

Unit 3: The Appellate Tribunal and Latest Amendments

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1.1 LEARNING OBJECTIVES

After going through this chapter you should be able to understand

- Establishment of Appellate Tribunal
- Latest Amendments
- Overview of Telecom Regulatory Authority of India

1.2 INTRODUCTION

Cyber Appellate Tribunal was established under the Information Technology Act, 2000 under the aegis of Controller of Certifying Authorities (CCA). It was a '*multi-member body*'. The Tribunal has the statutory authority to examine the correctness, legality or propriety of the decision or order passed by the Controller of Certifying Authorities or the Adjudicating Officer under the Act. The new amendments have made the Tribunal an '*expert body*' consisting of members having varied qualifications to appreciate the legal, technical and factual questions involved in the appeals in the first appellate stage itself.³⁶

1.3 ESTABLISHMENT OF CYBER APPELLATE TRIBUNAL

The Information Technology Act of India, which regulates several important aspects of electronic information, including the regulation of private electronic transactions as well as detailing civil and criminal offences relating to computers and electronic information, contemplates a specialized dispute resolution mechanism for disputes relating to the offences detailed under the Act. The Act provides for the establishment of quasi-judicial bodies, namely adjudicating officers under *Section 46*, to hear disputes namely, offences of a civil nature under *Section 43, 43A, 44 and 45 of the Act*, as well as criminal offences. The adjudicating officer has the power to both award compensation as damages in a civil remedy, as well as impose penalties for the contravention of the Act, and therefore has powers of both civil and criminal courts. The first appellate body provided in the Act, i.e. the authority that any party not satisfied by the decision of the adjudicating officer can appeal to, is the Cyber Appellate Tribunal, consisting of a Chairperson and any other members so prescribed by the Central Government. The second appeal, if a party is aggrieved by the decision of the Cyber Appellate Tribunal, may be filed before the High Court having jurisdiction, within 60 days from the date of communication of the order. The proper functioning of the Cyber Appellate Tribunal is particularly necessary for the functioning of a just judicial system in light of the provisions of the Information Technology Act.

³⁶ Cyber Appellate Tribunal and its powers – Unit 6 – MyBSCIT.com
<<https://www.mybscit.com/cyber-law/cyber-appellate-tribunal-and-its-powers-unit-6>>

As per **Section 48 of the Act**, the Central Government provides for an appointment of one or more appellate tribunals but the language of the **Rule 13 of the Cyber Regulations Tribunal (Procedure) Rules, 2000** makes it clear that there shall only be one tribunal and it shall ordinarily hold its sittings at New Delhi.³⁷ The said rule has further provided a lot of flexibility to Cyber Appellate Tribunal as far as its sittings are concerned. It is for the Chairperson to exercise this ‘**rule of sittings**’ in a most appropriate and judicious manner. The Tribunal shall notify to the parties the date and the place of hearing of the application (**Rule 12**). Initially, the Tribunal consisted of only one person who was referred to as the Presiding Officer and was to be appointed by way of notification by the Central Government.³⁸

It is for the Central Government to specify by order the matters and places in relation to which the Cyber Appellate Tribunal may exercise jurisdiction. It was held by the Supreme Court in **Union of India v Paras Laminates (P) Ltd.**,³⁹ “There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers”. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted.

1.4 LATEST AMENDMENTS

For the smooth functioning of any law, such law must be just, fair and reasonable and at the same time there must be a proper forum to regulate it. To give effect to the Information Technology Law, the parliament has established the most important authorities under the same Act for smooth functioning. It has been rightly said by Aristotle that “***It is better for a city to be governed by a good man than even by good laws***”.

³⁷ THE CYBER REGULATIONS APPELLATE TRIBUNAL (PROCEDURE) RULES

<<https://law.cyberpandit.org/rule02/>>

³⁸ A Review of the Functioning of the Cyber Appellate Tribunal

<<https://cis-india.org/internet-governance/blog/review-of-functioning-of-cyber-appellate-tribunal-and-adjudicatory-officers-under-it-act>>

³⁹ *Union of India v Paras Laminates (P) Ltd*, [1990] 4 SCC 453

The Finance Act, 2017 has made several structural changes including the merging of eight powerful and autonomous administrative tribunals with other tribunals. The Government of India has moved an amendment which it proposed that the Cyber Appellate Tribunal constituted under Section 48 of the IT Act would be merged with *Telecom Disputes Settlement & Appellate Tribunal (TDSAT)* constituted under Section 14 of the Telecom Regulatory Authority of India (TRAI) Act.⁴⁰

The Cyber Appellate Tribunal has not been functioning since June 2011. The jurisdiction of TDSAT extends to matters that lay before the Cyber Appellate Tribunal and also the Airport Economic Regulatory Authority Appellate Tribunal. The Tribunal exercises original as well as appellate jurisdiction in regard to Telecom, Broadcasting and Airport tariff matters. With respect to cyber matters the Tribunal exercises only the appellate jurisdiction.

The TDSAT consists of a Chairperson and two members appointed by the Central Government. Section 14C of the Act discusses about the Qualifications for appointment of Chairperson and Members.

1.5 OVERVIEW OF TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL

Telecom Regulatory Authority of India (TRAI) was enacted in 1997. TRAI is empowered to adjudicate upon disputes among service providers or between the service providers and a group of Consumers on matters relating to technical compatibility and interconnection between the Service Providers, revenue sharing arrangement between Service Providers and quality of telecommunication services and interests of consumers. TRAI was vested with the power to issue directions to the Service Providers. Appeals from the decisions of TRAI lay to the High Court and appeals therefrom lay to the Supreme Court. The jurisdiction of civil courts was barred.

