

HALTING TRIBUNALISATION:

IMPACT OF THE JUDGMENT OF THE SUPREME COURT OF INDIA IN MADRAS BAR ASSOCIATION V UNION OF INDIA ON EXTANT TRIBUNALS

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INTRODUCTION

On the 25th of September, 2014, a Constitution Bench of the Supreme Court of India struck down the National Tax Tribunals Act, 2005 (“NTT Act”) in its judgment in *Madras Bar Association v Union of India*¹ (hereinafter “NTT case”). The National Tax Tribunal (“NTT”) was set up to take over the existing jurisdiction of High Courts in India to hear and decide appeals pertaining to ‘questions of law’ relating to Income Tax, Customs, Central Excise and Service Tax matters, arising from the Income Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal. While the power of the legislature (Union Parliament or State Legislative Assembly) under Article 323B of the Constitution to create by law, any tribunal and vest any jurisdiction upon it as the legislature so chooses was upheld, the Supreme Court has however laid down that Tribunals which are vested with the jurisdiction of Courts should enjoy the same constitutional protections and features as Courts whose jurisdictions they are replacing. It was on this basis that the NTT was struck down as being unconstitutional, since it was a tribunal which had been vested with the extant subject matter jurisdiction of a High Court², but did not enjoy at least as much of the Constitution protection that the High Court enjoyed in respect of its independence from the executive.³ Moreover, the Court has also struck down provisions of the NTT Act on the ground that these provisions were responsible for the NTT being a less efficacious remedy than the High Courts it was supposed to replace.⁴

The principle, that a tribunal replacing a court must enjoy at least as much of the protections of the court, can be traced to the Constitution Bench judgment of the Supreme Court in *L Chandra Kumar v Union of India*⁵ and applied in *Union of India v Madras Bar Association*⁶ (the “NCLT case”) where certain provisions of the Companies Act, 1956 relating to the National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”) were held to be unconstitutional and “defective”. However, the NCLT and NCLAT were themselves held to be constitutional and valid. In its judgment in the NTT case, the Constitution Bench of the Supreme Court has expanded upon the principle with reference to the specific provisions of the NTT and found that taken individually and together, the provisions of the NTT Act do not sufficiently safeguard the independence of the NTT.

¹ Writ Petition 150 of 2006 reported in 2014 SCC Online SC 771.

² See Section 15 of the NTT Act.

³ *NTT case* (n 1), p. 225, para 89 (majority judgment) and p. 270 para 43 (concurring opinion of J Nariman).

⁴ *NTT case* (n 1), p. 215, para 80.

⁵ (1997) 3 SCC 261.

⁶ (2010) 11 SCC 1.

However, apart from guiding the future setting up of tribunals by the legislature, the NTT judgment will also immediately impact those tribunals which have been set up under Article 323B of the Constitution to deal with a wide set of laws. Our research has found twenty nine Central Government tribunals that are functioning at present ranging from single Bench tribunals such as the Telecom Disputes Settlement Appellate Tribunal to the income Tax Appellate Tribunal which has multiple Benches across the country and a sanctioned strength of one hundred and twenty nine Members.⁷ Each tribunal is set up with its own governing legislation and there is little uniformity in the various matters provided for in each of these legislations. A bill to provide for uniformity in some aspects for some tribunals, appellate tribunals and other authorities⁸ is currently pending consideration of the Rajya Sabha but does not cover all the aspects which are relevant to the functioning of the tribunals.

To understand the impact of the NTT judgment on individual tribunals, this note will analyse the parameters laid down by the Supreme Court in the NTT case in examining the provisions of the NTT Act and see how the same parameters could be applied to the provisions of other tribunal legislation. This exercise will point out where the defects in existing tribunal legislation and how they may be fixed to ensure constitutional compliance on the basis of the judgment in the NTT case.

The first part of this note will examine the NTT judgment and distil those parameters which have been used to test the constitutionality of the NTT Act. The second part will be a comparative chart applying the parameters which distilled from the NTT judgment to the extant tribunals to see which provisions in the legislation setting up these tribunals are likely to be affected.

⁷ State of the Nation's Tribunal report.

⁸ The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014 ("the Tribunals Bill").

1. WHAT IS A TRIBUNAL?

There is no statutory or constitutional provision which defines, exhaustively, what a “tribunal is. The recent Tribunals Bill introduced by the Union Government in the Rajya Sabha, does not provide a comprehensive legal definition of ‘tribunal’ but seeks to define the term by enumeration in sub-clause (i) of clause 2, by referring to the Tribunals in the First Schedule to the Tribunals Bill. However, the First Schedule does not contain an exhaustive list of all tribunals set up by the Central Government.⁹ The First Schedule to the Bill lists only twenty six such bodies, including the Coastal Aquaculture Authority, Press Council of India and the National Industrial Tribunal, all three of which, strictly speaking, are not ‘tribunals’.¹⁰ At the same time, the list also excludes certain key tribunals.¹¹

In order to get a grip on the term ‘tribunals’, the law laid down by the Supreme Court and other judicial bodies will have to be evaluated.

While the term has received extensive interpretation over a long period of time,¹² relevant here would be an instrumental definition of the term “tribunal” that was adopted by the Supreme Court of India in *NCLT case* where it was distinguished from a Court as follows:

“Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:

(i) Courts are established by the State and are entrusted with the State’s inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.

