

Legislative Brief

The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 (and Ordinance, 2021)

The Bill was introduced in Lok Sabha on February 13, 2021.

The Ordinance was promulgated on April 4, 2021.

Related Notes:

[The Tribunal System in India](#)

Aditya Kumar
aditya@prsindia.org

July 24, 2021

Highlights of the Bill

- ◆ The Bill dissolves certain existing appellate bodies and transfers their functions to other existing judicial bodies.
- ◆ The term of office for the Chairperson and members of a Tribunals will be four years, subject to an upper age limit of seventy years for the Chairperson, and sixty-seven years for other members.
- ◆ The Bill specifies that a person should be at least 50 years of age to be eligible for appointment as a Chairperson or member.

Key Issues and Analysis

- ◆ The term of office of four years is lower than the minimum of five years directed by the Supreme Court in various judgements.
- ◆ The Supreme Court has also noted that the minimum age limit requirement of 50 years for appointment of members may discourage young talent. It had earlier directed that advocates with 10 years of experience be made eligible to be appointed as a judicial member.
- ◆ Abolishing Tribunals may increase the disposal time for new cases, as High Courts already have a large number of cases awaiting judgement.

Table 1: Timeline on recent developments related to Tribunal reforms^{1,2,3,4,5}

| Year | Key developments |
|------|---|
| 2017 | <ul style="list-style-type: none"> • In March 2017, the Finance Act, 2017 reorganised the tribunal system by merging tribunals based on functional similarity. The total number of Tribunals was reduced from 26 to 19. It delegated powers to the central government to make Rules to provide for the qualifications, appointments, term of office, salaries and allowances, removal, and other conditions of service for chairpersons and members of these tribunals. • In June 2017, the Ministry of Finance notified Rules which specified details including qualifications of the Tribunal members, their terms and conditions of service, and composition of the search-cum-selection committees. |
| 2019 | <ul style="list-style-type: none"> • In November 2019, the Supreme Court struck down the 2017 Rules. The Court stated that the Rules did not meet the requirements laid down in earlier judgements mandating judicial independence in terms of: (i) composition of the Tribunals, (ii) the security of tenure of the Tribunal members, and (ii) composition the search-cum-selection committees. • The Court directed the central government to reformulate the Rules. Key concerns that the Court wanted addressed include: (i) short tenures which prevent enhancement of adjudicatory experience, and thus impact the efficacy of Tribunals, and (ii) lack of judicial dominance in selection committees which is in direct contravention of the doctrine of separation of powers. |
| 2020 | <ul style="list-style-type: none"> • In February 2020, new Rules were notified, which were again challenged in the Supreme Court mainly over the lack of conformity with the principles laid out earlier by the Court. For example: the 2020 Rules specified four-year term of office against five years as specified by the Supreme Court in 2019. • The Court suggested certain amendments to the 2020 Rules such as increasing the term of office to five-year along with eligibility for re-appointment (subjected to upper age limits), and allowing advocates with 10 years' experience to be appointed as judicial members. |
| 2021 | <ul style="list-style-type: none"> • The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 was introduced in Lok Sabha in February. As the Bill was pending at the end of the session, an Ordinance with similar provisions was promulgated in April. • Under the Finance Act, 2017, new Rules were notified on June 30, 2021. The Rules allow advocates with 10 years' relevant experience eligible for appointment as judicial members and provide details on house rent allowance for members. • The Ordinance and the Rules were challenged in the Supreme Court. The Court struck down provisions related to the four-year tenure and the minimum age requirement of 50 years for members of tribunals. |

PART A: HIGHLIGHTS OF THE BILL

Context

The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 was introduced in Lok Sabha on February 13, 2021.⁶ It proposes to dissolve certain existing appellate bodies and transfer their functions to other existing judicial bodies. Further, it proposes to include provisions related to the composition of selection committees and term of office in the Act itself. An Ordinance with similar provisions was promulgated in April 2021.⁷ The Ordinance was challenged in the Supreme Court over its lack of compliance with past Supreme Court judgements on Tribunals.⁴ In July 2021, the Court struck down certain provisions of the Ordinance.⁴

Key Features

- **Abolishing of appellate bodies and transfer of functions:** The Bill abolishes certain appellate bodies and transfer their functions to existing judicial bodies (see Table 2).

