individual jurisdiction under their respective statutes, and not that appeals from the first category (original) would go to the second (appellate). For example, Table No. 2 does not suggest that an appeal from AAR-IT lies with ITAT, but that AAR-IT exercises original jurisdiction over its subject-matter and ITAT exercises appellate jurisdiction over its subject-matter.

<sup>117</sup> COMPAT can be merged with NCLAT as recommended under the Finance Act 2017.

<sup>118</sup> A single tribunal with multiple benches can be constituted to hear and resolve the inter-state water disputes. A similar framework has been put in place via the Inter-State River Water Disputes (Amendment) Bill, 2017.

case of disputes relating to the highways, the NHT exercises original jurisdiction over matters against the orders of Highway Administrator (Regulator). This will be followed by an appeal to the High Court. Disputes against orders of the Airports Economic Regulatory Authority (Regulator) will lie before AERAAT under original jurisdiction. Appeals against these orders will be heard by appellate bench of the AEERAT under its appellate jurisdiction, following which an appeal will lie with the High Court.

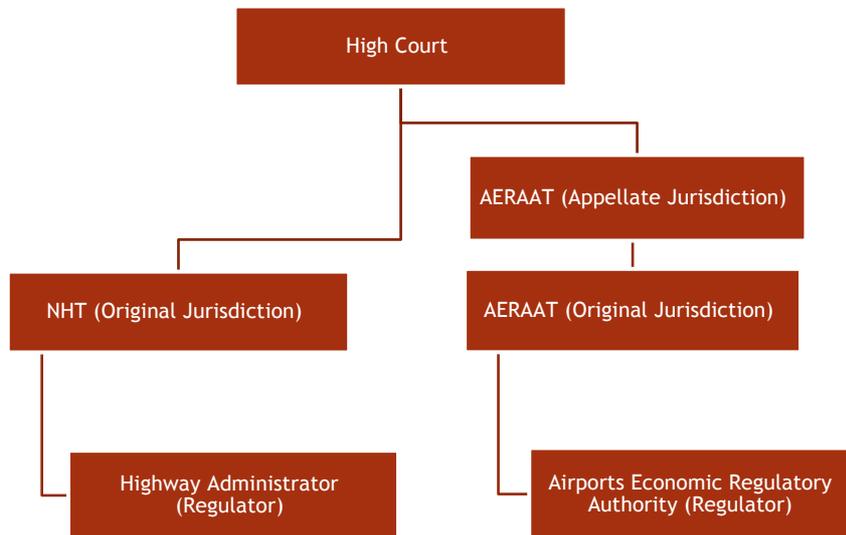


Figure 4: Model for a Tribunals Framework

### C. Characteristics of the Model

Based on the proposed model, tribunals can fall under either of the above sets depending on the statutory conditions. In the first set, a dispute moves from a regulator (that performs a quasi-judicial function), whose order can then be challenged by the first-tier tribunal that has original jurisdiction. For instance, the FCAT would have original jurisdiction against the orders of the regulator (Central Board of Film Certification). The second category has a regulator performing adjudicatory functions. For instance, the Commissioner of Revenue and Assistant Appellate Commissioner exercise adjudicatory powers, according to the Income Tax Act, 1961. Appeals against them are entertained by the ITAT, making its jurisdiction appellate and not original. This breakup creates a set of parameters that comply with the individual statutes that govern tribunals. Tribunal officers can be allocated to benches to deal with cases in a manner that allows for flexibility, without compromising on competence. Each subject-matter division can have common buildings, registries, support staff, etc., which is likely to both streamline and diminish operational costs. Furthermore, common selection processes can be developed that can be made rigorous. This can be complemented with training modules and programmes that build a judicial or expert members' expertise across statutes.

Such a model creates uniformity and coherence that enhances the operation of tribunals. It creates an ease of process, efficient use of funds, flexibility to respond to needs, and better case-flow management. The next step of such a model is to ensure judicial independence. Chapter 5 proposes

such a model for a National Tribunals Commission as an independent statutory entity, meant to secure judicial independence, while offering uniformity in service conditions for members of tribunals.

## 5. NATIONAL TRIBUNALS COMMISSION

The previous chapters have traced the history and evolution of tribunals, highlighting the important precedents of the Supreme Court that operate in this domain. An attempt has been made to critically understand and analyse the problems that exist in the tribunals framework and suggests a rationalisation of this framework through mergers.

The scheme of this chapter is divided into two parts:

1. The first part of the chapter introduces a blueprint for an independent and statutory body, named the National Tribunals Commission, which will be in charge of overseeing the administration of tribunals.
2. The second part of the chapter focuses on tribunals specific changes. It tries to remedy the defects which lead to issues of independence and functioning. These include enumerating the appointment process, the eligibility criteria/qualifications, the service conditions and removal procedure for members.

### A. Envisaging a National Tribunals Commission

Recognizing the already existing and much desirable need for a single agency to administer the functioning of tribunals, this interim report proposes to set up an independent statutory body called the National Tribunals Commission (NTC). Such a body established through a law of Parliament, would ensure the prioritisation of tribunals and also independence from the executive. *Figure 5* visually depicts how the NTC will be structured.



*Figure 5: Organisational structure of the NTC*

The following section tries to flesh out the different aspects of the NTC:

a) Board of the NTC

The NTC will work through its Board, the composition of which should be provided in the statute establishing it. As it is essential for the NTC to be independent, a total of 9 members have been considered, comprising a diverse mix of all the stakeholders:

- **Two sitting** judges of the Supreme Court to be nominated by the Chief Justice of India.
- **Three sitting** judges of the High Court to be nominated by the Collegium.
- **Three** executive members to be nominated by the Central Government (the minimum level required would be that of a Secretary in the Government).
- **One** senior advocate to be nominated by the Bar Council of India (BCI) (preferable senior advocates having a reputed standing in the profession and 20 years or more of standing practice)

From amongst the members of the Board, the senior-most judge nominated from the Supreme Court should be designated as the Chairperson of the Board of NTC.

b) Scope and Powers of the NTC

i. **Scope**

The NTC will be responsible for supervising and administering all tribunals established under any Act of Parliament and not tribunals established pursuant to state legislations.

ii. **Powers**

NTC will establish a Secretariat for its administration and functioning. The NTC may also be empowered to establish different sub-committees, which would be entrusted to administer the tribunals under its scope.

Furthermore, the NTC should be empowered to set up and ideate any new tribunals in consultation with the central government and through Parliamentary approval. A possible mechanism for the same is as follows:

- The central government makes a proposal for the establishment of a potential tribunal and submits it to the NTC for approval.
- The proposal of the central government lists the reasons for establishing a new tribunal along with details about the subject matter, jurisdiction, infrastructure as well as budgetary requirements of the tribunal.

- Post the submission of the proposal, the NTC will evaluate the proposal and put its report before the Parliament for a final decision. The proceedings of the NTC shall be made available for public scrutiny for transparency purposes.

#### c) Chief Executive Officer

Considering that Board members have judicial, administrative, and professional functions outside of the NTC, it is important to have a CEO to implement their decisions and directions. The CEO's role would be to manage and execute the functions of the NTC and to operationalise its mandate. The eligibility requirements as well as the selection process for the CEO of the NTC shall be decided by the Board of the NTC.

#### d) Tenure of the Board Members

The tenure of the members of the Board should be for three years, with no provision for reappointment. Every three years, the appointing bodies i.e. the judiciary,<sup>119</sup> the central government<sup>120</sup> and the BCI shall nominate new members to be a part of the Board. Furthermore, the senior advocate nominated by the BCI should not be allowed to practice in front of any central tribunal, while they are a serving member of the Board.

## B. Remedying the Issues with Tribunals

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In order to remedy the defects that exist with the tribunals framework, this interim report relies on the constitutional standards laid down by the Supreme Court in regard to tribunals. However, wherever there has been a scope on improving on the standards set down by the Court, this part of the chapter has also tried to explore those options. The following are the recommendations made:

#### a) Process of Appointment

At present, most central tribunals employ a method of appointment based on selection committees. As has been highlighted [discussed previously in *Lack of Independence with Tribunals (Appointment)*], the composition of selection committee has been a matter of much judicial scrutiny, as the appointment process of members for a tribunal has a direct nexus with the independence of tribunals. Also, there exist some tribunals where the appointment is done by the central government in consultation with the Chief Justice of India specifically for the posts of Chairperson/President of the tribunals. However, in an attempt to ensure the independence of tribunals in regard to appointment process, the following modes of appointments can be explored for both judicial and expert members:

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<sup>119</sup> It needs to be kept in mind that the Judiciary needs to be appoint judges who have at least three years of service left as a sitting judge of the Supreme Court/High Court.

<sup>120</sup> The central government shall only nominate those people who have at least three years of service left as a Secretary to the government.

(i) *Option 1: Open Advertisement*

In an Open Advertisement Model, a sub-committee for appointment of members can call for applications through public advertisements. It is important to mention here that the sub-committee should comprise an equal number of judicial and executive members. Following the application procedure, a list of candidates shall be made by the sub-committee based on the eligibility criteria/qualifications required for the particular post in a tribunal. The short-listed candidates may further undergo an interview phase, following which the sub-committee will prepare a final list of candidates and forward it to the Board. The approval for the candidates should be based on majority opinion of the Board, following which the central government shall make the final appointments.

In the option explored above, the final list of candidates forwarded to the central government by the NTC for appointment, shall be binding on them. Additionally, the sub-committee on appointments may also keep a reserve pool of candidates who can be utilized to fill vacancies in the tribunals as and when it arises. Such a list of candidates may exist for a period of one year, following which fresh appointment procedure needs to be carried out.

(ii) *Option 2: All India Entrance Examination for Tribunals (AIEET)*

In order to attract experienced professionals and facilitate appropriate career progression in tribunals, a regular system of appointment can be conceptualised through the creation of an *Indian Tribunals Service (ITS)*. An *All India Entrance Examination for Tribunals (AIEET)* can be conducted by the NTC or the Union Public Service Commission (UPSC) for appointment to central tribunals. As the case may be, the NTC/UPSC can be in-charge of determining the process including the number of examinations, the syllabus etc. The profile of the candidates should be kept in mind while setting the syllabus so as to cater to the specific needs of each subject matter division (discussed previously under *Rationalising Tribunals*). Additionally, an age limit should be set as an eligibility criteria for application process between 35 and 50 years of age. Further, for judicial members, at least 7 years of standing practice as a lawyer; and for expert members, 10 years of work experience can be set as minimum eligibility criteria for application process.

After clearing the examination, the list of candidates will be forwarded to the Board for approval. After receiving approval, the successful candidates will be a part of the ITS. The NTC shall then forward this list to the Central Government to be appointed.

b) Qualifications/Eligibility Criteria for Appointments to Tribunals

The NTC should be empowered to form a sub-committee which can be entrusted to set the eligibility criteria for appointment of members to the tribunals. However, the following guidelines should be kept in mind:

- a) For the post of President/Chairperson/Vice-Chairperson and judicial members, the qualifications should be uniform across all tribunals. In case ITS is established, the

qualifications required for a person to be eligible for the post of District Judge should be considered.

