



Tribunals Reforms Bill, 2021

Context:

The Tribunal Reforms Bill, 2021 was passed in Lok Sabha amid opposition demanding further discussion on the Bill.

Relevance:

GS-II: Polity and Constitution (Constitutional Provisions, Quasi-Judicial Bodies), GS-II: Governance (Government Policies and Interventions)

Dimensions of the Article:

1. The Tribunal Reforms Bill, 2021
2. The Need for the Tribunal Reforms bill
3. Key Issues with the Bill
4. Constitutional provisions and mandates regarding Tribunals
5. Issues with tribunalization

The Tribunal Reforms Bill, 2021

- The Tribunal Reforms Bill, 2021 seeks to withdraw and then replace the:
 1. Cinematograph Act,
 2. Copyright Act,
 3. Customs Act,
 4. Patents Act,
 5. Airport Authority of India Act,



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6. Trade Marks Act, and
 7. Geographical Indications of Goods (Registration and Protection) Act.
- The five tribunals which are sought to be abolished by the Bill (and their functions are to be transferred to the existing judicial bodies) are:
 1. Film Certification Appellate Tribunal,
 2. Airports Appellate Tribunal,
 3. Authority for Advanced Rulings,
 4. Intellectual Property Appellate Board and
 5. The Plant Varieties Protection Appellate Tribunal.
 - The government said this would reduce another layer of litigation by abolishing tribunals or authorities under various laws.
 - The bill provides for a Search-cum Selection Committee based on whose recommendations the Members of the various tribunals are to be appointed.
 - The members of the committee are:
 1. Chief Justice of India, or a Supreme Court Judge nominated by him, as the Chairperson (with casting vote),
 2. two Secretaries nominated by the Union government,
 3. the sitting or outgoing Chairperson, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court; and
 4. the Secretary of the Ministry under which the Tribunal is constituted (with no voting right).
 - For state tribunals, there will be a separate search committee consisting of the following members:
 1. the Chief Justice of the High Court of the concerned state, as the Chairman (with a casting vote),
 2. the Chief Secretary of the state government and the Chairman of the Public Service Commission of the concerned state,
 3. the sitting or outgoing Chairperson, or a retired High Court Judge; and
 4. the Secretary or Principal Secretary of the state's general administrative department (with no voting right).
 - According to the Bill, the Chairperson of a tribunal shall hold office for a term of four years or till he/ she attains the age of seventy years, whichever is earlier. For the members of the tribunal, the term is four years or till he or she attains the age of sixty-seven years, whichever is earlier

The Need for the Tribunal Reforms bill

- There has been incessant litigation since 1985 by advocate bar associations against the tribunals over serious questions of their independence from the executive.
- The quality of adjudication has been underwhelming in most cases, the delays have been substantial because the government has struggled to find competent persons willing to accept positions on these tribunals, and litigation has actually become more expensive, as these tribunals added another layer to it.
- The Government of India began the process of rationalisation of tribunals in 2015.



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- By the Finance Act, 2017, seven tribunals were abolished or merged based on functional similarity and their total number was reduced to 19 from 26.

Key Issues with the Bill

- The Bill suffers from the same flaws of the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 ("Ordinance") promulgated by the President in April 2021 which it sought to replace.
- In July 2021, the Supreme Court in the case of Madras Bar Association v. Union of India had struck down the provisions requiring a minimum age for appointment as chairperson or members as 50 years and prescribing the tenure of four years. It held that such conditions are violative of the principles of separation of powers, independence of judiciary, rule of law and Article 14 of the Constitution of India.
- However, under the proviso to Section 3, the minimum age requirement of 50 years still finds a place in the Bill. Similarly, the tenure for the Chairperson and the members of the tribunal remains four years.
- Furthermore, Section 3(7) also sought to undo the judgment of the Apex Court which held the provisions related to the recommendation of two names for each post by the Search-cum-Selection Committee and requiring the decision to be taken by the government preferably within three months.

Constitutional provisions and mandates regarding Tribunals

- **The provision for Tribunals was added by the 42nd Constitutional amendment act which added two new articles to the constitution.**
- Article 323-A: of the constitution which empowers the parliament to provide for the establishment of administrative tribunals for adjudicating the disputes relating to recruitment and conditions of service of a person appointed to public service of centre, states, local bodies, public corporations and other public authority.
- Accordingly, the Parliament has enacted Administrative Tribunals Act, 1985 which authorizes parliament to establish Centre and state Administrative tribunals (CAT & SATs).
 1. Central Administrative Tribunal (CAT):
 - It was set up in 1985 with the principal bench at Delhi and additional benches in other states (It now has 17 benches, 15 operating at seats of HC's and 2 in Lucknow and Jaipur.
 - It has original jurisdiction in matters related to recruitment and service of public servants (All India services, central services etc).
 - Its members have a status of High Court judges and are appointed by president.



- Appeals against the order of CAT lie before the division of High Court after Supreme Court's Chandra Kumar Judgement.
- 2. State administrative tribunals (SAT):
 - Central government can establish state administrative tribunals on request of the state according to Administrative tribunals act of 1985
 - SAT's enjoy original jurisdiction in relation to the matters of state government employees.
 - Chairman and members are appointed by President in consultation with the governor.
- Article 323-B: which empowers the parliament and the state legislatures to establish tribunals for adjudication of disputes related to following matters:
 1. Taxation
 2. Foreign exchange, Imports and Exports
 3. Industry and Labour
 4. Land reforms
 5. Ceiling on Urban Property
 6. Elections to parliament and state legislature
 7. Food stuffs
 8. Rent and Tenancy Rights

Issues with tribunalization

1. **Appeal:** Administrative tribunals were originally set up to provide specialized justice delivery and to reduce the burden of caseloads on regular courts. However, appeals from tribunals have inevitably managed to enter the mainstream judicial system.
2. **High Pendency:** Many tribunals also do not have adequate infrastructure to work smoothly and perform the functions originally envisioned leading to high pendency rates thus proving unfruitful to deliver quick justice.
3. **Appointments:** Appointments to tribunals are usually under the control of the executive. Not only does the government identify and appoint the members of the tribunals, but it also determines and makes appropriate staffing hires. This is problematic because often there is a lack of understanding of the staffing requirements in tribunals.
4. There is a **lack of information** available on the functioning of tribunals. Websites are routinely non-existent, unresponsive or not updated.
5. **Accessibility is low** due to scant geographic availability therefore justice becomes expensive and difficult.
6. **Against the principle of separation of powers:** Tribunalisation is seen as encroachment of judicial branch by the government.

-Source: *The Hindu*