Table 2: Transfer of functions of key appellate bodies as proposed under the Bill

| Appellate body | Role | Proposed entity |
|---|---|--|
| Appellate Tribunal under the Cinematograph Act, 1952 | Adjudication of appeals against the Board of Film Certification | High Court |
| Appellate Board under the Trade Marks Act, 1999 | Adjudication of appeals against orders of the Registrar | High Court |
| Appellate Board under the Copyright Act, 1957 | Adjudication of certain disputes and appeals against orders of the Registrar of Copyright. Disputes include those related to publications and term of the copyright | Commercial Court or the Commercial Division of a High Court* |
| Authority for Advance Rulings under the Customs Act, 1962 | Adjudication of appeals against orders of the Customs Authority for advance rulings | High Court |
| Appellate Board under The Patents Act, 1970 | Adjudication of appeals against decisions of the Controller on certain matters. Matters include applications for patents and restoration of patents. | High Court |
| Airport Appellate Tribunal under the Airports Authority of India Act, 1994 | Adjudication of: <ul style="list-style-type: none"> ▪ disputes arising from the disposal of properties left on airport premises by unauthorised occupants, and ▪ for appeals against order of an eviction officer | <ul style="list-style-type: none"> ▪ Central government, for disputes arising from the disposal of properties left on airport premises by unauthorised occupants. ▪ High Court, for appeals against orders of an eviction officer. |
| Airport Appellate Tribunal under the Control of National Highways (Land and Traffic) Act, 2002 | Adjudication of appeals against orders of the Highway Administration on matters including, grant of lease or licence of highway land, removal of unauthorised occupation, and prevention of damage to highway. | Civil Court# |
| Appellate Tribunal under the Protection of Plant Varieties and Farmers' Rights Act, 2001 | Adjudication of appeals against certain orders of Registrar or Plant Varieties and Farmer Rights Authority | High Court |
| Appellate Board under the Geographical Indications of Goods (Registration and Protection) Act, 1999 | Adjudication of appeals against orders of the Registrar | High Court |

Notes: * Constituted under the Commercial Courts Act, 2015; # Refers to a Civil Court of original jurisdiction in a district, and in cludes the High Court in exercise of its ordinary original civil jurisdiction

Sources: The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021; Parent Acts of the appellate bodies; PRS.

- **Search-cum-selection committees:** The Finance Act, 2017 specifies that the Chairperson and Members of the Tribunals will be appointed by the central government on the recommendation of a Search-cum-Selection Committee. The Bill amends the 2017 Act to specifies that these Committees will consist of: (i) the Chief Justice of India, or a Supreme Court Judge nominated by him, as the Chairperson (with a second casting vote in case of a tie), (ii) two Secretaries nominated by the central government, (iii) the sitting or outgoing Chairperson, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court, and (iv) the Secretary of the Ministry under which the Tribunal is constituted (with no voting right).
- **Term of office:** Under the Finance Act, 2017, the 2020 Rules specified a four-year term of office for members. The Bill amends the 2017 Act to include provisions related to term of office in the Act itself. The Bill retains the term of office at four years (subject to an upper age limit of 70 years for Chairperson and 67 years for other members) with provision for re-appointment.

PART B: KEY ISSUES AND ANALYSIS

Tribunals are quasi-judicial bodies that parallel to the court system. In India, some tribunals are at the level of subordinate courts with appeals lying with the High Court, while some others are at the level of High Courts with appeals lying with the Supreme Court. There are two main reasons for establishing tribunals: allowing for specialised subject knowledge for technical matters, and reducing the burden on the court system. For a discussion on the working of tribunals, see our note on [the Tribunal System in India](#).

Appointment of presiding officers and other members of tribunals

Term of office for presiding officers and members violates principles laid down by the Supreme Court

Tribunals Reforms Bill (and Ordinance), 2021: Clause 12 of Chapter XI

The Bill and the Ordinance specify that the term of office for the Chairperson and members will be four years.^{6,7} On July 14, 2021, the Supreme Court struck down these provisions of the Ordinance.⁴ The Court stated that specifying four years of term of office violates the principles of separation of powers, independence of judiciary, rule of law, and equality before law.⁴

Over the years, the Supreme Court had stated that short tenure of members of a tribunal along with provisions of re-appointment increases the influence and control of the Executive over the judiciary.^{2,8} It also discourages meritorious candidates from applying for such positions as they may not leave their well-established careers to serve as a member for a short period.² The Court has also noted that security of tenure and conditions of service (including adequate remuneration) are core components of independence of the judiciary.^{2,8} The Supreme Court had stated that the term of office for the Chairperson and other members must be five years (subject to a maximum age limit of 70 years for the Chairperson and 67 years for other members).³