- b) There should be a complete bar on retired judges being part of tribunals.
- c) Persons who have been members of Indian Legal Service (Grade-I or II) or a person who is a secretary in any ministry or department of central government should not be eligible for appointment as judicial members for a tribunal.
- d) Technical/expert members should be people of ability, integrity and have a formidable standing in their profession. Their domain expertise should not be less than 10 years.

#### c) Reappointment

It is recommended that there should be a complete bar on reappointment [discussed previously in *Lack of Independence with Tribunals (Reappointment)*].

#### d) Tenure of Members

Based on the recommendation of the Supreme Court, the tenure of all members of a tribunal should at least be set at five years or seven years in case a tenure based system of appointment to tribunals is in place.

However, if a regular system of appointment is put in place through the introduction of the AIEET, the members of the tribunals will be serving till the age of the retirement which can be set at 65 years of age.

#### e) Post-tenure Restrictions

An important aspect that needs to be considered is the problem regarding 'post-retirement' benefits that can be offered to tribunal members. Such a situation can influence the decision making of tribunal members, where decisions can be passed in the favour of the executive, if they are promised lucrative posts within the government after their tenure ends. The following provisions with respect to cessation of tenure needs to be added to the parent statutes of all central tribunals:

- Former members shall be ineligible for further government employment.
- They should be ineligible to appear, act or plead before any tribunal. However, they can practice before the High Courts and Supreme Court.

#### f) By-passing the Jurisdiction of High Courts

Based on the observation made by the Supreme Court (discussed previously under *Jurisdiction of the High Courts*), the following is suggested:

- Direct appeal to the Supreme Court should not be permitted from any tribunal.
- The decision of a tribunal shall attain finality in all cases. However, in the event of substantial questions of law, a statutory appeal can lie with the Division Bench of the territorial High Court.

#### g) Salaries and Other Allowances

For an effective administration of tribunals and their members, it is recommended that salaries and other allowances should be made uniform across all tribunals.

#### h) Nodal Ministry

In order to remedy the problem of different nodal ministries administering tribunals, the establishment of an independent statutory body such as the NTC should be sufficient.

#### i) Vacancy

The sub-committee on appointments of the NTC should be entrusted with the job of filling up vacancies and should be mandated to carry out an assessment on the requirement of human resources for all tribunals. Any vacancy in a tribunal should be filled up preferably within six months prior to the occurrence of vacancy.

#### j) Removal of Members

The procedure for removal should be made uniform across all tribunals. Additionally, the following suggestions in regard to the removal process should be considered:

- A three member sub-committee should be established by the NTC, which would be entrusted with the responsibility of carrying out the removal procedure.
- The composition of this sub-committee shall be decided by the Board, based on majority.
- An inquiry needs to be carried out (preferably by a sitting Supreme Court/High Court judge) nominated by the Chief Justice of India on a reference made by the NTC, in the allegations made against the respective member. After the conclusion of inquiry, the concerned judge should elaborate on its findings and record reasons for the recommendation made and submit it to the sub-committee on removal.
- After the submission of the recommendation, the sub-committee shall forward it to the Board for approval. The decision of the Board shall be final and should be forwarded to the central government for implementation. However, for transparency purposes, the decision of the sub-committee and the reasons recorded for the removal of the member shall be made available for public scrutiny.

## 6. WAY FORWARD

This interim report has attempted to trace the origins of tribunals, critically analyse precedent and reports, and provided an exhaustive assessment of problems in India's tribunals framework. After a detailed diagnosis, this report floats a proposal for a new tribunals framework, which recommends a systemic reform and the establishment for a NTC.

At this juncture, it is important to recognise that holistic reforms can only be conceived and effectively implemented by engaging with all stakeholders. Therefore, moving forward, it is important to conduct a roundtable seminar in order to engage with different perspectives on enhancing this proposal. Such a consultation must involve members of the judiciary, executive, tribunals, practising advocates, civil society, bureaucrats, etc. While this report tries to propose several reforms, a public consultation must also yield pointed insights on issues that have not been fully addressed in this draft report, such as:

- 1) **Status of the NTC:** The viability of constituting the NTC as an independent statutory authority versus a body operating under a single nodal ministry (for instance, the Ministry of Law and Justice).
- 2) **Scope of the NTC:** The possibility of extending the scope of the NTC to administer state tribunals can be explored. Alternatively, the prospect of establishing state-wise independent and statutory bodies can also be considered.
- 3) **Tenure:** The optimal tenure for NTC members, considering the fact that a three-year tenure might reduce the pool of viable candidates from the bureaucracy.
- 4) **BCI Nominee:** The need for a lawyer member in the NTC and consequently a relook at the appropriate cooling off period before such a member can resume practice in tribunals.
- 5) **Career Progression:** The prospect of developing an ITS, with provisions for transfers, promotions, seniority, etc.
- 6) **Tribunal Mergers:** The need to reassess tribunal mergers based on empirical data on vacancies, pendency, infrastructure and budgets, etc. procured from Ministries.
- 7) **Finance Division:** Exploring the possibility of a unified Finance subject matter division as opposed to sub-dividing it as Bank, Company and Property.

## Annexures

### ANNEXURE-A: SEARCH-CUM-SELECTION COMMITTEE COMPOSITIONS (UNDER FINANCE ACT, 2017)

The following table maps the composition of search-cum-selection committees (SSC) for various tribunals under the Finance Act, 2017. Only the CAT, NCLAT (with respect to Judicial/Technical member), and AFT (with respect to Vice-Chairman/Judicial/Administrative member) follow the *NCLT Case* recommendations. The SSC composition for other tribunals are as follows:

TRIBUNAL	SSC COMPOSITION
Industrial Tribunal	Presiding Officer: 5-member SSC (no judicial member)
ITAT	President and Vice-President: 3-member SSC (2 judicial members and 1 executive member) Account Member and Judicial Member: 5-member SSC (including President of ITAT, as a judicial member)
CESTAT	President: 4-member SSC (3 executive members) Judicial Member: 6-member SSC (including 2 Supreme Court judges, President of CESTAT) Technical Member: 4-member SSC (no judicial member)
ATFP-SAFEMA	Chairman: 4-member SSC (3 executive members) Member: no judicial members
CAT	Administrative Member: 4-member SSC (2 executive members and 2 nominees of the central government)
RCT	Chairman: 5-member SSC (2 judicial members, 1 executive member, 2 nominees of the central government) Vice-chairman (Technical) or Member (Technical): 5-member SSC (1 judicial member, 3 nominees of the central government, and 1 executive member)
SAT	No SSC for Presiding and Judicial Members. Technical Member: 4-member SSC (3 executive members and 1 judicial member)
DRT	Presiding Officer: 5-member SSC (1 judicial member, 3 executive members, and the RBI Governor/Deputy Governor)

DRAT	Presiding Officer: 5-member SSC (1 judicial member, 3 executive members, and the RBI Governor/Deputy Governor)
<b>TRIBUNAL</b>	<b>SSC COMPOSITION</b>
AAT	Chairperson: 4-member SSC (2 executive members and 2 nominees of the central government)
TDSAT	Chairperson: 5-member SSC (1 judicial member, 2 executive members, 2 experts nominated by the central government)
IPAB	Chairman/Vice-Chairman/Judicial Member: 5-member SSC (1 judicial member, 2 executive members, 2 experts nominated by central government)
NCLAT	No SSC. Chairperson appointed by central government in consultation with the Chief Justice of India.
AAR-IT	Chairman/Vice-Chairman: 4-member SSC (1 judicial member and 3 executive members) Member: Only executive members
FCAT	Chairman and Member: 5-member SSC (3 nominees of the central government and 2 executive members)
NCDRC	President: No SSC. Appointed by central government in consultation with Chief Justice of India. Member: 5-member SSC (1 judicial member, 2 executive members, 2 experts nominated by central government)
APTEL	Chairperson and Judicial Member: 5-member SSC (1 judicial member, 2 executive members, 2 experts nominated by central government) Technical Member: 5-member SSC (no judicial members)
AFT	No SSC. Chairperson appointed by central government in consultation with the Chief Justice of India.
NGT	Chairperson/Judicial Member: 5-member SSC (1 judicial member, 2 executive members, 2 experts nominated by central government) Technical Member: 5-member SSC (no judicial member)

## ANNEXURE-B: STATUTORY FRAMEWORK OF CENTRAL TRIBUNALS

*Appeals, Composition, Qualifications, and Appointment Processes*

TRIBUNAL	ACT AND RULES (NODAL MINISTRY)	APPEAL	COMPOSITION	QUALIFICATION	APPOINTMENT PROCESSES
AAT	The Airport Authority of India Act, 1994  (Ministry of Civil Aviation)	No appeal	Chairperson	<b>Chairperson:</b> (a) Is or has been, or is qualified to be, a Judge of a High Court.	<b>Chairperson:</b> Appointed by the Central Government after consultation with the Chief Justice of India.
AERAT	The Airports Economic Regulatory Authority of India Act, 2008, b) Airports Economic Regulatory Authority Appellate Tribunal (Salaries and Allowances and Other Terms and Conditions of Service of the Chairperson and Other Members) Rules, 2011  (Ministry of Civil Aviation)	Supreme Court	Chairperson and at least 2 members.	<b>Chairperson</b> (a) Is, or has been, a judge of the Supreme Court or the Chief Justice of a High Court <b>Member-</b> (a) Secretary, Government of India or any equivalent post in Central government or State government for a total period of not less than 2 years in the Ministries or Departments dealing with aviation/economics/ law <b>or</b> (b) A person who is well-versed in the field of aviation or economics or law.	<b>Chairperson:</b> Appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

ATBT	The Benami Transactions (Prohibition) Amendment Act, 2016.  (Ministry of Finance)	High Court	Chairperson and at least 2 members	<p><b>Chairperson-</b> (a) Sitting or retired judge of the High Court or Supreme Court who has completed not less than five years of service.</p> <p><b>Judicial Member-</b> (a) Member of the Indian Legal Service and has held the post of Additional Secretary or equivalent post in that Service;</p> <p><b>Administrative Member,</b> (a) Has been a Member of the Indian Revenue Service at the post of Chief Commissioner of Income tax or equivalent post in that Service.</p>	Method of appointment and authority not specified in the act.