(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole Member, or can have a combination of a judicial Member and a technical Member who is an “expert” in the field to which the Tribunal relates. Some highly specialised fact-finding tribunals may have only technical Members, but they are rare and are exceptions.

(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.”¹³

⁹ See The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014 (the “Tribunals Bill”), First Schedule <<http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/Tribnule.pdf>> (accessed 28 February 2014).

¹⁰ See below pp 6.

¹¹ See below pp 6-7.

¹² See Alok Prasanna Kumar and Rukmini Das, “State of the Nation’s Tribunals: Introduction and Part 1: Telecom Disputes Settlement and Appellate Tribunal”, Vidhi Centre for Legal Policy, 2014 available at <http://www.vidhilegalpolicy.in/140618_State%20of%20the%20Nation's%20Tribunals%20-%20TDSAT.pdf> (accessed 24 November 2014), 4-6.

¹³ *NTT case* (n 1), p. 35, para 45.

An overbroad definition of the term “tribunal” will cause conceptual confusion on how to assess these institutions. A working, instrumental approach must be adopted in defining the term “tribunal”. To this effect, a definition has been adopted as follows; a tribunal is a permanent and independent body set up by the Legislature, to solely decide a *lis* between parties in the context of specific jurisdiction vested upon it by statute, and which is not part of the regular judiciary.¹⁴ In this context, a distinction must also be drawn from those special courts or “tribunals” which are constituted under a specific legislation but remain part of the existing judicial hierarchy, for instance, Labour Courts and Industrial Tribunals. Such bodies, while their jurisdiction is specified by statute, still function under the supervision and purview of the High Court.

The definition of a tribunal can therefore be split up into six criteria, which collectively are necessary and sufficient to designate a body as a tribunal. These are:

- (1) Permanency;
- (2) Independence from the Executive;
- (3) Set up by or under law made by Parliament;
- (4) To solely decide a *lis* between parties;
- (5) Specific jurisdiction vested by statute;
- (6) Not part of the regular judiciary.

This definition is in line with the instrumental definition adopted by the Supreme Court in *NCLT case*. It also follows the distinction between ‘tribunals’ and ‘quasi-judicial authorities’ as recently explained by the Supreme Court in *State of Gujarat v Gujarat Revenue Tribunal Bar Association*, where it held that:

“18. ...Where there is a *lis* between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority i.e. a situation where, (a) a statutory authority is empowered under a statute to do any act; (b) the order of such authority would adversely affect the subject; and (c) although there is no *lis* or two contending parties, and the contest is between the authority and the subject; and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi-judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a “court”, but not all. In case certain powers under CPC or CrPC have been conferred upon an authority, but it has not been entrusted with the judicial powers of State, it cannot be held to be a court.”¹⁵

In addition, this definition expressly excludes those courts which are ‘designated’ tribunals under certain statutes, such as High Courts and District Courts. These are sometimes designated ‘Company Courts’, ‘Election Tribunals’ or ‘National Industrial Tribunals’, and are not ‘tribunals’ *per se*, simply because they continue to be part of the regular judiciary under the Constitution, but only exercise certain additional jurisdictions under specific legislations. Likewise, bodies such as the Press Council of India do not actually decide a *lis* between parties though they may exercise quasi-judicial functions. The Coastal Aquaculture Authority, though required to be headed by a retired judge of the Supreme Court, does not even perform quasi-judicial functions.

¹⁴ See Alok Prasanna Kumar and Rukmini Das (n 11), p. 7.

¹⁵ *State of Gujarat v Gujarat Revenue Tribunal Bar Assn*, (2012) 10 SCC 353, p. 365 para 18.

Based on this definition, and on an examination of all current Central legislations for current and extant tribunals, the following final and exhaustive list of tribunals was arrived at:

- (1) Appellate Authority for Industrial and Financial Reconstruction
- (2) Airports Economic Regulatory Authority Appellate Tribunal
- (3) Appellate Tribunal for Electricity
- (4) Appellate Tribunal for Foreign Exchange
- (5) Appellate Tribunal for Forfeited Property
- (6) Appellate Tribunal for Forfeiture of Property
- (7) Appellate Tribunal for Prevention of Money Laundering
- (8) Armed Forces Tribunal
- (9) Authority for Advance Rulings (Income Tax)
- (10) Authority for Advance Rulings (Central Excise, Customs and Service Tax)
- (11) Board for Industrial and Financial Reconstruction
- (12) Central Administrative Tribunal
- (13) Central Excise Service Tax Appellate Tribunal (“CESTAT”)
- (14) Central Sales Tax Appellate Authority
- (15) Company Law Board
- (16) Competition Appellate Tribunal (“COMPAT”)
- (17) Cyber Appellate Tribunal
- (18) Debts Recovery Appellate Tribunal
- (19) Debts Recovery Tribunal
- (20) Employees' Provident Fund Appellate Tribunal
- (21) Film Certification Appellate Tribunal
- (22) Income Tax Appellate Tribunal (“ITAT”)
- (23) Intellectual Property Appellate Board
- (24) National Consumer Disputes Redressal Commission
- (25) National Green Tribunal
- (26) National Highways Tribunal
- (27) Railway Claims Tribunal
- (28) Securities Appellate Tribunal
- (29) Telecom Disputes Settlement and Appellate Tribunal¹⁶

This list relates only to tribunals which have been notified by the Central Government and are actually functioning. The NCLT and NTT do not find mention here simply because they were never operationalised before they were challenged in the Supreme Court.