Minimum age requirement of 50 years for appointment as a member

The Bill and the Ordinance specify that a person must be at least 50 years old to be appointed as a member of a tribunal.^{6,7} This violates past Supreme Court judgements and was also struck down by the Court in July 2021.^{2,4}

While reviewing the Ordinance in 2021, the Supreme Court reiterated earlier judgements which emphasised the recruitment of members at a young age.⁴ In past judgements, the Supreme Court (2020) has stated that advocates with at least 10 years of relevant experience must be eligible to be appointed as judicial members, as that is the qualification required for a High Court judge.³ A minimum age requirement of 50 years may prevent such persons from being appointed as tribunal members.

Abolishing tribunals may increase disposal time for new cases

Tribunals Reforms Bill (and Ordinance), 2021: Chapter II to X

The Bill and Ordinance abolish certain existing appellate bodies and transfer their functions to High Courts.^{6,7} This may further increase the disposal time for cases.

The Statement of Objects and Reasons of the 2021 Bill states that data from the past three years shows that the presence of tribunals in certain sectors has not led to faster adjudication, and such tribunals add considerable cost to the exchequer.⁶ It also states that these amendments would address the issue of shortage of support staff and infrastructure in such tribunals. However, transferring functions of an appellate body to a High Court may lead to a further increase in the disposal time of cases as most High Courts already have high pendency. Note that as of July 20, 2021, there are over 59 lakh cases pending in High Courts across India.⁹ This defeats the purpose with which these tribunals were set up, which was to help reduce the burden on High Courts. Further, if there is an issue of shortage of administrative capacity at such tribunals, it may be questioned whether the capacity should be increased, or their case load be shifted to other courts.

The Supreme Court (2019) considered the question whether amalgamation of tribunals could increase litigation, which in the absence of adequate infrastructure or budgetary grants, would overburden the judiciary. It noted the absence of such judicial impact assessment, and directed the central government to undertake an exercise to assess requirements and make sufficient resources for each Tribunal.² Neither the Finance Act, 2017 which reorganised several Tribunals nor this Bill provide a Financial Memorandum that estimates the resources required as a result of their provisions.

¹ The Finance Act, 2017, Ministry of Law and Justice, March 31, 2017, <https://egazette.nic.in/WriteReadData/2017/175141.pdf>.

² Rojer Mathew versus South Indian Bank Ltd & Ors., 2019 (369) ELT3 (S.C.), Supreme Court of India, November 13, 2019, https://www.sci.gov.in/pdf/JUD_4.pdf.

³ Madras Bar Association vs Union of India & Anr., Civil Writ Petition No. 804 of 2020, Supreme of India, November 27, 2020, https://main.sci.gov.in/supremecourt/2020/16100/16100_2020_35_1501_24869_Judgement_27-Nov-2020.pdf.

⁴ Madras Bar Association vs Union of India, W.P.(C) No. 000502 of 2021, Supreme Court of India, July 14, 2021, https://main.sci.gov.in/supremecourt/2021/10688/10688_2021_36_1501_28573_Judgement_14-Jul-2021.pdf.

⁵ Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021, <https://egazette.nic.in/WriteReadData/2021/228033.pdf>.

⁶ The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021, Ministry of Finance, February 13, 2021, [https://prsindia.org/files/bills_acts/bills_parliament/The%20Tribunals%20Reforms%20\(Rationalisation%20and%20Conditions%20of%20Service\)%20Bill,2021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/The%20Tribunals%20Reforms%20(Rationalisation%20and%20Conditions%20of%20Service)%20Bill,2021.pdf),

⁷ The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, Ministry of Law and Justice, April 4, 2021, https://prsindia.org/files/bill_track/2021-04-04/Tribunals%20Reforms%20Ordinance%202021.pdf.

⁸ Madras Bar Association versus Union of India, 2014 (308) ELT209 (S.C.), Supreme Court of India, September 25, 2014, <https://main.sci.gov.in/judgment/judis/41962.pdf>.

⁹ National Judicial Data Grid (High Courts of India), as accessed on July 20, 2021, <https://njdg.ecourts.gov.in/hcnjdgnew/>.

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