APTEL	The Electricity Act, 2003  (Ministry of Power)	Supreme Court	Chairperson, 3 members	<p><b>Chairperson:</b> (a) Is or has been a judge of the Supreme Court or the Chief Justice of a High Court</p> <p><b>Members:</b> (a) Is or has been or is qualified to be a Judge of the High Court (b) Is, or has been, a Secretary for at least one year in the Ministry or Department of the Central Government dealing with economic affairs or matters or infrastructure (c) Is, or has been, a person, having adequate knowledge or experience in dealing with the matters relating to electricity generation, transmission and distribution and regulation or economics, commerce, law or management.</p>	<p><b>Chairperson:</b> Appointed by the Central Government after Consultation with the Chief Justice of India.</p> <p><b>Members:</b> The Members shall be appointed by the Central Government on the recommendation of the Selection Committee.</p> <p><u>Composition of Selection Committee</u> (a) Member of the Planning Commission in charge of the energy sector as Chairperson; (b) Secretary-in-charge of the Ministry of the Central Government dealing with the Department of the Legal Affairs (c) Chairperson of the Public Enterprises Selection Board (d) A person to be nominated by the Central Government (e) a person to be nominated by the Central Government (f) Secretary-in-charge of the Ministry of the Central Government dealing with power</p>
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ATFE	<p>a)The Foreign Exchange Management Act, 1999;  b) Appellate Tribunal for Foreign Exchange (Recruitment, Salary and Allowances and Other Conditions of Service of Chairperson and Members) Rules, 2000.</p> <p>(Ministry of Finance)</p>	High Court	Chairperson and not exceeding 4 members.	<p><b>Chairperson:</b>  (a)Is or has been or is qualified to be a Judge of a High Court.</p> <p><b>Member</b>  (a) Is or has been or is qualified to be a District Judge</p>	<p><b>Chairperson and Members:</b> Appointed by Central Government on the recommendation of the Selection Board.</p> <p><u>Composition of Selection Board</u> - a) Supreme Court Judge, nominated by the Minister of Law, Justice and Company Affairs in consultation with the Chief Justice of India.</p> <p>b) Secretary-in-charge of the Ministry of the Central Government dealing with the Department of Legal Affairs.</p> <p>c) Secretary-in-charge of the Ministry of the Central Government dealing with the Department of Personnel and Training.</p>
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ATFP-PMLA	<p>The Prevention of Money Laundering Act, 2002.</p> <p>Prevention of Money Laundering (Appointment and Conditions of Service of Chairperson and Members of Appellate Tribunal) Rules, 2007.</p> <p>(Ministry of Finance)</p>	High Court	Chairperson and 2 other members.	<p><b>Chairperson-</b> (a) Shall be a Judge of the Supreme Court or of a High Court or is qualified for the same.</p> <p><b>Member-</b> (a) is or has been a judge of the High Court. (b) Is or has been a member of Grade I of the Indian Legal Service for at least 3 years or (c) Has been a member of the Indian Revenue Service as Commissioner of Income-tax or equivalent post for at least 3 years. (d) Has been a member of the Indian Economic Service as Joint Secretary or equivalent post for at least 3 years; or (e) Has been a member of the Indian Customs and Central Excise Service as Joint Secretary or equivalent post in that Service for at least 3 years; or (f) Has been in the practice of accountancy as a chartered accountant as a registered accountant or partly as a registered accountant and partly as a chartered accountant for at least 10 years (mandatory member) or (g) Has been a member of the Indian Audit and Accounts Service as a Joint Secretary or equivalent post for at least 3 years.</p>	<p><b>Chairperson:</b> Chairperson to be appointed in consultation with the Chief Justice of India.</p> <p><b>Member-</b> Selection of members shall be made on the recommendation of a Selection Committee.</p> <p><u>Composition of Selection Committee:</u></p> <p>a) Revenue Secretary (Chairperson) b) Secretary, Department of Legal Affairs c) Deputy Comptroller and Auditor General -of India, d)Central Board of Direct Taxes or Chairman, Central Board of Excise and Customs.</p> <p>The Selection Committee shall recommend persons from amongst the persons on the list of candidates prepared by the Ministry of Finance which shall invite applications through advertisement.</p>
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ATFP-SAFEMA	<p>Smugglers and foreign Exchange Manipulators (Forfeiture of Property Act), 1976</p> <p>Narcotic Drugs and Psychotropic Substances Act, 1985;</p> <p>Appellate Tribunal for Forfeited Property (Conditions of Service for Chairman and Members) Rules, 1978</p> <p>(Ministry of Finance)</p>	No appeal	Chairman and such number of other members as the Central Government thinks fit	<p><b>Chairman:</b></p> <p>(a) Is or has been a Judge of the Supreme court or of a High Court</p> <p><b>Members:</b></p> <p>(a) Officers of the Central Government not being below the rank of Joint Secretary to the government.</p>	<p>Central Government shall appoint the members. Method of appointment not specified.</p>
AFT	<p>Armed Forces Tribunal Act, 2007.</p> <p>Armed Forces Tribunal (Procedure For Appointment of Vice-Chairperson and Other Members) Rules, 2008.</p> <p>Armed Forces Tribunal (Procedure For Investigation of Misbehaviour or Incapacity of Chairperson, Vice-Chairperson and Other Members) Rules, 2008</p>	Supreme Court	Chairperson, Vice-Chairperson and such number of Judicial and Administrative Members as the Central Government may deem fit.	<p><b>Chairperson-</b></p> <p>a) Retired judge of Supreme Court or a retired Chief Justice of a High Court</p> <p><b>Judicial Member-</b></p> <p>a) He is or has been a Judge of High Court</p> <p><b>Administrative Member</b></p> <p>a) Has held or has been holding the rank of Major General or above for a total period of at least 3 years in the army or equivalent ranking in the Navy or Air Force;</p> <p>b) Has served for not less than one year as Judge Advocate General in the Army, Navy or Air Force and is not below the rank of Major General, Commodore, or Air Commodore</p>	<p><b>Chairperson:</b> Shall be appointed by the President after a consultation with the Chief Justice of India.</p> <p><b>Members:</b> Shall be appointed by the President after a consultation with the Chief Justice. There shall be a Selection Committee for the purpose of the selection of the Vice-Chairperson and Members</p> <p><u>Composition of Selection Committee</u></p> <p>(a) sitting Judge of the Supreme Court nominated by the Chief Justice of India as Chairperson</p> <p>(b) Chairperson, Armed Forces Tribunal</p> <p>(c) Secretary to the Government of India, Ministry of Defence</p> <p>(d) Secretary, Government of India, Ministry of Law and Justice, Department Legal Affairs.</p>

	(Ministry of Defence)				
AAR-CCS	<p>Customs Act, 1962</p> <p>Central Excise Act, 1944</p> <p>Authority for Advance Rulings for Customs and Central Excise (Salaries, allowances and terms and conditions of service of Chairperson and Members) Rules, 2003.</p> <p>(Ministry of Finance)</p>	No appeal	Chairperson and other members	<p><b>Chairperson:</b></p> <p>a) A person who is a retired Judge of the Supreme Court;</p> <p><b>Member:</b></p> <p>a) An officer of the Indian Customs and Central Excise Service who is qualified to be a member of the Board;</p> <p>(b) An officer of the Indian legal service who is, or is qualified, to be, an Additional Secretary to the Government of India.</p>	Central Government

AAR-IT	<p>Income Tax Act,1961;  Authority for Advance Rulings (Salaries and Allowances, Terms and Conditions of Service of Chairman and Members) Rules, 1994.</p> <p>Authority for Advance Rulings (Procedure for Appointment as Chairman and Vice-Chairman) Rules, 2016</p> <p>(Ministry of Finance)</p>	High Court	Chairman, Vice-chairmen, Revenue Members and Law Members	<p><b>Chairman</b> (a) A Judge of the Supreme Court or the Chief Justice of a High Court or High Court Judge for at least seven years. (b) Vice-chairman, who has been Judge of a High Court;</p> <p><b>Revenue Member</b> (a) Member of the Indian Revenue Service, who is, or is qualified to be, a Member of the Board; or (b) Member of the Indian Customs and Central Excise Service, who is, or is qualified to be, a Member of the Central Board of Excise and Customs. (c) A law Member from the Indian Legal Service, who is, or is qualified to be, an Additional Secretary to the Government of India.</p>	<p><b>Chairman, Vice-Chairman:</b> Central Government will select a Chairman and Vice-Chairman on the basis of the recommendation of a Selection Committee.</p> <p><u>Composition of a Selection Committee:</u> (a) The Chief Justice of India or a Judge of the Supreme Court as nominated by the Chief Justice of India as Chairman; (b) The Secretary to the Government of India in the Ministry of Finance, Department of Revenue. (c) The Secretary to the Government of India in the Ministry of Law and Justice, Department of Legal Affairs. (d) The Secretary to the Government of India in Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training</p>
CWDT	<p>Inter-State River Water Disputes Act, 1956</p> <p>(Ministry of Water Resources)</p>	No appeal.	Chairman and two Members, nominated by Chief Justice of India	a) Chairman and Members must be sitting judges of the Supreme Court or a High Court	Chairman and members are nominated by the Chief Justice of India.

CAT	<p>The Administrative Tribunals Act, 1985</p> <p>Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985.</p> <p>Administrative Tribunals (Procedure for appointment of Members) Rules, 2011</p> <p>Administrative Tribunals (Procedure for Investigation of Misbehaviour or Incapacity of Chairmen, Vice-Chairman and Other Members) Rules, 2000</p> <p>(Ministry of Personnel, Public Grievances and Pensions)</p>	No appeal	Chairman, Vice-Chairmen and Judicial, Administrative members	<p><b>Chairman-</b></p> <p>(a) Is, or has been, a Judge of a High Court; or</p> <p>(b) Has, for at least two years, held the office of Vice-Chairman;</p> <p><b>Vice-Chairman-</b></p> <p>(a) Is, or has been, or is qualified to be a Judge of a High Court; or</p> <p>(b) Has for at least 2 years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government with the same scale of pay or</p> <p>(b) Has for at least 5 years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying the same scale of pay or</p> <p>(c) Has, for a period of not less than 3 years, held office as a Judicial Member or an Administrative Member.</p> <p><b>Judicial Member-</b></p> <p>(a) Is, or has been, or is qualified to be, a Judge of a High Court; or</p> <p>(b) Has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least 3 years.</p> <p><b>Administrative Member-</b></p> <p>(a) Has, for at least 2 years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government; or</p> <p>(b) Has, for at least 3 years, held the post of a Joint Secretary to the Government of India or any other post under the Central or a State Government</p>	<p><b>Chairman and other members:</b></p> <p>Appointed by the Central Government in consultation with the Chief Justice on the recommendation of the Selection Committee.</p> <p><u>Composition of the Selection Committee</u></p> <p>a) Sitting judge of the Supreme Court nominated by the Chief Justice of India</p> <p>b) Chairman, Central Administrative Tribunal</p> <p>c) Secretary, Government of India, Public Grievances and Pensions, (Department of Personnel and Training.)</p> <p>d) Secretary, Government of India in the Ministry of Law and Justice, (Department of Legal Affairs)</p>
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				carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.	
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CSTAA	The Central Sales Tax Act, 1956  (Ministry of Finance)	No appeal	A chairman and 2 members.	<p><b>Chairman</b> a) Is a retired Judge of the Supreme Court, or a retired Chief Justice of a High Court</p> <p><b>Member</b> a) An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India; and b) An officer of a State Government not below the rank of Secretary or an officer of the Central Government not below the rank of Additional Secretary, who is an expert in sales tax matters.</p>	Central Government
COMPAT	Competition Act, 2002  Competition Appellate Tribunal (Salaries and Allowances and other terms and conditions of service of the Chairperson and other Members) Rules, 2009  (Ministry of Corporate Affairs)	Supreme Court	Chairperson and not more than 2 other members.	<p><b>Chairperson</b> a) The Chairperson of the Appellate Tribunal shall be a person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court.</p> <p><b>Member</b> a) A member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty five years in, competition matters including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.</p>	<p>The Chairperson and members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee.</p> <p><u>Composition of the Selection Committee</u> (a) the Chief Justice of India or his nominee (Chairperson) (b) the Secretary in the Ministry of Corporate Affairs (c) the Secretary in the Ministry of Law and Justice</p>