¹⁶ Of the twenty nine tribunals listed above, it must be noted that there are at least three instances of one tribunal exercising the jurisdiction and performing the functions of two or more tribunals. These are the Authority for Advance Rulings (for Income Tax, Central Excise, Customs and Service Tax cases, and for Central Sales Tax cases, separately), Appellate Tribunal for Forfeited Property (for Narcotic Drugs and Psychotropic Substances Act, 1985 and Seizure and Attachment of Property of Foreign Exchange Manipulators Act, 1976 cases, separately) and the COMPAT (which also acts as the Airports Economic Regulatory Authority Appellate Tribunal, separately). These should not be confused with tribunals which deal with cases under multiple legislations, such as the CESTAT (Central Excise Act, 1944, Customs Act, 1962, and the Finance Act, 1994) and the ITAT (Income Tax Act, 1961 and the Wealth Tax Act, 1957). The three instances referred to here are actually cases where despite legislations providing for separate tribunals with separate jurisdictions, both the jurisdictions are being exercised by one tribunal alone as chosen by the Central Government.

2. PARAMETERS OF EFFICACY AND INDEPENDENCE

The Supreme Court of India, in the NTT case, has struck down the heart of the NTT Act by striking down Sections 5, 6, 7, 8 and 13 as being unconstitutional, rendering the Act, and by extension, the NTT largely otiose as a result. These provisions have been declared unconstitutional on grounds which can broadly be classified into reasons of efficacy and reasons of independence. The underlying premise is that unless the Tribunal replacing the court is one which is as independent as, and provides a remedy as efficacious as the court it is replacing, such a tribunal would be unconstitutional.

2.1. Efficacy

2.1.1. Seat of Tribunal

Section 5(2) of the NTT Act states

“The Benches of the National Tax Tribunal shall ordinarily sit at any place in the National Capital Territory of Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:

Provided that the Chairperson may for adequate reasons permit a Bench to hold its temporary sitting for a period not exceeding fifteen days at a place other than its ordinary place of seat.”

This provision was struck down by the Supreme Court holding that,

“Even though we have expressed the view, that it is open to the Parliament to substitute the appellate jurisdiction vested in the jurisdictional High Courts and constitute courts/tribunals to exercise the said jurisdiction, we are of the view, that while vesting jurisdiction in an alternative court/tribunal, it is imperative for the legislature to ensure, that redress should be available, with the same convenience and expediency, as it was prior to the introduction of the newly created court/tribunal. Thus viewed, the mandate incorporated in Section 5(2) of the NTT Act to the effect that the sittings of the NTT would ordinarily be conducted in the National Capital Territory of Delhi, would render the remedy inefficacious, and thus unacceptable in law.”¹⁷

What follows from this therefore is that when a tribunal is being vested with the jurisdiction of a court, then the tribunal must be just as accessible as the court to the intended litigant in order to constitute an “efficacious remedy”. In the NTT’s case, since the remedy available at each High Court was being vested in just one tribunal located in Delhi, it was held that this could not amount to an efficacious alternate remedy. Although the Act provided for the creation of additional benches, the

¹⁷ NTT case pp 215-16, para 80.

fact that this was left to the discretion of the Central Government was held to be unconstitutional as well.

While declaring sub-section (2) of Section 5 as unconstitutional, the Court however does not go into the impact of such a declaration outside of the other provisions. Because the rest of the Act was also struck down, the Court did not consider what would be the implication if this was the only provision which was unconstitutional. Indeed it is hard to see any tribunal being functional if a provision similar to sub-section (2) is struck down by the Courts unless the unconstitutionality is remedied by the insertion of a clause which mandates seats in all those places where the Court being replaced exercised jurisdiction.

This parameter can therefore be re-formulated as:

“Whether the tribunal taking over the function of the court is at least as geographically widespread and accessible as the court it seeks to replace?”

2.1.2. Appearance of non-legally trained authorised representatives

Section 13 of the NTT Act provided that Chartered Accountants would be entitled to appear on behalf of parties before the NTT. This, the Court held, after finding that the jurisdiction of the NTT being exclusively to decide questions of law, to be “unacceptable in law” since it permitted persons who have no training in law to appear before such tribunals on behalf of parties. In this context, the Court held:

“In our understanding, Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. These issues would, fall purely within the realm of facts. We find it difficult to accept the prayer made by the Company Secretaries to allow them, to represent a party to an appeal before the NTT. Even insofar as the Chartered Accountants are concerned, we are constrained to hold that allowing them to appear on behalf of a party before the NTT, would be unacceptable in law. We accordingly reject the claim of Company Secretaries, to represent a party before the NTT. Accordingly the prayer made by Company Secretaries in Writ Petition (Civil) no. 621 of 2007 is hereby declined. While recording the above conclusion, we simultaneously hold Section 13(1), insofar as it allows Chartered Accountants to represent a party to an appeal before the NTT, as unconstitutional and unsustainable in law.”¹⁸

This principle links to the entitlement of non-law practitioners to appear before the forum to the actual jurisdiction of the forum. The implication therefore is that while non-law practitioners would be entitled to appear before tribunals on behalf of parties where there are issues of fact which are required to be decided but not where there are only issues of law to be decided. Where a tribunal is empowered to determine questions of law as well, it cannot permit non-lawyers to address arguments on behalf of parties.

Therefore, the parameter in this case can be rephrased as:

“Whether the persons authorised to appear on behalf of parties in the Tribunal are trained and capable of assisting the Tribunal in exercising its jurisdiction?”

