

The Tribunals Reforms (Rationalization and Conditions of Service) Ordinance was enforced by the Central Government of India on 4th April 2021. The President of India, exercising the powers under Article 123(1) of the Constitution of India promulgated this bill. Ever since it got passed this bill has become a matter of debate. The insight of the bill is elaborated as under.

What are Tribunals?

Tribunal is a quasi-judicial institution that deals with the matters related to administration or taxes. Tribunals perform various functions including reviewing administrative decisions, resolving disputes, making administrative decision, determining rights of parties, etc.

Types of Tribunals

There are four different types of Tribunals stated below:

- **Central Administrative Tribunal** – It deals with the disputes and anomalies arisen regarding the service condition and recruitment in public sectors.
- **Income Tax Appellate Tribunal** – Made to deal with the appeals falling under the direct tax Acts.
- **Industrial Tribunal or Labor Court** – All kinds of industrial disputes are being dealt under this.
- **Motor Accidents Claim Tribunal** – It functions to deal with the disputes related to motor accident claims under the Motor Vehicle Act, 1988.

Tribunals vs. Courts

It is important to understand how are tribunals different from the courts to understand how the Tribunals Reforms (Rationalization and Condition of Service) Ordinance has affected the country.

Courts and Tribunals are two different but highly important judicial entities possessing judicial powers and having unending succession. They are established by the State to perform administrative or executive duties.

- The courts need to follow the procedure laid down by law of the State but it is not a necessary condition for the tribunals. The tribunals can pronounce the judgment freely, keeping in context the circumstances and specific points of each case.
- Tribunals are basically a body of members elected to decide upon special cases and controversies whereas Courts are known to be the judicial institutions that are brought into existence by the constitution and they are given the work to administer the justice in the country following the rules laid down by the law of the country.
- Tribunals only deal with special kind of matters whereas courts deal with all kinds of day to day, common matters.
- Courts are impartial entities that practice no bias towards the defendant or the prosecutor but Tribunals might or might not be a party to some dispute.
- Courts have a proper code of conduct and a proper procedure for all the judgments but tribunals do not have such kind of strict procedures and conducts.
- A court has judge, jury (panel of judges) or magistrate but Tribunals are simply managed by a chairman and judicial members elected by respective authorities.

What is the tribunals reforms ordinance?

Through this ordinance, the Central Government brings certain changes in the existing framework of Appellate Bodies and shifts their functioning to other judicial authorities. It follows the rules made by the Centre in 2017 and 2020 which found huge criticism from the Supreme Court. The bill is an initiative by the government towards bringing the appeals of judicial cases in a proper order.

Contents of the Ordinance

The Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021 is made with an objective to dissolve some Appellate Bodies and to redirect their role to other judicial bodies.

A chart describing the same is given below:

ACTS	APPELLATE BODIES	PROPOSED ENTITY
The Cinematograph Act, 1952	Appellate Tribunal	High Court
The Copyright Act, 1957	Appellate Board	High Court
The Customers Act, 1962	Authority for Advanced Rulings	High Court
The Patent Act, 1970	Appellate Board	High Court
The Airports Authority of India Act, 1994	Airport Appellate Tribunal	Central government, for disputes arising from the disposal of properties left on airport premises by unauthorized occupants High Court, for appeals against orders of an eviction officer
The Trade Marks Act, 1999	Appellate Board Appellate Tribunal	High Court Registrar or the high court
The Geographical Indications of goods (Registration and Protection) Act, 1999	Appellate Board Appellate Tribunal	High Court Civil court of original jurisdiction
The Protection of Plant Varieties and Farmers' Right Act, 2001	Plant Varieties Protection Appellate Tribunal	High Court
The control of National Highways (Land and Traffic) Act, 2002	Airport Appellate Tribunal	Civil court of original jurisdiction

Source of information: *The Tribunals Reforms (Rationalization and Conditions of Service) Act, 2021*

Explanation

- While amending the section 5C of the Cinematographic Act 1952, the Ordinance transfers the appellate function of the Tribunals to the

High Court. Under Section 7A and 7C the word “Tribunal” has been deleted and is substituted with the “High Court”, wherein, Section 2(h) defining the Tribunal has been omitted. Moreover, the Section defining the powers to make rules under Clauses (h), (i), (j) and (k) of sub-section 2 of Section 8 have also been omitted.