CESTAT	<p>The Customs Act, 1962 and Customs, Excise and Service Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987</p> <p>(Ministry of Finance.)</p>	High Court	<p>President, Vice-President and as many judicial and technical members as the Central Government thinks fit.</p>	<p><b>President:</b></p> <p>a) A person who is or has been a Judge of a High Court; or</p> <p>b) One of the members of the Appellate Tribunal, to be the President thereof.</p> <p><b>Vice-President</b></p> <p>a) Is or has been a member of the Appellate Tribunal for Customs ,Excise and Service Tax.</p> <p><b>Judicial member</b></p> <p>a) A person who has for at least 10 years held a judicial office or who has been a Grade I member of the 'Indian Legal Service' for at least 3 years, or</p> <p>b) Who has been an advocate for at least 10 years.</p> <p><b>Technical member</b></p> <p>a) Has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least 3years.</p> <p>A Judicial and Technical member has to be a minimum of 45 years.</p>	<p><b>President:</b> The Central Government will appoint the President.</p> <p><b>Vice President-</b> The Central Government appoints the Vice President.</p> <p>The Central Government will appoint members and the Vice-Chairman to the Tribunal based on the recommendations of a Selection Committee.</p> <p><u>Composition of a Selection Committee</u></p> <p>(i) A Judge of the Supreme Court of India as nominated by the Chief Justice of India (Chairman)</p> <p>(ii) The Secretary to the Government of India in the Ministry of Finance (Department of Revenue);</p> <p>(iii) the Secretary to the Government of India in the Ministry of Law (Department of Legal Affairs);</p> <p>(iv) the President; and</p> <p>(v) such other persons, not exceeding two, as the Central Government may nominate</p>
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CyAT	<p>Information Technology Act, 2000</p> <p>Cyber Appellate Tribunal (Salary, Allowances and Other Terms and Conditions of Service of Chairperson and Members) Rules, 2009 and</p> <p>Cyber Appellate Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of Chairperson and Members) Rules, 2009</p> <p>(Ministry of Electronics and Information Technology )</p>	High Court	Chairperson and such number of other members as the Central Government may appoint.	<p><b>Chairperson</b></p> <p>a) He is, or has been, or is qualified to be, a Judge of a High Court</p> <p><b>Members</b></p> <p>a) Appointed from amongst persons who is or has been a member of the Grade I, Indian Legal Service for at least 5 years and has held the post of Additional Secretary for at least a year.</p> <p>b) Appointed from amongst persons having special knowledge of, and professional experience in, information technology, telecommunications, industry, management or consumer affairs; If person appointed from the Central Government of India then he should have held office for not less than a year and if appointed from the State Government, then the person must have held office for a period of not less than 7 years.</p>	The Selection of Chairperson and Members shall be made by the Central Government in consultation with the Chief Justice of India
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DRAT	The Recovery of Debts Due to Banks and Financial Institutions Act, 1993  (Ministry of Finance)	No appeal	Chairperson	<p><b>Chairperson</b></p> <p>a) Is, or has been, or is qualified to be a, Judge of a High Court; or</p> <p>b) Has been a member of the Indian legal Service and has held a post in Grade I of that service for at least three years; or</p> <p>c) Has held office as Presiding Officer of a Tribunal for at least three years</p>	<p>Central Government will appoint the Chairperson on the recommendation of the Selection Committee. The Selection Committee shall recommend persons for appointment of Chairperson from amongst the persons from the list of candidates prepared by the Ministry of finance after inviting necessary applications; and from amongst the Judges of the High Court nominated by the Chief Justice of such High Courts.</p> <p><u>Composition of a Selection Committee</u></p> <p>a) the Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India</p> <p>b) The Secretary to the Government of India in the Ministry of Finance (Department of Economic Affairs)</p> <p>c) The Secretary to the Government of India in the Ministry of Law and Justice</p> <p>d) The Governor, of the Reserve Bank or the Deputy Governor of the Reserve Bank Nominated by the Governor of the Reserve Bank</p> <p>e) Secretary or Additional Secretary to the GOI in the Ministry of Finance, Dept. of Financial Services</p>
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DRT	<p>The Recovery of Debts Due to Banks and Financial Institutions Act, 1993</p> <p>Debts Recovery Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of Presiding Officer) Rules, 2010.</p> <p>(Ministry of Finance)</p>	Debt Recovery Appellate Tribunal	Tribunal shall consist of a Presiding Officer.	<p><b>Presiding officer</b></p> <p>a) Is, or has been , or is qualified to be a District Judge</p>	<p>Central Government will appoint the Presiding Officer on the basis of the list prepared by the Selection Committee. The Selection Committee shall recommend persons for appointment as Presiding Officer from amongst the list of candidates prepared by the Ministry of Finance after inviting applications therefore by advertisement</p> <p><u>Composition of Selection Committee:</u></p> <p>a) the Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India</p> <p>b) The Secretary to the Government of India in the Ministry of Finance (Department of Economic Affairs)</p> <p>c) The Secretary to the Government of India in the Ministry of Law and Justice</p> <p>d) The Governor, of the Reserve Bank or the Deputy Governor of the Reserve Bank Nominated by the Governor of the Reserve Bank</p> <p>e) Secretary or Additional Secretary to the Government of India in the Ministry of Finance, Department of Financial Services.</p>
EPFAT	<p>The Employees' Provident Fund and Miscellaneous Provisions Act, 1952</p> <p>(Ministry of Labour and Employment)</p>	No appeal.	Presiding Officer	<p><b>Presiding Officer</b></p> <p>a) Has to be qualified to be a Judge of a High Court or a District Judge.</p>	<p>Presiding Officer to be appointed by the Central Government. No order of the Central Government appointing any person as the Presiding Officer,</p>

FCAT	Cinematograph Act, 1952.  Cinematographer (Certification) Rules, 1983  (Ministry of Information and Broadcasting)	No appeal	Chairman and not more than 4 members.	<b>Chairman-</b> a) Retired Judge of a High Court, or is a person who is qualified to be a Judge of a High Court. b) Such persons who, in the opinion of the Central Government qualified to judge the effect of films on the public, to be members of the Tribunal.	<b>Chairperson-</b> The Central Government will appoint the Chairperson based on the eligibility criteria. <b>Members -</b> The Central Government may, after consultation with the Chairman of the Appellate Tribunal, appoint any person whom it thinks fit to be a member of the Appellate Tribunal:
ITAT	Income Tax Act, 1961,  Income-tax. Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963  (Ministry of Law and Justice)	High Court	Central Government shall appoint as many judicial and accountant members as it deems fit.	<b>Judicial members</b> a) A minimum of 10 years' experience of holding a judicial office in the territory of India or b) One who has been a Grade II member of the Indian Legal Service or any equivalent or higher post for at least 3 years or c) One who has been an advocate for at least 10 years.  <b>Accountant Members</b> a) An accountant with 10 years practice in accountancy as a chartered accountant under the Chartered Accountants Act, 1949, or b) Has a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or c) Who has been a member of the Indian Income- tax Service, Group A and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.  Further, i) A member must be less than thirty-five years of age; or	Central Government appoints members on the basis of the recommendation of the Selection Board. The Selection Board shall recommend persons for appointment as members from amongst the persons on the list of candidates prepared by the Ministry of Law after inviting applications by advertisement or on the recommendations of the appropriate authority.  <u>Composition of Selection Board:</u>  (a) A nominee of the Minister of Law, who is the Chairman of the Selection Board. (b) The Secretary to the Government of India, Ministry of Law (Department of Legal Affairs); (c) the President or the Senior Vice-President of the Tribunal, and (d) Such other person, if any, not exceeding two, as the Minister of Law may appoint.

				ii) He is more than fifty years of age; provided that the upper age limit may be relaxed:.	
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IPAB	<p>Indian Trademarks Act, 1999 and</p> <p>The Intellectual Property Appellate Board (Salaries and Allowances Payable to, and other Terms and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 2003.</p> <p>(Ministry of Commerce)</p>	No appeal	Chairperson, Vice-Chairperson and such number of Members as the Central Government may deem fit.	<p><b>Chairperson-</b></p> <p>a) Is, or has been, a Judge of a High Court; or</p> <p>b) Has, for at least two years, held the office of a Vice-Chairperson.</p> <p><b>Vice-Chairperson-</b></p> <p>a) Has, for at least two years, held the office of a Judicial Member or a Technical Member; or</p> <p>b) Has been a Member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least 5 years.</p> <p><b>Judicial Member-</b></p> <p>a) Has been a member of the Indian Legal Service and has held the post in Grade I of that Service for at least 3 years; or</p> <p>b) Has, for at least 10 years, held a civil judicial office.</p> <p><b>Technical Member:-</b></p> <p>a) Has, for at least 10 years, exercised functions of a tribunal under this Act or under the Trade and Merchandise Marks Act, 1958 or both, and</p> <p>b) Has held a post not lower than the post of a Joint Registrar for at least 5 years; or</p> <p>c) Has, for at least 10 years, been an advocate of a proven specialised experience in trade mark law.</p>	<p>The Chairperson, Vice-Chairperson and every other Member shall be appointed by the President of India. No appointment of a person as the Chairperson shall be made except after consultation with the Chief Justice of India.</p>
KWDT-II	<p>Inter-State River Water Disputes Act, 1956</p> <p>(Ministry of Water Resources)</p>	No appeal.	Chairman and two Members, nominated by Chief Justice of India	Chairman and Members must be sitting judges of the Supreme Court or a High Court	Chairman and members are nominated by the Chief Justice of India.

MWDT	Inter-State River Water Disputes Act, 1956  (Ministry of Water Resources)	No appeal.	Chairman and two Members, nominated by Chief Justice of India	Chairman and Members must be sitting judges of the Supreme Court or a High Court	Chairman and members are nominated by the Chief Justice of India.
NCLAT	The Insolvency and Bankruptcy Code, 2016 b) The Companies Act, 2013  (Ministry of Corporate Affairs)	Supreme Court	Tribunal shall consist of a Chairperson and such number of Judicial and technical members, not exceeding eleven.	<b>Chairperson</b> a) A person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court  <b>Judicial member</b> a) Is or has been a judge of a High Court or is a Judicial member of the tribunal for 5 years.  <b>Technical member</b> a) Shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than 25 years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.	<b>Chairperson and the Judicial members:</b> Appointed by the Central government after consultation with the Chief Justice of India.  <b>Technical members:</b> They shall be appointed by the Central Government on the recommendation of a Selection Committee.  <u>Composition of Selection Committee:</u> a) Chief Justice of India or his nominee as chairperson b) A senior judge of the Supreme Court or a Chief justice of high court as member c) Secretary in Ministry of Corporate Affairs as member d) Secretary in the Ministry of Law and Justice as member e) Secretary in the Department of Financial Services in the Ministry of Finance as member