In respect of Telecom, Broadcasting and Airport tariff matters, the Tribunal's orders can be appealed to the Supreme Court but only on substantial questions of law. However, no appeal lies against an interlocutory order or against any decision or order made by the Tribunal with the

⁴⁰ Probity in Governance in India
<<http://www.legalserviceindia.com/articles/nkdev.htm>>

consent of the parties. In regard to Cyber matters, the Tribunal's order can be appealed before High Court.⁴¹

1.6 INTRODUCTION TO TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL (TDSAT)

The Telecom Regulatory Authority of India Act, 1997 was amended by the Telecom Regulatory Authority of India (Amendment) Act, 2000. The amendments were introduced to resolve the issues that emerged from the implementation of the Act. The desired objectives of bringing about functional clarity, strengthening the regulatory framework and the disputes settlement mechanism were attained by bringing about a clear distinction between the recommendatory and regulatory functions of the Telecom Regulatory Authority of India (TRAI) by making it mandatory for the Government to seek recommendations of TRAI in respect of specified matters and by the setting up a separate dispute settlement mechanism etc. An Appellate Tribunal known as the "Telecom Disputes Settlement & Appellate Tribunal" has been set up under Section 14 of the Telecom Regulatory Authority of India Act, 1997 as amended by TRAI (Amendment) Act, 2000 to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector. The Appellate Tribunal came into existence on 29 May 2000 and started hearing cases from January 2001.

The functions of the appellate tribunal are to adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and to hear and dispose of appeals against any decision or order of TRAI, DoT and MIB. The appellate tribunal consists of a Chairperson and two Members.

1.7 FORMATION OF TDSAT

In order to bring in functional clarity and strengthen the regulatory framework and the disputes settlement mechanism in the telecommunication sector, the TRAI Act of 1997 was amended in the year 2000 and TDSAT was set up to adjudicate disputes and dispose of appeals with a view

⁴¹ Current based PRELIMS QUESTION 19 MARCH 2020 | The Core IAS
<<https://thecoreias.com/current-based-prelims-question-19-march-2020/>>

to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector. In January 2004, the Government included broadcasting and cable services also within the purview of TRAI Act. After coming into force of the relevant provisions of the Finance Act 2017, the jurisdiction of TDSAT stands extended to matters that lay before the Cyber Appellate Tribunal and also the Airport Economic Regulatory Authority Appellate Tribunal.

1.8 COMPOSITION OF TDSAT

The Tribunal consists of a Chairperson and two Members appointed by the Central Government. The Chairperson should be or should have been a Judge of the Supreme Court or the Chief Justice of a High Court. A Member should have held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.⁴²

1.9 POWERS AND JURISDICTION

The Tribunal exercises jurisdiction over Telecom, Broadcasting, IT and Airport tariff matters under the TRAI Act, 1997 (as amended), the Information Technology Act, 2008 and the Airport Economic Regulatory Authority of India Act, 2008. The Tribunal exercises original as well as appellate jurisdiction in regard to Telecom, Broadcasting and Airport tariff matters. In regard to Cyber matters the Tribunal exercises only the appellate jurisdiction.

1.10 PROCEDURE

- The Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908;
- It has the power to regulate its own procedure;
- It is to be guided by the principles of natural justice;

⁴² Telecom Disputes Settlement & Appellate Tribunal (TDSAT)
<<https://www.insightsonindia.com/2018/12/14/telecom-disputes-settlement-appellate-tribunal-tdsat/>>

Tribunal has the same powers as are vested in a civil court under the CPC in respect of:

- a) summoning and enforcing the attendance of any person and examining him on oath;
- b) requiring the discovery and production of documents;
- c) receiving evidence on affidavits;
- d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;
- e) issuing commissions for the examination of witnesses or documents;
- f) reviewing its decisions;
- g) dismissing an application for default or deciding it ex parte;
- h) setting aside any order of dismissal or any application for default or any order passed by it ex parte; and
- i) any other matter which may be prescribed.

In addition, the Tribunal can call for the records relevant to disposing of a Petition or appeal, for the purpose of examining the legality or propriety or correctness of any decision or of any order etc. of TRAI.

1.11 NATURE OF PROCEEDINGS

- The Tribunal is the Court of first instance except cyber matters.
- Every proceeding before the Tribunal is deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860);
- The Tribunal is deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
- Tribunal's Orders are executable as a decree of civil court.

1.12 Appeals

In respect of Telecom, Broadcasting and Airport tariff matters, the Tribunal's orders can be appealed to the Supreme Court but only on substantial questions of law. However, no appeal lies

2. When was TRAI enacted?

Telecom Regulatory Authority of India (TRAI) was enacted in 1997.

3. What is the Composition of TDSAT?

The Tribunal consists of a Chairperson and two Members appointed by the Central Government.

4. What was the latest amendments that took place in the Cyber Appellate Tribunal?

The Finance Act, 2017 has made several structural changes including the merging of eight powerful and autonomous administrative tribunals with other tribunals. The Government of India has moved an amendment which it proposed that the Cyber Appellate Tribunal constituted under Section 48 of the IT Act would be merged with *Telecom Disputes Settlement & Appellate Tribunal (TDSAT)* constituted under Section 14 of the Telecom Regulatory Authority of India (TRAI) Act.

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1.12 ACTIVITY

Explain the constitution of Cyber Appellate Tribunal along with the latest amendments? What are the powers and functions of TDSAT? (1000 words)