¹⁸ NTT case, p. 214 para 78.

2.2. Independence

2.2.1. Involvement of the Government in determining constitution and jurisdiction of Benches of the Tribunal

Sub-sections (3), (4), and (5) of Section 5 of the NTT Act allowed the Central Government to notify the areas in relation to which each Bench of the NTT may exercise its jurisdiction, determine the number of Benches and, in consultation with the Chairperson, transfer Members from one Bench to another, respectively.

These three sub-sections of Section 5 have been struck down by the Supreme Court on the ground that they substantially affects the independence in the functioning of the Tribunal. The sub-sections vest functions in the Central Government which would, in the context of High Courts, be the sole discretion of the Chief Justice of the High Court. Since the NTT was supposed to replace the High Court, it could not, in the Court's view be left beholden to the Central Government in this respect. The Supreme Court held:

“One cannot lose sight of the fact, that the Central Government will be a stakeholder in each and every appeal/case, which would be filed before the NTT. It cannot, therefore, be appropriate to allow the Central Government to play any role, with reference to the places where the benches would be set up, the areas over which the benches would exercise jurisdiction, the composition and the constitution of the benches, as also, the transfer of the Members from one bench to another. It would be inappropriate for the Central Government, to have any administrative dealings with the NTT or its Members. In the jurisdictional High Courts, such power is exercised exclusively by the Chief Justice, in the best interest of the administration of justice. Allowing the Central Government to participate in the aforesaid administrative functioning of the NTT, in our view, would impinge upon the independence and fairness of the Members of the NTT. For the NTT Act to be valid, the Chairperson and Members of the NTT should be possessed of the same independence and security, as the judges of the jurisdictional High Courts (which the NTT is mandated to substitute).”¹⁹

It must be noted that another principle which informs this particular finding is that the Central Government, which is a litigant in every case before the Tribunal, should not have the power to determine (for all practical purposes) the composition of Benches, jurisdiction of the Benches, and have a say in the functioning of the Tribunal itself.

It is not clear if both conditions, i.e., transfer of jurisdiction from a High Court, and Government being the principal litigant before the tribunal, must be satisfied for this test to be applicable. It is however, safe to assume that the fulfilment of either of the above conditions would be necessary and sufficient to make this test applicable.

However, this principle would not, *prima facie* extend to those Tribunals which review the actions of independent regulators such as the Securities Exchange Board of India, the Competition Commission of India or the Telecom Regulatory Authority of India. These regulators have independent statutory existence apart from the Central Government. On occasion, even the Central Government

¹⁹ NTT case pp. 216-7, para 81.

can be a party to a dispute with or before such regulatory bodies.²⁰ However, if such Tribunals exercised jurisdiction in subject matters earlier exercised by High Courts, the same level of independence would have to be granted in respect of constitution of Benches as well.

This parameter will therefore, not apply directly to those tribunals whose jurisdiction is limited exclusively to reviewing decisions of statutory regulators, unless the tribunal is exercising an appellate jurisdiction previously exercised by a High Court over such regulator.

This parameter therefore is:

“Where the Central Government is a party in every case before the Tribunal or where the Tribunal’s jurisdiction vested earlier with the High Court, whether the Tribunal’s functioning with respect to composition and jurisdiction of benches of the tribunal and transfer of members is vested with the President of the Tribunal?”

This parameter will be relevant for those tribunals whose jurisdiction exclusively consists of matters which involve challenges to decisions of the Central or State Government.

2.2.2. Qualifications of Members of the Tribunal

Section 6 of the NTT Act provides for the qualifications of the Chairpersons and Members of the NTT. The Chairperson is required to have been a former Supreme Court judge or a Chief Justice of High Court whereas a Member may be a Judge of a High Court or a Member of the ITAT or CESTAT for at least a period of seven years. Although the Supreme Court has struck down the entirety of Section 6, it seems from its reasoning that it has taken issue with only the requirement relating to appointment of “non-judicial members” contained in sub-section (2)(b) of Section 6. The Supreme Court has held:

“It is difficult to appreciate how Accountant Members and Technical Members would handle complicated questions of law relating to tax matters, and also questions of law on a variety of subjects (unconnected to tax), in exercise of the jurisdiction vested with the NTT. That in our view would be a tall order. An arduous and intimidating asking. Since the Chairperson/Members of the NTT will be required to determine –substantial questions of law, arising out of decisions of the Appellate Tribunals, it is difficult to appreciate how an individual, well-versed only in accounts, would be able to discharge such functions. Likewise, it is also difficult for us to understand how Technical Members, who may not even possess the qualification of law, or may have no experience at all in the practice of law, would be able to deal with –substantial questions of law for which alone, the NTT has been constituted.”²¹

What may have perhaps also been on the Court’s mind is the fact that there is no requirement in the NTT Act that there have to be a certain number of judicial members or that each Bench of the NTT contain at least one judicial member.²² On a plain reading of the NTT Act it would seem as though the Central Government could staff the NTT entirely with expert member “promotees” from the ITAT and CESTAT with no legal training, with the exception of the Chairperson. Furthermore, the Court has linked the qualifications of the Members of the Tribunal to the scope of the jurisdiction of the

²⁰ See for instance *Union of India v Competition Commission of India* (2012) 128 DRJ 301 (Del).

²¹ *NTT case* p 219.