NCLT	Companies Act, 2013,  National Company Law Tribunal (Salary, Allowances and other Terms and Conditions of Service of President and other Members) Rules, 2015  (Ministry of Corporate Affairs)	National Company Law Appellate Tribunal	Tribunal comprises of the President and such number of Judicial and Technical members, as the Central Government may deem necessary.	<p><b>The President</b> a) Shall be a person who is or has been a Judge of a High Court for 5 years.</p> <p><b>Judicial Members</b> a) Is, or has been, a judge of a High Court; or b) Is, or has been, a District Judge for at least 5 years; or c) Has, for at least 10 years been an advocate of a court.</p> <p><b>Technical Members</b> a) At least 15 years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or b) Is, or has been, in practice as a chartered accountant for at least 15 years; or c) Is, or has been, in practice as a cost accountant for at least 15 years; or d) Is, or has been, in practice as a company secretary for at least 15 years; or e) Is a person of proven ability, integrity and standing having special knowledge and experience, of not less than 15 years, in related fields such as law, industrial finance, industrial management etc. or vi) Is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 person who has not completed 50 years of age shall not be eligible for appointment as Member.</p>	<p><b>President:</b> The President of the tribunal, Judicial Members of the Appellate Tribunal, shall be appointed after consultation with the Chief Justice of India.</p> <p><b>Technical members:</b> Technical members shall be appointed on the recommendation of a Selection Committee.</p> <p><u>Composition of the Selection Committee</u> (a) Chief Justice of India or his nominee as Chairperson; b) A senior Judge of the Supreme Court or a Chief Justice of High Court c) Secretary in the Ministry of Corporate Affairs d) Secretary in the Ministry of Law and Justice e) Secretary in the Department of Financial Services in the Ministry of Finance f) The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.</p>
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NCDRC	<p>The Consumer Protection Act, 1986</p> <p>(Ministry of Consumer Affairs, Food &amp; Public Distribution)</p>	Supreme Court	President 4 or more Members	<p><b>President</b></p> <p>a) A person who is, or has been a Judge of the Supreme Court.</p> <p><b>Members-</b></p> <p>a) Not less than 35 years of age</p> <p>b) Bachelor's degree from recognized university</p> <p>c) At least 10 years' experience in dealing with problems relating to economics, law commerce, accountancy, industry, public affairs or administration (not more than 50% of the members shall be from amongst the persons having a judicial background)</p>	<p>President is appointed by the Central Government in consultation with Chief Justice of India.</p> <p>Members are appointed by the Central Government on recommendation of Selection Committee.</p> <p><u>Composition of Selection Committee:</u></p> <p>a) Chairman (Judge of Supreme Court nominated by Chief Justice of India)</p> <p>b) Member (Secretary in the Department of Legal Affairs)</p> <p>c) Member (Secretary in the department dealing with Consumer Affairs)</p>
NGT	<p>The National Green Tribunal Act, 2010</p> <p>(Ministry of Environment, Forest and Climate Change)</p>	Supreme Court	<p>Chairperson, 10-20 Full time Judicial Members, 10-20 Full time Expert Members, 1 or more person with specialized knowledge</p>	<p><b>Chairperson</b></p> <p>a) Judge of Supreme court or Chief Justice of High Court.</p> <p><b>Judicial Member</b></p> <p>b) Judge of Supreme Court or Chief Justice of High Court or Judge of High Court</p> <p><b>Expert Member</b></p> <p>a) Master of Science with a doctorate degree; or Master of Engineering; or Master of Technology and has experience of 15 years including 5 years practical experience in relevant field; and including 5 years administrative experience.</p>	<p>Chairperson is appointed by the Central Government in consultation with Chief Justice of India</p> <p>Judicial members and expert members to be appointed on the recommendation of the Selection Committee by the Central government</p> <p><u>Composition of the Selection Committee:</u></p> <p>a) Sitting judge of the Supreme Court to be nominated by the Chief Justice of India in consultation with the Minister for Law and Justice as Chairperson</p> <p>b) Chairperson of the Tribunal</p> <p>c) Director, Indian Institute of Technology</p> <p>d) An expert in Environmental Policy to be nominated by the Minister for Environment and Forests</p> <p>e) An expert in Forests Policy to be nominated by the Minister for Environment and Forests</p> <p>f) Secretary to the GOI in the Ministry of Environment and Forests.</p>

NHT	<p>The Control of National Highways (Land and Traffic) Act, 2002</p> <p>National Highways Tribunal (Procedure for Appointment as Presiding Officer of the Tribunals) Rules, 2003</p> <p>National Highways Tribunals (Procedure for Investigation or Incapacity of Presiding Officer) Rules, 2003.</p> <p>(Ministry of Road Transport &amp; Highways)</p>	No appeal	Tribunal shall consist of Presiding Officer only	<p><b>Presiding officer</b></p> <p>a) Is qualified to be a Judge of the High Court</p> <p>b) Has been a member of the Indian legal service and has held a post not less than Grade II of that service</p>	<p>The Presiding officer shall be appointed by the Central Government on the recommendation of a Selection Committee.</p> <p><u>Composition of Selection Committee:</u></p> <p>i) Judge of the Supreme Court of India as nominated by the Chief Justice of India</p> <p>ii) The Secretary to the Government of India in the Ministry of Road Transport and Highways</p> <p>iii) The Secretary to the Government of India in the Ministry of law and Justice</p>
RRT	<p>The Railways Act, 1989</p> <p>(Ministry of Railways)</p>	No appeal	Chairman and 2 other members to be appointed by the Central Government.	<p><b>Chairman</b></p> <p>a) Is, or has been, a Judge of the Supreme Court or of a High Court.</p> <p><b>Member</b></p> <p>a) Shall be a person, who, in the opinion of the Central Government, has special knowledge of the commercial, industrial or economic conditions of the country, and</p> <p>b) Shall be a person, who, in the opinion of the Central Government, has special knowledge and experience of the commercial working of the railways.</p>	Not specified

RCT	The Railways Claims Tribunal Act, 1987  (Ministry of Railways)	High Court	Chairman, 4 Vice-Chairman and such number of Judicial Members and Technical Members as the Central Government may deem fit.	<p><b>Chairman</b></p> <p>a) Is, or has been, a judge of a High Court; or</p> <p>b) Has, for at least two years, held the office of a Vice-Chairman</p> <p><b>Vice Chairman-</b></p> <p>a) Is, or has been, or is qualified to be, a Judge of a High Court; or</p> <p>b) Has been a Grade I member of the Indian Legal Service or any higher post for at least 5 years or</p> <p>c) Has, for at least 5 years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the government of India; or d) Has, for at least 5 years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India or</p> <p>e) has for a period of not less than 3 years, held office as a Judicial Member or a Technical Member</p> <p><b>Judicial Member-</b></p> <p>a) Is or has been or is qualified to be, a Judge of a High Court; or</p> <p>b) Has been a Grade I member of the Indian Legal Service and has held a post in Grade I of that Service for at least 3 years; or has for at least three years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.</p> <p><b>Technical Member-</b></p> <p>a) Has for at least 3 years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge</p>	Chairman, Vice-Chairman and every other member shall be appointed by the President after consultation with the Chief Justice of India.
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				of rules and procedures of, and experience in, claims and commercial matters relating to railways.	
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RBWDT	Inter-State River Water Disputes Act, 1956  (Ministry of Water Resources)	No appeal.	Chairman and two Members, nominated by Chief Justice of India	Chairman and Members must be sitting judges of the Supreme Court or a High Court	Chairman and members are nominated by the Chief Justice of India.
REAT	The Real Estate (Regulation and Development) Act, 2016  (Ministry of Housing and Urban Affairs.)	High Court	Chairperson and not less than two members (one judicial and the other Technical/Administrative member)	<p><b>Chairperson:</b> a) Is or has been a Judge of a High Court;</p> <p><b>Judicial Member:</b> a) He has held a judicial officer in the territory of India for at least fifteen years or b) Has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and</p> <p><b>Technical/Administrative Member:</b> a) A person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field. or b) Who has held the post in the Central Government or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.</p>	<p><b>Chairperson</b> He shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.</p> <p><b>Judicial Members and Technical/Administrative Members:</b> They shall be appointed by the appropriate Government on the recommendations of a Selection Committee.</p> <p><u>Composition of the Selection Committee:</u> a) Chief Justice of the High Court or his nominee. b) The Secretary of the Department, handling Housing and c) Law Secretary and in such manner as may be prescribed.</p>

SAT	<p>a) The Securities and Exchange Board of India Act, 1992</p> <p>b) Securities Appellate Tribunal (Salaries, Allowance and other Terms and Conditions of Presiding Officer and Other Members) Rules, 2003</p> <p>(Ministry of Finance)</p>	Supreme Court	Presiding Officer and two other members	<p><b>Presiding Officer:</b></p> <p>a) Sitting or retired judge of Supreme Court or sitting or retired Chief Justice of a High Court.</p> <p><b>Member:</b></p> <p>a) Qualification and experience of Corporate law, securities law, finance, economics or accountancy</p>	<p>The Presiding Officer and member shall be appointed by the Central Government on the recommendation of Selection Committee to be constituted in consultation with the Chief Justice of India.</p> <p><u>Composition of the Selection Committee:</u></p> <p>(a) Governor, Reserve Bank of India or his nominee</p> <p>(b) Finance Secretary/Secretary, Department of Economic Affairs</p> <p>(c) Presiding Officer, Securities Appellate Tribunal</p> <p>The Government shall have the right to return the name/panel for reconsideration by the Committee and for submission of a fresh name/panel.</p>
TDSAT	<p>The Telecom Regulatory Authority of India Act, 1997</p> <p>Telecom Disputes Settlement and Appellate Tribunal (Salary, Allowances and Other Conditions of Service of the Officers and Employees) Rules, 2001</p> <p>(Ministry of Communication)</p>	Supreme Court	Chairperson and not more than two members	<p><b>Chairperson-</b></p> <p>a) Is, or has been, a judge of the Supreme Court or the Chief Justice of High Court</p> <p><b>Member</b></p> <p>a) Has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or</p> <p>b) A person who is well versed in the field of technology, telecommunication, industry, commerce or administration</p>	<p>The selection of Chairperson and members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India</p>
VWDT	<p>Vansdhara Water Disputes Tribunal</p> <p>(Ministry of Water Resources)</p>	Vansdhara Water Disputes Tribunal	Vansdhara Water Disputes Tribunal	Vansdhara Water Disputes Tribunal	<p>Chairman and members are nominated by the Chief Justice of India.</p>

Tenure, Reappointment, Removal, and Post-retirement restrictions

TRIBUNAL	TENURE AND REAPPOINTMENT	REMOVAL	POST-RETIREMENT RESTRICTION
AAT	Chairperson: 3 years / Chairperson- 62 years  No provision on reappointment	<b>Grounds of removal:</b> Proved misbehaviour or incapacity <b>Inquiry whether Mandatory:</b> Yes. <b>Authority for inquiry:</b> Judge of the Supreme Court.	No post retirement restrictions.
AERAT	Chairperson and Members: 3 years / Chairperson- 70 years Member- 65 years  No provision on reappointment	<b>Grounds of removal:</b> a) Has been adjudged an insolvent b) Has been convicted of an offence which in the opinion of the Central Government, involves moral turpitude c) Has become physically or mentally incapable of acting as the Chairperson or a member d) Has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a member e) Has so abused his position as to render his continuance in office prejudicial to the public interest <i>(hereinafter referred to as the 'five grounds')</i> <b>Inquiry whether mandatory:</b> Yes, only for grounds (d) &(e) <b>Authority for inquiry:</b> Judge, Supreme Court	No post retirement restrictions.