- Section 2(aa) that defines the Appellate Board under the Copyright Act, 1957 stands omitted in the Ordinance, along with Sections 11 and 12 of the Act where the Appellate Board is referred in Clause (fa) is to be redone as (faa), where ‘Commercial Court’ is added and defined as ‘for the purpose of any state, means Commercial Court constituted under Section 3, or the commercial division under Section 4, under the Commercial Courts Act, 2015.’ Hence, the Appellate Board’s power is transferred to the Commercial Court or Commercial Division of the High Court. ‘Commercial Court’ should be substituted in place of ‘Appellate Board’ under Section 6 that has the detailed information regarding the disputes which otherwise were decided by Appellate Board earlier and also in several other Sections namely 19A, 23, 31, 31A, 31B, 31C, 31D, 32, 32A and 33A. Appellate Board is required to be replaced by High Court for rectification of the registrar as required in Section 50, hence, for the appeal against the order of registrar, one can make a direct appeal to the High Court and the same will be heard by a single Judge and then passed on to the Bench in case of further appeal.
- The powers of Appellate Board in the Patent Act, 1970, through the Ordinance is transferred to High Court by omitting Sections 2(a)(1) and (u)(B) by including Sections 116, 117, 117B, 117C, 117D, 117F, 117G and 117H. However, in other Sections such as Section 58, 59, 64, 71, 76, 113, 117A, 117E and 151 the word ‘Appellate Board’ or ‘Board’ shall be replaced by High Court or might be removed completely.
- The clauses dealing with the functioning of Appellate Board i.e. Section 2(1)(a), (d), (f), (k), (n), (ze) and (zf) are to be omitted under the Ordinance, in the Trademarks Act, 1999. Moreover, clauses that deal with the rules framed in the Patent Act shall now include the rules made by the High Court in relation to the proceedings before the High Court. The word ‘Tribunal’ is substituted by the ‘Registrar’ or the ‘High Court’ depending on the case and Appellate Board is replaced with High Court in the Sections – 10, 26, 46, 47, 55, 57, 71, 91, 94, 97, 98, 113, 124, 125, 130, 141, 144, 157. Sections under the chapter heading of ‘Appeals’ are omitted except Section 91, 94, 97, 98 as in the Patent Act.

- The Ordinance transfers the powers of Appellate Board to the High Court and substitutes the word 'Tribunal' with 'Registrar or High Court depending on the case in Section 19, 23, 27, 31, 34, 35, 48, 57, 58, 72, 75, under the Geographical Indications of Goods Act, 1999. Sections referred to as Appellate Board have been omitted that include Section 2(1)(a) and (p), 32, 33, 48.
- In the Protection of Plant Varieties and Farmers' Act, 2001, the Ordinance removes the Sections with reference to the Chairperson and members of Tribunal i.e. Section 2(d), (n), (o), (y), (z) have been removed. The sections as under, describing Tribunals, its compositions and the procedure are also omitted: Section 54, 55, 58, 59. Under Section 56, 44, 57 'High Court' is substituted in the place of 'Tribunal'
- In the Control of National Highways (Land and Traffic) Act, 2002, the Customs Act, 1962 and the Airport Authority of India Act, 1994, the powers of Appellate Board has been distributed to the following judicial bodies as per the Ordinance: Power of Appellate is transferred to the Civil Court for Control of National Highways (Land and Traffic) Act, 2002, power of Appellate Authority is transferred to the High Court for the Customs Act, 1962 and power of Tribunal is transferred to the Central Government for the Airport Authority of India Act, 1994.

Additional Changes

The Tribunals Reforms Ordinance, 2021 was also affected Finance Act, 2017. The changes include omitting of Tribunals whose powers were transferred and directing of powers through Section 184 to the Central Government for making rules related to qualification, appointment, allowances and salaries, removal, resignation and various conditions of services specified in Eighth Schedule by the Chairman and Members of Tribunal.

Search-cum-Selection Committee

Another change was made regarding the appointment. Appointment is to be done only if Search-cum-Selection committee makes a recommendation. Search-cum-Selection committee is constituted in such a way that it consists of the Chief Justice of India or a Judge who is appointed by the Chief Justice of India, two secretaries from the Government's side and one Secretary of the Ministry from the

concerned Department under which the Tribunal functions however, the Secretary has no voting rights. In case the Tribunal is under the Industrial Dispute Act, 1947 as an Industrial Tribunal, Tribunals and Appellate Tribunals falling under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, a retired judge of the Supreme Court or the Chief Justice of High Court shall constitute the members of the committee. The Search-cum-Selection committee is applicable for 19 Tribunals including customs, excise and service tax Appellate Tribunals.