²² This was also suggested by the Supreme Court in the NCLT Case.

tribunal - in this case the NTT was supposed to deal purely with questions of law but the NTT Act permitted the appointment of non-legally trained members of the Tribunal.

This parameter is in addition to the criterion prescribed in the *NCLT case* where it was held that the qualifications of the Members of the Tribunal should also be commensurate with the qualification of the judges of the Court which replaced the Tribunal. This has been re-iterated by the Supreme Court in the NTT judgment as well, saying:

“There seems to be no doubt, whatsoever, that the Members of a Court/tribunal to which adjudicatory functions are transferred, must be manned by judges/members whose stature and qualifications are commensurate to the court from which the adjudicatory process has been transferred.”²³

Therefore, keeping in view the two considerations, this parameter can be re-phrased into three related sub-parameters as follows:

“a. Whether the prescribed qualifications of the members of the Tribunal are adequate to enable the Tribunal to exercise its jurisdiction?”

“b. Whether there is sufficient representation for legally trained members of the Tribunal to help perform adjudicatory functions?”

“c. Whether only legally trained Members are appointed to the Tribunal, if such Tribunal is taking over the jurisdiction of the Court?”

2.2.3. Procedure for Appointment and Terms and Conditions of Members of the Tribunal

Section 7 of the NTT provided for the procedure to be followed for appointment of Chairperson and Members of the Tribunal. It provides for a selection committee headed by the Chief Justice of India and the Secretary (Law) and Secretary (Finance) which recommends the names of the Chairperson and the Members. The validity of this Section, when questioned, was justified by the Government on the basis that a similar clause had been upheld in *L Chandra Kumar* in the context of the Central Administrative Tribunal and should therefore be upheld here as well. This Section has been struck down by the Supreme Court holding that the Central Government’s reliance upon the judgment of the Supreme Court in *L Chandra Kumar* was misplaced since the Central Administrative Tribunals were not taking over the functions of the High Courts but were in fact subservient in jurisdiction to them, whereas the NTT was supposed to replace the High Court’s appellate jurisdiction. The Supreme Court held that:

“Herein the acknowledged position is, that the NTT has been constituted as a replacement of High Courts. The NTT is, therefore, in the real sense a tribunal substituting the High Courts. The manner of appointment of Chairperson/Members to the NTT will have to be, by the same procedure (or by a similar procedure), to that which is prevalent for appointment of judges of High Courts. Insofar as the instant aspect of the matter is concerned, the above proposition was declared by this Court in *Union of India v. Madras Bar Association* case (supra), wherein it was held, that the stature of the Members who would constitute the tribunal, would depend on the jurisdiction which was being transferred to the tribunal.

²³ *NTT case* p. 220, para 85.

Accordingly, if the jurisdiction of the High Courts is being transferred to the NTT, the stature of the Members of the tribunal had to be akin to that of the judges of High Courts. So also the conditions of service of its Chairperson/Members. And the manner of their appointment and removal, including transfers. Including, the tenure of their appointments.”²⁴

The Supreme Court also premised the striking down of Section 7 on the basis that the Central Government being a litigant in every case before it. It held:

“Section 7 cannot even otherwise, be considered to be constitutionally valid, since it includes in the process of selection and appointment of the Chairperson and Members of the NTT, Secretaries of Departments of the Central Government. In this behalf, it would also be pertinent to mention, that the interests of the Central Government would be represented on one side, in every litigation before the NTT. It is not possible to accept a party to a litigation, can participate in the selection process, whereby the Chairperson and Members of the adjudicatory body are selected.”²⁵

Therefore, this parameter can be broken down into two parts:

“a. Whether the appointment, and terms and conditions of service of Chairperson and Members of a Tribunal are on par with the Court whose jurisdiction is being replaced by the Tribunal?”

“b. If the Government is a litigant in every case before the Tribunal, whether the Government’s decision is based on proper consultation with the judiciary in the appointments to the Tribunal?”

2.2.4. Procedure for Re-appointment

Section 8 of the NTT Act provided for re-appointment of Chairpersons and Members of the Tribunal for a period of five years after the initial five year term. This was struck down by the Court on the ground that it would undermine the independence of the Chairperson and Member of the NTT. The Court held,

“We have no hesitation to accept the submissions advanced at the hands of the learned counsel for the petitioners, that a provision for reappointment would itself have the effect of undermining the independence of the Chairperson/Members of the NTT. Every Chairperson/Member appointed to the NTT, would be constrained to decide matters, in a manner that would ensure his reappointment in terms of Section 8 of the NTT Act. His decisions may or may not be based on his independent understanding. We are satisfied, that the above provision would undermine the independence and fairness of the Chairperson and Members of the NTT. Since the NTT has been vested with jurisdiction which earlier lay with the High Courts, in all matters of appointment, and extension of tenure, must be shielded from executive involvement.”

The principle here is that by controlling the power to re-appoint as a Chairperson or Member, the Central Government, which is the single most prominent litigant before the Tribunal is likely to influence the judicial functioning of the Tribunal. Thus this parameter can be re-phrased as:

²⁴ NTT case pp.223-4, para 87.

²⁵ NTT case p. 224, para 88.

“Whether the Chairperson or Member of the Tribunal can be re-appointed by the Government which is a major litigant before the Tribunal?”