ATBT	<p>Chairperson and Member-5 years / Chairperson and Members- 65 years</p> <p>Reappointment barred.</p>	<p><b><u>Chairperson and Judicial Members</u></b></p> <p><b>Grounds of removal:</b> Five grounds.  <b>Inquiry whether mandatory:</b> Yes  <b>Authority for inquiry:</b> Chief Justice of the High Court</p> <p><b><u>Administrative Member</u></b></p> <p><b>Grounds:</b> Five grounds. Method of removal not specified.</p>	No post retirement restrictions.
APTEL	<p>Chairperson and Members- 3 years / Chairperson- 70 years  Members- 65 years</p> <p>Reappointment allowed.</p>	<p><b>Grounds of Removal:</b> Proved misbehaviour or incapacity  <b>Inquiry whether mandatory:</b> Yes  <b>Authority for inquiry:</b> sitting judge of the Supreme Court.</p>	No post retirement restrictions
ATFE	<p>Chairperson and Members- 5 years / Chairperson- 65 years  Members-62 years</p> <p>Reappointment barred.</p>	<p><b>Grounds of Removal:</b> Proved misbehaviour or incapacity  <b>Inquiry whether mandatory:</b> Yes  <b>Authority for inquiry:</b> Inquiry can be made by such person as the President may appoint for this purpose.</p>	Post retirement restrictions exist.
ATFP-PML	<p>Chairperson- 5 years  Member- 5 years /  Chairman- 70 or 67 years  Member- 65 years</p> <p>No provision on reappointment</p>	<p><b>Grounds of removal:</b> Proved misbehaviour or incapacity.  <b>Inquiry mandatory whether:</b> Yes  <b>Authority for inquiry:</b> Inquiry will be made by a person appointed by the President.</p>	No post retirement restrictions.

ATFP-SAFEMA	Chairman- 3 years / Chairman- 62 or 65 years Members- 60 years  Reappointment provision not clear	No provision on removal.	No post retirement restrictions.
AFT	Chairperson and Member- 4 years / Chairperson- 70 years or 65 years Member- 65 years  No provision on reappointment	<b>Member:</b> <b>Grounds for Removal:</b> Misbehaviour or incapacity <b>Inquiry whether mandatory:</b> No. If any complaint is received, the Central Government shall make a preliminary scrutiny of such complaint. If on such scrutiny, the Central Government considers it necessary to investigate, it will place it before a Committee consisting of the following members: a) Cabinet Secretary as Chairperson, b) Secretary, Ministry of Defence c) Secretary, Department of Legal Affairs, Ministry of Law and Justice. This Committee submits its findings to the President. If he feels that there are reasonable grounds for an inquiry, he shall make a reference to the Chief Justice of India requesting him to nominate a judge of the Supreme Court to make an inquiry. <b>Authority for inquiry:</b> Judge of Supreme Court	Post retirement restrictions exist.
AAR-CCS	Chairperson- 3 years / Chairman- 70 years Members- 62 years  Reappointment allowed.	No provision on removal.	No post retirement restriction
AAR-IT	3 years / Chairman- 70 years Members: 62 years  Reappointment allowed.	No provision on removal.	No post retirement restriction

CWDT	Not applicable / Age of retirement same as sitting judge of a Supreme Court/High Court  Not applicable	Not applicable	No post retirement restrictions.
CAT	The Chairman, Vice-Chairman or other Member - 5 years / Chairman, Vice-Chairman and Member- 65 years  Reappointment allowed.	<b>Grounds for removal:</b> Proved misbehaviour and incapacity <b>Whether inquiry mandatory:</b> No. Such a removal must be based on a preliminary scrutiny by the Central Government, which shall place it before a Committee comprising of i) Cabinet Secretary as Chairman, ii) Secretary, Ministry of Personnel, Public Grievances and Pensions and Secretary. Iii) Department of Legal Affairs, Ministry of Law, Justice and Company Affairs as Members.  Based on the investigation of this committee, if the President feels that there are reasonable grounds for making any inquiry, a reference should be made to the Chief Justice of India. <b>Authority for inquiry:</b> Judge, Supreme Court.	Post retirement restrictions exist for the Chairman and Vice-Chairman of the Central Administrative Tribunal.
CSTAA	No information available / No information available  No provision on reappointment	No information available	No post retirement restrictions.
COMPAT	Chairperson and Member-5 years / Chairperson- 68 years Members- 65 years.  Reappointment allowed.	<b>Grounds of removal:</b> Five grounds and an additional one where the member or chairperson has been engaged at any time, during his terms of office, in any paid employment. <b>Inquiry Whether mandatory:</b> Yes, but only for grounds (e) and (f). <b>Authority for inquiry:</b> Judge, Supreme Court.	No post retirement restrictions.

CESTAT	<p>President- 3 years / President- 65 years Member- 62 years</p> <p>No provision on reappointment</p>	No provision on removal.	No post retirement restriction.
CyAT	<p>Chairperson or Member- 5 years / Chairperson and Members- 65 years</p> <p>No provision on reappointment</p>	<p><b><u>Chairperson and Members:</u></b></p> <p><b>Grounds of removal:</b> Proved misbehaviour or incapacity. <b>Inquiry whether mandatory:</b> No. In case there is an allegation, there will be a preliminary scrutiny. If on preliminary scrutiny the Central Government considers it necessary to investigate into the allegation, it shall place the complaint before a Committee comprising of the i) Secretary, Co-ordination and Public Grievances in the Cabinet Secretariat as Chairperson, ii) Secretary, Department of Information Technology and iii) Secretary, Department of Legal Affairs, Ministry of Law and Justice as members. On receipt of the report of the Committee, if the President is of the opinion that there are reasonable grounds for making an inquiry, he shall make a reference to the Chief Justice of India. <b>Authority for inquiry:</b> Judge, Supreme Court</p>	No post retirement restriction
DRAT	<p>Chairperson 5 years / Chairperson- 65 years</p> <p>Reappointment allowed.</p>	<p><b>Grounds for removal:</b> Proved misbehaviour or incapacity. <b>Inquiry whether mandatory:</b> Yes <b>Authority for inquiry:</b> Judge, Supreme Court.</p>	No post retirement restrictions
DRT	<p>Presiding Officer- 5 years / Presiding Officer- 62 Years</p> <p>No provision on reappointment</p>	<p><b>Grounds of removal:</b> Proved misbehaviour or incapacity. <b>Inquiry whether mandatory:</b> Yes. <b>Authority for inquiry:</b> Judge, High Court</p>	No post retirement restrictions

EPFAT	<p>Presiding officer- 5 years. / Presiding Officer- 62 years</p> <p>No provision on reappointment</p>	<p><b>Ground of removal:</b> Proved misbehaviour or incapacity</p> <p><b>Inquiry whether mandatory:</b> Yes</p> <p><b>Authority for inquiry:</b> Judge, High Court</p>	No post retirement restrictions.
FCAT	<p>Chairperson and Members- 3 years / No information available</p> <p>Reappointment allowed for Chairman</p>	<p><b>Members-</b> the Central Government may remove from office any member of the Appellate Tribunal before the expiry of his term of office after consultation with the Chairman of the Appellate Tribunal or on the recommendation of the Chairman of the Appellate Tribunal.</p>	No post retirement restrictions
ITAT	<p>No information available / President- 65 years, Vice President, and Members- 62 years</p> <p>No provision on reappointment</p>	No provision on removal.	No post retirement restriction
IPAB	<p>Chairperson, Vice- Chairperson or other Members- 5 years / Chairperson and Vice- Chairperson- 65 years Member- 62 years.</p> <p>No provision on reappointment</p>	<p><b>Grounds of removal:</b> Proved incapacity and misbehaviour</p> <p><b>Inquiry whether mandatory:</b> Yes</p> <p><b>Authority for Inquiry:</b> Judge, Supreme Court</p>	No post retirement restrictions
KWDT-II	Not applicable / Age of retirement same as sitting judge of a Supreme Court/High Court	Not applicable	No post retirement restrictions.

	Not applicable		
MWDT	Not applicable / Age of retirement same as sitting judge of a Supreme Court/High Court  Not applicable	Not applicable	No post retirement restrictions.
NCLAT	Chairperson and members- 5 years / Chairperson- 70 years Members- 67 years  Reappointment allowed.	<b><u>Chairperson and Other Members:</u></b>  <b>Grounds of removal:</b> 5 grounds and proved misbehaviour and incapacity. <b>Inquiry whether mandatory:</b> Yes. <b>Authority for inquiry:</b> Judge, Supreme Court.	No post retirement restriction
NCLT	President and other members- 5 years / President- 67 years Other members- 65 years  Reappointment allowed.	<b>Grounds of removal:</b> Five Grounds. <b>Inquiry whether mandatory:</b> Yes <b>Authority for inquiry:</b> Judge, Supreme Court of India.	No post retirement restriction
NCDRC	President and members- 5 years / President and members- 70 years  Reappointment allowed.	Chairman and Members are <b>disqualified</b> for appointment on the following grounds:  a) If they have been convicted and sentenced for imprisonment for an office which involves moral turpitude b) If they have been found to be an undischarged insolvent c) If they are of unsound mind and stand so declared by a competent court d) If they have been removed or dismissed from the Service of the Government or a body corporate owned or controlled by the Government e) If they have in such financial or other interest that is likely to prejudicially affect the discharge by him or his functions as member.	No post retirement restriction

		f) If they have any such other disqualifications as may be prescribed by the Central Government	
NGT	<p>Chairperson, Judicial Members and Expert Members- 5 years / Supreme Court Judge- 70 years Chief Justice of High Court- 67 Years Judge of High Court- 67 Years Expert Member- 65 Years</p> <p>Reappointment barred.</p>	<p><b>Grounds for removal:</b> Five grounds. <b>Inquiry whether mandatory:</b> Yes. <b>Authority for inquiry:</b> Judge, Supreme Court</p>	No post retirement restriction
NHT	<p>Till the age of retirement / Presiding Officer- 62 Years</p> <p>No provision on reappointment</p>	<p><b>Grounds of Removal:</b> Proved misbehaviour and incapacity. <b>Inquiry whether mandatory:</b> No. If on preliminary scrutiny, the President considers it necessary to investigate into the allegation it shall place the complaint before a Committee consisting of the following persons to investigate the charges. The Committee comprises of i) Secretary (Coordination and Public Grievances) Cabinet Secretariat ii) Secretary, Ministry of Road Transport and Highways iii) Secretary, Department of Legal Affairs, Ministry of Law and Justice. The Committee shall submit its findings to the President who, if he is of the opinion that there are reasonable grounds for making an inquiry, shall make a reference to the Chief Justice of India. <b>Authority for inquiry:</b> Judge, High Court.</p>	No post retirement restriction

RRT	Chairperson and Members- 5 years / No information available  Reappointment barred.	In case the Chairman or any other member is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government may appoint another person to act in his place during his absence.	No post retirement restriction
RCT	Chairman, Vice Chairman and Member- 5 years / Chairman- 65 years Vice-Chairman and Members- 62 years  No provision on reappointment	<b>Grounds of Removal:</b> Proved misbehaviour or incapacity. <b>Inquiry whether mandatory:</b> Yes. <b>Authority for Inquiry:</b> Judge, Supreme Court.	Post retirement restrictions exist for the Chairman and Vice-Chairman. A member is eligible for appointment as the Chairman, Vice-Chairman of the Railways Claims Tribunal or any other Tribunal but not in the employment of either the Government of India or Government of state.
RBWDT	Not applicable / Age of retirement same as sitting judge of a Supreme Court/High Court  Not applicable	Not applicable	No post retirement restrictions.
REAT	Chairperson and members- 5 years / Chairperson: 67 years Member: 65 years  Reappointment barred.	<b>Grounds of removal:</b> Five grounds. <b>Inquiry whether mandatory:</b> Not specified. Members can be removed by the Appropriate Government in consultation with the Chief Justice of the High Court. <b>Authority for inquiry:</b> Not mentioned.	Post retirement restriction exists for Chairperson, judicial, technical and administrative members.
SAT	Presiding Officer and Members- 5 years / Presiding officer- 68 years Member- 62 Years  No provision on reappointment	<b>Grounds for removal:</b> Five grounds <b>Inquiry whether mandatory:</b> Yes. <b>Authority for inquiry:</b> Judge, Supreme Court.	No post retirement restrictions

TDSAT	Chairperson and members- 3 years / Chairperson- 65 years Member- 65 years  No provision on reappointment	<b>Grounds of removal:</b> Five grounds. <b>Inquiry whether mandatory:</b> Inquiry mandatory only for ground (d) and (e). <b>Authority for inquiry:</b> Judge, Supreme Court	Post retirement restrictions exist for Chairperson and other members.
VWDT	Not applicable / Age of retirement same as sitting judge of a Supreme Court/High Court  Not applicable	Not applicable	No post retirement restrictions.