Retirement

The retirement criteria described by the Ordinance is as follows:

- The Chairperson of the Tribunal can remain in the position for 4 years or till 70 years of age, whichever is earlier.
- Other members can remain in the respective positions for 4 years or till 67 years of their age, whichever is earlier.

Reasons to Introduce the Ordinance

The reasons brought forward by the government to replace the Tribunals include:

- The quality of the settlement of the cases by Tribunals was not found to be up to the mark with respect to Indian Judgment Standards.
- The judgment process was not following proper time management resulting in the delay of decisions.
- Government has been facing problems to find suitable members for the Tribunals who are willing to take up the position.
- Due to the Tribunals, litigation has become more expensive as the Tribunals are an extra branch to the litigation.
- Tribunals have been in controversy since 1985 with the advocate bar association due to their unnecessary independence from the executive branch.

Challenges to the Ordinance

- It is a concern to many, which the High Court will have to deal with more cases causing overburden to the courts.

- The Supreme Court states the need of Tribunals for the people not having accessibility to courts and not having much money.
- The requirement of independence of the hearings from the rules listed down by the Indian Law in some complicated cases is also a concern to people now, that the Tribunals are dismissed.
- The Supreme Court is also concerned by the quality of justice after the Ordinance since Tribunals are considered an important addition to the litigation.

Impacts of the Ordinance

The government of India has been trying to rationalize the Tribunals since a long time tracing back to the year of 2015 for the reason that dissolving of the infrastructure of Tribunals and staff working in it will contribute in betterment of the national treasury and will save the nation from extra expenditure. The government also dropped down statistics from last three years showing inefficiency of Tribunals of several sectors in providing appropriate justice within a proper time frame.

However, the Supreme Court showed disagreement with the Government's decision saying that Tribunals are important for the centre as well as the state as they are required for people living in remote areas and people who are financially unstable. The Supreme Court also said that Tribunals are an additional layer to the litigation and hence helps the overall litigation.

The whole country is storming with debates going on in favor of and against the Ordinance. Tribunals are considered essential to ensure the quality of justice as some matters require judgment based on their own specific incidences and such matters cannot be simply handled by the laws enforced in the country. This Ordinance is quite disappointing for people with such complex cases. The courts do not have specializations as in the case of Tribunals. The need of Tribunals has been acknowledged by the Supreme Court of India.

Some people agree to the Government's decision after looking at the information provided to them for the dismissal of the Tribunals and the introduction of the Ordinance. In their purview it is better to dismiss the Tribunals if they are not able to provide proper justice in the given

time frame and are lacking in its part. They feel that by not performing up to the mark, the Tribunals are indeed just a waste of money and resources to the country as well as the citizens.

The Advocate Bar Association is also happy with the introduction of the Ordinance as they felt that giving Tribunals independence from the executive was wrong on many levels. Hence, the removal of Tribunals was a required decision.

On the other hand some people are highly concerned about the quality of justice provided to them after this decision due to the overburdening of the High Court. And also, some people feel that in complicated and complex cases independence of judgments from the rules brought by the law is important wherein such cases require hearings based solely on their elements and decisions made over them instead of the rules.

Even the Supreme Court is disappointed with the Ordinance keeping in mind poor people and people living in places inaccessible to the High Court's reach. The Supreme Court has also shown concern about the working of the judicial system after the removal of Tribunals as the Tribunals are an important part of the litigation.

The sections 12 and 13 of Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021 along with amended sections of the Finance Act, 2017 (Section 184 and 186(b)) were challenged in the Supreme Court by Madras Bar Associations stating that the provisions are in 'contravention of the principles of separation of powers, independence of the judiciary.' At present the plea is in hearing by the Supreme Court Bench led by Justice L. Nageswara Rao.

The decision was made following all the guidelines of passing an Ordinance and it is felt that it might bring smoothness in the functioning of the judicial system of the country. The bill still has some shortcomings that can cause trouble in its application. These shortcomings are to be looked through carefully and disposed off as soon as possible to make the bill efficient and effective. To avoid the problems being suspected with the introduction of the bill the Government should ensure that new judges are appointed in the High Court to fill the vacancies in order to fulfill the aim of the bill and also

look through the working of the already loaded High Courts so that the management of the bill can be done without causing extra work load to the courts.

Conclusion

All the matters related to the judiciary are always well discussed in the country as the judicial system of our country holds a great importance for all countrymen. Similarly, the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021 is being discussed heavily throughout the country. It is facing criticism at certain points and receiving support at the other points. It is the new talk of the town. The Government has taken the decision of the Ordinance, keeping in view all the aspects that need to be dealt with and its duty is to make sure that the decision comes out with positive impacts in the country as a whole unit.