3. SUMMARY

To summarise the various parameters of efficacy and independence laid down by the Supreme Court to test the provisions of a Tribunal legislation:

3.1. Efficacy:

1. Whether the tribunal taking over the function of the court is at least as geographically widespread and accessible as the court it seeks to replace?
2. Whether the persons authorised to appear on behalf of parties in the Tribunal are trained and capable of assisting the Tribunal in exercising its jurisdiction?

3.2. Independence:

1. Where the Central Government is a party in every case before the Tribunal or where the Tribunal’s jurisdiction vested earlier with the High Court, whether the Tribunal’s functioning with respect to composition and jurisdiction of benches of the tribunal and transfer of members is vested with the President of the Tribunal?
2. Whether the prescribed qualifications of the members of the Tribunal are adequate to enable the Tribunal to exercise its jurisdiction?
3. Whether there is sufficient representation for legally trained members of the Tribunal to help perform adjudicatory functions?
4. Whether only legally trained Members are appointed to the Tribunal if such Tribunal is taking over the jurisdiction of the Court?
5. Whether the appointment, and terms and conditions of service of Chairperson and Members of a Tribunal are on par with the Court whose jurisdiction is being replaced by the Tribunal??
6. If the Government is a litigant in every case before the Tribunal, whether the Government’s decision is based on proper consultation with the judiciary in the appointments to the Tribunal?
7. Whether the Chairperson or Member of the Tribunal can be re-appointed by the Government which is a major litigant before the Tribunal?

Each clause of a Tribunal legislation has to be tested against the relevant parameter set out to see whether they meet the Constitutional requirement, and if they do not, such clause will be considered unconstitutional by the Supreme Court. If the answer to the questions posed above in the parameters is in the affirmative then such clause in the Tribunal’s governing statute will be valid.

A caveat must necessarily be addressed here.

While the Supreme Court has enunciated these principles in the *NCLT* and the *NTT case* judgments, the question as to how to assess the constitutional independence and efficacy of Tribunals which replace the jurisdiction of regular civil or criminal courts remains to be seen. In both the *NCLT* and in the *NTT case*, the Tribunal in question was clearly being vested with the jurisdiction of a High Court. Additionally, in the *NTT case*, the Tribunal in question had the Government as a litigant in every single case before it. It is therefore likely that not all the above parameters will be relevant for all Tribunals. For instance, parameters 1, 6 and 7 relating to independence would not be entirely

relevant in the context of a tribunal which solely decides disputes between private parties or where the Central Government is not a principal litigant through other Governmental entities may be (such as PSU Banks and statutory regulators). Likewise, parameter 1 relating to efficacy and parameter 5 relating to independence would not be relevant for a Tribunal which has taken over a freshly created jurisdiction that was not earlier being exercised by any Court in the past.

To clarify all these and other issues, a chart comparing the various provisions of all the Tribunal legislations related to the twenty nine tribunals listed out above can be found in the next part.

PART II: CHART EXAMINING THE IMPACT OF THE NATIONAL TAX TRIBUNAL CASE ON ALL EXTANT TRIBUNALS

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
Appellate Authority for Industrial and Financial Reconstruction Appellate authority hears appeals preferred against the orders of the Board.	No	No	N/A	Yes	N/A	Yes	yes	N/A	N/A	N/A	N/A
Airports Economic Regulatory Authority Appellate Tribunal Can adjudicate any dispute- (i) between two or more service providers;	No	No	N/A	Yes	N/A	Yes	Yes	N/A	N/A	N/A	N/A

²⁶ Whether the tribunal taking over the function of the court is at least as geographically widespread and accessible as the court it seeks to replace?

²⁷ Whether the persons authorised to appear on behalf of parties in the Tribunal are trained and capable of assisting the Tribunal exercising its jurisdiction?

²⁸ Where the Central Government is a party in every case before the Tribunal or where the Tribunal’s jurisdiction vested earlier with the High Court, whether the Tribunal’s functioning with respect to composition and jurisdiction of benches of the tribunal and transfer of members is vested with the President of the Tribunal

²⁹ Whether the prescribed qualifications of the members of the Tribunal are adequate to enable the Tribunal to exercise its jurisdiction?

³⁰ Whether there is sufficient representation for legally trained members of the Tribunal to help perform adjudicatory functions?

³¹ Whether only legally trained Members are appointed to the Tribunal if such Tribunal is taking over the jurisdiction of the Court?

³² Whether the appointment, and terms and conditions of service of Chairperson and Members of a Tribunal are on par with the Court whose jurisdiction is being replaced by the Tribunal?

³³ If the Government is a litigant in every case before the Tribunal, whether the Government’s decision is based on proper consultation with the judiciary in the appointments to the Tribunal?

³⁴ Whether the Chairperson or Member of the Tribunal can be re-appointed by the Government which is a major litigant before the Tribunal?