## ANNEXURE-C SUBJECT MATTER AND JURISDICTION OF TRIBUNALS

Tribunal	Nodal Ministry	Subject Matter	Jurisdiction
AAT	Ministry of Civil Aviation	Claims related to eviction from airport premises.	It has original jurisdiction and hears appeals against the order of the quasi-judicial officer, Eviction Officer who may evict persons in unauthorised occupation of airport premises.
AERAAT	Ministry of Civil Aviation	The AERAAT regulates tariff and other charges for the aeronautical services rendered at airports and also monitors performance standards of airports	It decides any dispute between two or more service providers, between a service providers and a group of consumer. It also decides any appeals against the decision of the Airport Economic Regulatory Authority which determines tariff for aeronautical services and other related fees It doesn't have jurisdiction over anything that would come under the purview of Monopolies and Restrictive Trade Practices Commission, or Consumer Disputes Redressal Forum or anything appealable under section 28K of the Airports Authority of India Act, 1994.

APTEL	Ministry of Power	Under the Electricity Act, the tribunal deals with generation, transmission, distribution, trading and use of electricity as well as the electricity industry in general. Under the Petroleum and Natural Gas Regulatory Act, it deals with petroleum, petroleum products and natural gas excluding production of crude oil and natural gas.	The tribunal has the jurisdiction to hear appeals against the orders of the Adjudicating officer or The Central Regulatory Commission or State Regulatory Commission or Joint Commission which can adjudicate disputes relating to availability of transmission facility, the quality of electricity, operation of the grid etc. Under the Petroleum And Natural Gas Regulatory Board Act, 2006, it hears appeals against any decision of the board which deals with petroleum and its products as well as natural gas.
ATFE	Ministry of Finance	Promotion and development of foreign exchange in India and facilitate external trade and payments.	It has appellate jurisdiction and entertains appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals) which decide disputes related to Foreign Exchange Management Act.
ATFP (SAFEMA, PMLA)	Ministry of Finance	It deals with forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances; illegally acquired properties of smugglers and foreign exchange manipulators; matters related to money laundering by seizure of properties obtained from money laundering.	It has appellate jurisdiction and hears: appeals against seizure of property under the NDPS by competent authority; appeals against any order of a competent authority forfeiting acquired properties of smugglers and foreign exchange manipulators; It hears appeals against the orders of the Adjudicating Authority which decides whether any of the property seized is involved in money laundering.
AFT	Ministry of Defence	Disputes and complaints related to commission, appointments, enrolments and conditions of service in respect of persons subject to the Army Act, 1950, The Navy Act, 1957 and the Air Force Act, 1950.	The tribunal has original jurisdiction over all military personnel and their heirs in all service related matters. It has appellate jurisdiction with regards to decision of courts-martial on service related matters.
AAR-CCS	Ministry of Finance	"advance ruling" means the determination, by the authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant. If the applicant thinks the charge should be different, they apply to the Authority for an Advance Ruling, determining their liability.	Jurisdiction over "applicants" which are: non-resident setting up a joint venture in India in collaboration with a non-resident or resident, or a resident setting up a joint venture in India in collaboration with a non-resident, making application. They examine appeals against the order of the competent authority under their respective Acts, however this is an original jurisdiction, considering that the competent authority does not exercise adjudicatory powers.

AAR-IT	Ministry of Finance	Advance Ruling means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto.	Jurisdiction over "applicants" which are: a non-resident; a resident-undertaking proposing to undertake a transaction with a non-resident can obtain advance ruling in respect of any question of law or fact in relation to the tax liability of the non-resident arising out of such transaction; a resident who has undertaken or propose to undertake one or more transactions of value of Rs.100 crore or more in total; a notified public sector company; any person, being a resident or non-resident, can obtain an advance ruling to decide whether an arrangement proposed to be undertaken by him is an impermissible avoidance arrangements and may be subjected to General Anti Avoidance Rules or not.
CAT	Ministry of Personnel, Public Grievances and Pensions	Adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or other authorities under the control of the Government.	Original jurisdiction on all such matters against any order or decision of the concerned competent authority.
CESTAT	Ministry of Finance	Expeditious disposal of appeals in matters relating to these indirect taxes. Prior to this tribunal, there existed no right to appeal.	Appeals against Appellate Collector or the Central Board of Excise and Customs or the Commissioners (Appeals)
CSTAA	Ministry of Finance	To settle Inter-State disputes falling under Section 6A read with section 9 of the Central Sales Tax Act, 1956.	Appellate, against highest state appellate authority.
COMPAT	Ministry of Corporate Affairs	To hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Competition Act; to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub- section(2) of section 53Q of the Competition Act, and pass orders for the recovery of compensation under section 53N of the Competition Act.	Appeals against orders by the Competition Commission of India

CyAT	Ministry of Electronics and Information Technology	The Cyber Appellate Tribunal shall has the same powers as a civil court, in matters related to the Information Technology Act, 2000, while trying a suit, in respect of the following matters, namely:– (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents or other electronic records; (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for default or deciding it ex pane; (g) any other matter which may be prescribed.	Appellate jurisdiction. Appeals against order of Adjudicating Officer or Controller.
DRT	Ministry of Finance	Under the RDDBFI, banks and financial institutions apply to the DRT for recovery of any debts due to them. Under the SARFAESI, borrowers, guarantors, and other any other person aggrieved by any action of the bank can approach the DRT.	It has original jurisdiction with respect to any bank or financial institution's claim for the debt due to it as well as claims by any person aggrieved by an action of the bank. The DRT only has jurisdiction when the amount due to banks and financial institutions is more than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.
DRAT	Ministry of Finance	Under the RDDBFI, banks and financial institutions apply to the DRT for recovery of any debts due to them. Under the SARFAESI, borrowers, guarantors, and other any other person aggrieved by any action of the bank can approach the DRT.	The DRAT has appellate jurisdiction and deals with any appeals made against the order or decision of the DRT.
EPFAT	Ministry of Labour and Employment	A person aggrieved by an employer's defaulting payment to the Provident Fund or Insurance Scheme can approach the EPFAT from an order of the Commissioner.	It has appellate jurisdiction from an order of the Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner on disputes regarding provident fund can approach the EPFAT.
FCAT	Ministry of Information and Broadcasting	Any person applying for a certificate in respect of a film who is aggrieved by any order of the Board of Film Certification can approach the FCAT.	The Board performs purely certification function after having viewed the film and as the FCAT is the forum of first hearing of the dispute it has original jurisdiction.
ITAT	Ministry of Law and Justice- Department of Legal Affairs	Assessment of income tax liability under the Income Tax Act, 1961.	Appellate jurisdiction against orders of various authorities under the Income Tax Act such as the Principal Commissioner, Commissioner (Appeals), Assessing Officer relating to matters such as assessment of tax liability.

IPAB	Department of Industrial Policy and Promotion, Ministry of Commerce	In case of an unsatisfactory order from Patents Controller Trademark Registry, GI Registry, Copyright Registry with respect to the intellectual property the IPAB can be approached for resolution.	The Regulators perform only statutory functions that does not involve adjudication. Therefore, IPAB has original jurisdiction.
NCLT	Ministry of Corporate Affairs	Any matter of dispute regarding a company incorporated under the Companies Act, 2013	NCLT has an original jurisdiction.
NCLAT	Ministry of Corporate Affairs	Same as above	NCLAT hears appeals from the orders of NCLAT.
NCDRC	Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution	To enable consumers to secure less expensive and speedy redressal of their grievances.	To entertain a complaint valued more than one crore and also have Appellate and Revisional jurisdiction from the orders of State Commissions or the District fora as the case may be.
NGT	Ministry of Environment, Forest and Climate Change	Effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property	NGT will have jurisdiction over all civil cases involving substantial question of the environment.
NHT	Ministry of Highways and Surface Transport	This tribunal deals with removal of unauthorised occupation from highways, recovery of cost to do so and fine imposed, right to access to highways, prevention and repair of damages to highway, prohibition to leave animals and vehicles in dangerous positions and construction on highway land.	It has appellate jurisdiction and entertains appeals against decision taken by the Highway Administration or any officer authorised on its behalf taken under sections 26, 27, 28, 36, 37 and 38 of the Act (removal of unauthorised occupation from highways, prevention of damage to highways and their repair, construction on highway land, etc)
RCT	Ministry of Railways	It deals with liability of the Railways in case of any accident and also compensation and refund of freight in case of any loss, damage or no delivery of animals or goods entrusted to a railway administration for carriage by railway.	It has jurisdiction to hear claims against the railway administration related to loss, destruction, damage, non-delivery or deterioration of goods entrusted to them for carriage and for death or injuries or loss to a passenger in a railway accident or untoward incident.
RRT	Ministry of Railways	It deals with any complaints against the railway administration.	It has original jurisdiction to hear complaints against railway administration .
REAT	Ministry of Housing and Urban Affairs	establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from	Appellate jurisdiction from the Real Estate Regulatory Authority

		the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters	
SAT	Ministry of Finance	It deals with the stock exchanges and other securities market, protection of investors' interest and all related matters.	It has appellate jurisdiction with regards any decision of SEBI which deals with issues pertaining to the securities market in India.
TDSAT	Ministry of Communications and Information Technology	It deals with challenges to the computation of license fee by the licensor, wrongful levy and charge of royalty and license fee for frequency allocation, blocking of calls by one group of service providers, disputes relating to default traffic, challenges to tariff fixed by TRAI, encashment of bank guarantees, disputes between broadcasters etc.	It has both original jurisdiction and appellate jurisdiction. On one hand it has jurisdiction to adjudicate any disputes between a licensor and licensee, two or more service providers or between a service provider and consumers which relate to the telecom sector. On the other hand, it has appellate jurisdiction with regards to any appeal against a decision of the TRAI which deals with telecom sector and interests of service providers and consumers. However, it doesn't have jurisdiction over anything that would come under the purview of Monopolies and Restrictive Trade Practices Commission, or Consumer Disputes Redressal Forum or Section 7B(1) of the Indian Telegraph Act 1885.
CWDT	Ministry for Water Resources	Water dispute regarding interstate river Cauvery and the river valley thereof.	Tamil Nadu and Karnataka
KWDT-II	Ministry for Water Resources	Water dispute regarding the Inter-State river Krishna and the river valley thereof.	Tamil Nadu, Andhra Pradesh and Karnataka
MWDT	Ministry for Water Resources	Water dispute relating to Mahadayi river	Goa, Karnataka, Maharashtra
VWDT	Ministry for Water Resources	Water dispute relating to Vasandhara river	Orissa and Andhra Pradesh
RBWDT	Ministry for Water Resources	Water dispute regarding the water of Ravi and Beas	Punjab, Haryana and Rajasthan