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
(ii) between a service provider and a group of consumer											
Appellate Tribunal for Electricity Can adjudicate appeals preferred against order made by adjudicating officer or an order made by the Appropriate Commission	No	No, state power corporati ons are typically primary litigants	N/A	Yes	N/A	Yes	Yes	N/A	N/A	N/A	N/A
Appellate Tribunal for Foreign Exchange Can adjudicate appeals against orders of the Adjudicating Authorities and the Special Director Disputes relate to contravention of any provision of the Foreign Exchange and Management Act, or the rules and regulations issued thereunder, or contravenes	No	Yes	N/A	Yes	No (Section 20(3) FEMA)	Yes	Yes	N/A	N/A	No (Section 18 FEMA)	Yes (No bar against re- appointmen t)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
any condition subject to which an authorisation is issued by the Reserve Bank.											
Appellate Tribunal for Forfeited Property (SAFEMA) Can adjudicate appeals against orders passed by the competent authority including orders in relation to forfeiture of “illegally acquired” property by the Central Government or imposition of fine in lieu of forfeiture. held in trust.	No	Yes	N/A	Yes (none indicated so no bar presumed)	Yes	Yes	Yes	N/A	N/A	No (Section 12 of SAFEMA)	Yes (No bar against re- appointmen t)
Appellate Tribunal for Forfeiture of Property (NDPS) Can adjudicate appeals against orders passed by the competent authority including orders in relation to seizure or freezing of	Yes (Dangero us Drugs Act, 1930 provided for recourse to regular	Yes	No	Yes	Yes	Yes	Yes	Yes	No (Rule 11 of The Appellate Tribunal for Forfeited Property (Conditions of Service of	No (Section 68N of the NDPS)	Yes (Rule 11 of The Appellate Tribunal for Forfeited Property (Conditions of Service of

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
illegally acquired property, imposition of fine in lieu of forfeiture or notice served in relation to property	criminal courts)								Chairman and Members) Rules, 1989 provides for fixed tenure)		Chairman and Members) Rules, 1989 provides for reappointm ent)
Appellate Tribunal for Prevention of Money Laundering Can adjudicate appeals against the orders of the Adjudicating Authority including orders in relation to attachment of property or retention of property or record seized or frozen	No	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	No (Section 25 of the PMLA)	Yes (No Bar against re-appointmen t)
Armed Forces Tribunal Disputes with respect to commission, appointments and conditions of service of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act,	Yes (Replaces jurisdicti on of civil courts)	Yes	No	Yes	Yes	No (In so far as criminal appeals being heard by retired Army-men	Yes	No (In so far as criminal appeals being heard by retired	No.	Unclear at the moment if “consultatio n” under Section 7 of the AFT Act	Yes (Section 8 of the AFT Act)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
1950 and also to provide for appeals arising out of orders, findings or sentences of court martial. (i) The jurisdiction exercisable by all courts (except jurisdiction of the Supreme Court or a High Court under articles 226 and 227 of the Constitution) in relation to all service matters. (ii)Appellate jurisdiction against any order or sentence passed by a court martial or any matter connected therewith.						are concerned)		Army-men are concerned)		is concurrence. If it is, it will pass constitutional scrutiny. If not, will not.	
Authority for Advance Rulings (Income Tax) Can determine the tax liability arising out of a transaction by a resident with a non-resident or the permissibility of a tax avoidance arrangement	No	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	No (Section 245-O of the Income Tax Act, 1961)	Yes (No Bar against re-appointmen t)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
between a resident and a non-resident											
Authority for Advance Rulings (Central Excise, Customs and Service Tax) Can determine questions of law or fact in relation to the liability to pay duty in relation to an activity proposed to be undertaken, by a non-resident setting up a joint venture in India in collaboration with a non- resident or a resident; or (b) a resident setting up a joint venture in India in collaboration with a non- resident; or (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company which proposes to	No	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	No (Section 28-F of the Customs Act, 1962)	Yes (No Bar against re- appointmen t)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
undertake any business activity in India											
Board for Industrial and Financial Reconstruction Determines the measures to be adopted by a sick industrial company.	Yes (replaces civil courts)	No	Yes	Yes	N/A	Yes	Yes	Yes	No (Section 5 of SICA provides for fixed term of appointment and subsequent reappointme nts)	N/A	N/A
Central Administrative Tribunal All service matters including recruitment to All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence services and recruitment, and matters concerning recruitment, to any service or post in	Yes (replaces civil courts)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No (Section 8 of the CAT Act provides for fixed term of appointment)	Unclear at the moment if “consultatio n” under Section 6 of the CAT Act is concurrenc e. If it is, it will pass constitution	Yes (Section 8- tenure extendable by 5 years)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
connection with the affairs of local or other authority or corporation										al scrutiny. If not, will not.	
Customs Excise Service Tax Appellate Tribunal Appellate authority against orders passed by the Principal Commissioner of Customs, Commissioner Appeals, Appellate Commissioner of Customer	No	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	No (Section 129 of the Customs Act)	Yes(No Bar against re- appointmen t)
Central Sales Tax Appellate Authority Against any order passed by the highest appellate authority of a State under the Central Sales Tax Act , 1956 determining issues relating to stock transfers or consignments of goods, in so far as they involve a dispute of inter-State nature.	No	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	No (Section 19 of the Central Sales Tax Act, 1956)	Yes (No Bar against re- appointmen t)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
Company Law Board To adjudicate disputes arising out of the Companies Act, 1956	Yes (replaces jurisdiction of High Courts)	No	No (Regulation 7(3) of the CLB Rules, 1991	Yes	N/A	No (Regulation 7 (2), CLB (Qualificatio ns, Experience and Other Conditions Of Service of Members) Rules, 1993 appointmen t of technical members)	Yes	No (Regulatio n 7 (2), appointme nt of technical members)	Yes	N/A	N/A
Competition Appellate Tribunal (i) Can hear appeals against any direction issued or order passed by the Competition Commission including orders imposing fine or penalties (ii) to adjudicate on claim for compensation that may	No	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Section 53F of the Competition Act,2002)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Government primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualifications of Members ²⁹	Presence of judicial Members ³⁰	Commensurate Qualifications. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointment ³³	Re-appointment powers ³⁴
arise from the findings of the Competition Commission or the orders of the Appellate Tribunal											
Cyber Appellate Tribunal Appellate jurisdiction against order made by Controller or an adjudicating officer under the IT Act, 2000.	No	No	N/A	Yes	N/A	Yes	Yes	N/A	N/A	N/A	N/A
Debts Recovery Appellate Tribunal Appellate jurisdiction over any order made, or deemed to have been made, by Debt Recovery Tribunal under the RDDBFI Act.	No	No	N/A	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A
Debts Recovery Tribunal SC1479] To decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.	Yes (Replaces Civil Court jurisdiction)	No	Yes	Yes	N/A	Yes	Yes	Yes	No (Section 6-tenure of 5 yrs or age of 62, lack of continuity]	N/A	N/A

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
Employees' Provident Fund Appellate Tribunal Appellate jurisdiction against notifications issued by the Central Government, or an order passed by the Central Government or any authority, in relation to <i>inter alia</i> application of the EPF Act to an establishment or determination of moneys due from employers	No	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	No (Section 7D of the Employees' Provident Fund Act, 1956)	Yes (No Bar against re-appointmen t)
Film Certification Appellate Tribunal Appellate jurisdiction against any order any order of the Board in relation to the nature of certificate granted or refusal to grant certificate and of any order by the Central Government	No	Yes	N/A	Yes	No (Section 5D of the Cinematogr aph Act, 1918)	Yes	Yes	Yes	Yes	No (Section 5D of the Cinematogr aph Act, 1918)	Yes (No Bar against re-appointmen t)
Income Tax Appellate Tribunal Appellate jurisdiction against orders of various	[No	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (No Bar against re-appointmen t)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
authorities under the Income Tax Act such as the Principal Commissioner, Commissioner (Appeals), Assessing Officer relating to matters such as assessment of tax liability.											
Intellectual Property Appellate Board Appellate jurisdiction against any order or decision of the Registrar under Trade Marks Act, 1999 or Controller or Central Government under the Patents Act, or the rules made thereunder	Yes (replaced High Court appellate jurisdicti on)	Yes	No(mandated to sit at Chennai, Mumbai, Delhi , Kolkata and Ahmedabad, Notification S.O. 1050(E), dated September 15, 2003)	Yes	No(Section 84 of the TM Act)	No (Section 85 of the TM Act)	Yes	No (Section 85 of the TM Act)	No (Section 88 of the TM Act)	No (Section 84 of the TM Act)	Yes(No bar against re- appointmen t)
National Consumer Disputes Redressal Commission Appellate jurisdiction against any order of the state commission and complaints where the value	No	No	N/A	Yes	N/A	Yes	N/A	N/A	N/A	N/A	N/A

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
of the goods or services and compensation claimed exceeds rupees one crore											
National Green Tribunal Matters 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 and for matters connected therewith or incidental thereto.	Yes replaces civil courts	No	No (zonal benches)	Yes	N/A	Yes	Yes	Yes	Yes	Unclear at the moment if “consultatio n” under Section 6 of the NGT Act is concurrenc e. If it is, it will pass constitution al scrutiny. If not, will not.	N/A
National Highways Tribunal Appellate jurisdiction against the orders passed by Highway Administration or an officer authorised in relation to cancellation of	No	Yes	N/A	Yes	No	Yes	Yes	N/A	N/A	No(Section 6 of the Control of National Highways Act,2002)	No (Section 7 of the Nsection]

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
permit for occupation of highway land or grant lease or licence of highway land to a person for temporary use.											
Railway Claims Tribunal Disputes relating to responsibility of the railway administrations as carriers in respect of claims for compensation, damage, n or non-delivery of animals or goods entrusted to a railway administration or claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration	Yes (Replaces civil court)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unclear at the moment if “consultation” under Section 5 of the RCT Act is concurrence. If it is, it will pass constitutional scrutiny. If not, will not. Further, consultation is only in relation to appointment	Yes (No bar against re-appointment)

Tribunal: Jurisdiction	Whether replacing existing Court	Whether Central Governm ent primary litigant	Geographical Accessibility. ²⁶	Representation Rules ²⁷	Powers of Presiding Officer ²⁸	Qualificatio ns of Members ²⁹	Presence of judicial Members ³⁰	Commensu rate Qualificati ons. ³¹	Parity of Terms and Conditions of Service ³²	Government involvement in Appointmen t ³³	Re- appointmen t powers ³⁴
										t of chairman	
Securities Appellate Tribunal: Appellate jurisdiction against an order by SEBI or an adjudicating officer on the SEBI Act or the rules and regulations made thereunder.	No	No	N/A	Yes	Yes	N/A	Yes	N/A	N/A	N/A	N/A
Telecom Disputes Settlement and Appellate Tribunal: Adjudicate any dispute between a licensor and a licensee; between two or more service providers; or between a service provider and a group of consumers. The tribunal also hears appeals against any direction, decision or order of the Telecom Regulatory	Yes (replaces Civil Courts)	No (Central Governm ent could be a litigant as licensor and as Telecom Regulator y Authority of India)	No (Section 14B(1)(c) mentions the seat of the tribunal as New Delhi and further benches to be set up in the discretion of the Central Government)	Yes	Yes	N/A	Yes	Yes	N/A	N/A	N/A



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