## ANNEXURE-D TRIBUNALS IN FOREIGN JURISDICTIONS

## (a) France

French tribunals, known as Administrative Courts (*Ordre administratif*), have a general jurisdiction on administrative matters. This system comprises three levels, a first instance tribunal, an appellate tribunal, and a second appellate tribunal.<sup>121</sup> Considering that there are two appeals, there is no provision enabling judicial review from the regular courts or an appeal to the regular courts.<sup>122</sup> In terms of specific subject matter, this general administrative jurisdiction includes the review of administrative decisions by branches of government, direct taxes, employment, actions by regional councils, municipal elections, etc. making the jurisdiction significantly wide.<sup>123</sup> However, considering the restriction of appeals to or review by regular courts, this system, while efficient for France, would not be viable in the Indian context. This impracticability has also been acknowledged by the Law Commission of India.<sup>124</sup>

## (b) South Africa

South Africa, being a former British colony, inherited a similar framework of tribunals as India did. It is multifaceted and serves multiple functions. Broadly, tribunals in South Africa serve one or more of the following functions: Administrative, Judicial, Hybrid (both, administrative and judicial), Quasi-judicial, and *Sui generis*.<sup>125</sup> Furthermore, each tribunal's scope of powers, functions, and jurisdiction are determined by statute.<sup>126</sup> Therefore, such a system is a varied one that does not operate uniformly. In fact, much like India, the South African tribunals framework has been criticised for its lack of uniformity, incoherence and haphazard nature.<sup>127</sup> Since the present Indian framework suffers from problems that emanate from a lack of uniformity, it leaves little scope to apply features of the South African tribunals framework to India.

## (c) Canada

<sup>121</sup> The Judiciary in France, available at [http://www.justice.gouv.fr/art\\_pix/plaquette\\_justiceenfrance\\_angl.pdf](http://www.justice.gouv.fr/art_pix/plaquette_justiceenfrance_angl.pdf) (last accessed on 6<sup>th</sup> February, 2018)

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> 272<sup>nd</sup> Report, Law Commission of India, p. 11

<sup>125</sup> Rashri Baboolal, A Discussion of Jurisdiction in South Africa, Frank University of Pretoria, Pretoria, South Africa, pp. 31 and 32 available at <http://socioeconomica.info/xmlui/bitstream/handle/11171/223/3.pdf?sequence=1> (last accessed on 13<sup>th</sup> February, 2018)

<sup>126</sup> *Ibid.*

<sup>127</sup> Gillian Claire Armstrong, "Administrative Justice and Tribunals in South Africa: A Commonwealth Comparison, December 2011, Faculty of Law, Department of Public Law, University of Stellenbosch, P 130 onwards (History of Tribunal Reform in SA)

Administrative tribunals in Canada are specialised, quasi-judicial, decision-making authorities that are created under specific Acts of the legislature, distinct from the ordinary court system. Apart from adjudication, several tribunals are vested with investigative/fact-finding jurisdictions, potentially overseeing multiple statutes. For instance, the Ontario Child and Family Services Review Board gets its powers from the Child and Family Services Act (1990), the Intercountry Adoption Act (1998) and the Education Act (1990). Canada has two levels of administrative tribunals: Federal and Provincial. Appointments to the tribunals are made by the order-in council, which is a formal order by the Governor General backed by the Cabinet or a Committee of the Cabinet.<sup>128</sup> The Canadian courts have been entrusted with the power to review tribunals' decisions, even where the statute does not explicitly provide for an appeal.<sup>129</sup> Certain administrative tribunals are given the power to enforce their decisions themselves, either as adjudicatory bodies or as regulatory and licensing bodies.<sup>130</sup> The federal administrative tribunals are granted secretarial support through the Administrative Tribunals Support Service of Canada Act.<sup>131</sup> Considering the fact that the tribunals in Canada are an extension of the executive, it leaves little scope for the framework's application in the Indian context.

#### (d) Australia

Australia enacted the Administrative Appeals Tribunal Act, 1975 which set up the Administrative Appeals Tribunal (AAT). The AAT is a tribunal "with general jurisdiction to review a large range of government administrative decisions involved very advanced thinking."<sup>132</sup> The Parliament of Australia has since conferred jurisdiction of over 400 Acts to the AAT for administrative review.<sup>133</sup> The Law Commission also noted that following this, several tribunals have been set up in Australia, such as the Equal Opportunity Tribunal, the Migration Tribunal, etc. Tribunals are considered an extension of the Executive and therefore do not exercise judicial power, in compliance with the separation of powers doctrine.<sup>134</sup> Justice Garry Downes (former President of the AAT) notes that tribunals fulfil one or more of three functions: (a) Reviewing administrative decisions or the executive decisions of government; (b) Making original administrative decisions; (c) Resolving disputes in areas including consumer trading, tenancy and similar matters.<sup>135</sup> They are executive bodies exercising "merits review", where the merit of the administrative action in question,

<sup>128</sup> Kuttner, Thomas S. "Administrative Tribunals in Canada," The Canadian Encyclopaedia, 6 February 2006, (<https://www.thecanadianencyclopedia.ca/en/article/administrative-tribunals/>) (last accessed on 14<sup>th</sup> February, 2018)

<sup>129</sup> 272<sup>nd</sup> Report, Law Commission of India, at p. 17

<sup>130</sup> *Ibid.*

<sup>131</sup> "How Courts are organized", Department of Justice website, available at <http://www.justice.gc.ca/eng/csj-sjc/just/07.html> (last accessed on 13<sup>th</sup> February, 2018)

<sup>132</sup> Hon. Justice Garry Downes, "Tribunals in Australia: Their roles and responsibilities", Reform (Australian Law Reform Commission's Journal), Issue 84, Autumn 2004, available at <http://www.aat.gov.au/AAT/media/AAT/Files/Speeches%20and%20Papers/tribunals.pdf> (last accessed on 21<sup>st</sup> April, 2018) at p. 3

<sup>133</sup> *Ibid.*

<sup>134</sup> Hon. Justice Garry Downes, "Overview of Tribunals Scene in Australia", International Tribunals Workshop, Canberra, 8 April, 2006, available at <http://www.aat.gov.au/AAT/media/AAT/Files/Speeches%20and%20Papers/OverviewTribunalsSceneApril2006.pdf> (last accessed on 21<sup>st</sup> April, 2018) at p. 2

<sup>135</sup> *Ibid.*

independent of its legality, is reviewed.<sup>136</sup> making this model unviable in India, where tribunals are independent of the executive. While the Australian framework is ill-suited for the Indian context, it is important to note that Australia too has chosen the tactic of merging tribunals via the Tribunals Amalgamation Act, 2015, with an expected saving \$20.2 million over four years.<sup>137</sup>

(e) United Kingdom (UK)

The tribunals in UK have gone through several evolutionary changes, and was scrutinised multiple times, beginning with the Donoughmore Committee Report (1932), followed by the Franks Committee Report (1957), and most recently, the Leggatt Committee Report (2001).<sup>138</sup> While the Donoughmore Committee debated questions of constitutionality, recommending the appropriate circumstances when tribunals ought to be established, the Franks Committee addressed the question of procedure and oversight, recommending supervision by British and Scottish Councils on Tribunals. Finally, the Leggatt Committee scrutinised the framework as recently as 2001, leading to the promulgation of the Tribunals, Courts and Enforcement Act, 2007.

The problems that were identified by the Leggatt Committee Report included lack of independence and impartiality in its functioning, as the tribunals adjudicated upon actions of the executive who are also in charge of their appointments. Departments of the government provide administrative support to these tribunals, such as salaries, infrastructural support, etc., resulting in a perception that tribunal members identified with their respective sponsoring department, against whom they were supposed to hear disputes.<sup>139</sup> The lack of uniformity and the ad-hoc manner in which the tribunals were set up by different departments based on need is an additional issue. The fifth chapter of the Leggatt Report covers the Committee's primary recommendation to revamp the United Kingdom's tribunals framework. The committee identified three elements that are prerequisite for a streamlined system:<sup>140</sup>

- a. creating the initial core (tribunals) service;
- b. developing new ways of working, new processes and new rules for the service;
- c. preparing other tribunals for inclusion in the service.

The proposed streamlining intended to create the following divisions:

- **First-tier tribunals:** The Committee proposed a grouping of tribunals based on subject-matter into coherent areas of work called Divisions, each of which would be administered by a single government department.<sup>141</sup> Consequently, tribunals were grouped into nine Divisions: Immigration, Social Security and Pensions, Land and Valuation, Financial, Transport, Health and Social Services, Education, Regulatory, and Employment.
- **Second-tier tribunals** - The Leggatt Report recommended that there should be a single route for all appeals from first-tier tribunals.<sup>142</sup>

<sup>136</sup> *Ibid.*

<sup>137</sup> Moira Coombs, "Amalgamation of Merits Review Tribunal", available at: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201415/Tribunals](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201415/Tribunals) (last accessed on 21<sup>st</sup> April, 2018)

<sup>138</sup> Gavin Drewry, The Judicialisation of 'Administrative' Tribunals In The UK: From Hewart to Leggatt, *Transylvanian Review of Administrative Sciences*, No. 28 E SI/2009, at p.47

<sup>139</sup> Andrew Leggatt, 'Tribunals for Users- One System, One Service : Report of the Review of Tribunals by Sir Andrew Leggatt', The National Archives, March 2001, available at - <http://webarchive.nationalarchives.gov.uk/20060214102004/http://www.tribunals-review.org.uk/> (last accessed on 12<sup>th</sup> February, 2018), at para 2.20

<sup>140</sup> *Ibid.* para 5.16

<sup>141</sup> *Ibid.* para 6.3

<sup>142</sup> *Ibid.* para 6.5

In order to ensure the independence of the tribunals, the Leggatt Committee developed a clear separation between the ministries and other authorities, whose policies and decisions are tested by the tribunals, and the minister who appoints and supports them. To centralise the administration and form a coherent system of tribunals, the Leggatt Committee suggested that tribunals should be made to sit alongside ordinary courts, by bringing their administrative control under the Lord Chancellor's Department. The United Kingdom model in its present iteration presents beneficial features that could be applied in India, particularly a merger of tribunals based on subject-matter. As noted earlier, this is a route that even Australia has now taken, with the Tribunals Amalgamation Act in 2015.



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