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GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Report No.272 (Joint Supplemental Report)

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**Assessment of Statutory Frameworks of
Tribunals in India**

16 November 2017

ACKNOWLEDGEMENT

The genesis of this project can be traced to the reference made by the Supreme Court to study issue pertaining to the statutory framework and functioning of Tribunals, Commissions and Authorities in India, to the 21st Law Commission of India. Realising the scope and size of research, I requested initially the Ministry of Law and Justice and the Law Commission to provide some funding for the project, as empirical research was identified as an integral part of obtaining the real state of affairs in the functioning of the Tribunals. I also requested the Commission to wait before submitting the report till my input is considered. While the Commission agreed upon my request at its meeting held on 27 October 2017, the Commission, proceeded to submit the report to the Ministry of Law and Justice and was made available to the public at large. Surprisingly, these members obtained the copy of the submitted report from a public website.

This Report would have further enriched if the Chairmen / Members and Registry of the Tribunals would have contributed to the questionnaire and met with the Research Team. Unfortunately, therefore, this Individual Report, while brings out real experience of counsels / litigants, misses a vital input from the authorities who run the Tribunals.

Despite the above sorry state of affairs, it is our privilege and honour to file this Joint Supplemental Report to the Commission and since the Commission has submitted its report to the Ministry of Law and Justice, also to the Ministry of Law and Justice directly. This report also benefits from the fact that one member, Dr Patel, has carried out two extensive research projects with regard to reduction of backlog of cases and functioning of the Evening Courts, Nari Adalats, Fast Track Courts. Hundreds of students of the Gujarat National Law University have directly and indirectly contributed to the reduction of backlog of cases in the

Gujarat High Court and subordinate courts in Gujarat as well as several PSUs.

I take this opportunity to thank my deep gratitude to team of faculty member – Dr. Jagadeesh Chandra T G, Dr. Kalpeshkumar L Gupta and LL.M students Ashish Yadav, Shikhar Gupta, Akhil Hasija, Birendra Karki and Supratim Das for undertaking field visit to New Delhi and interacting with 495 counsels and advocates to bring real experience based credibility to this individual Report. The team, considering the unique importance of the project and value of its findings in the lasting search for effective and efficiency justice through the mechanisms of Tribunals, was partially granted funds from the ongoing research projects undertaken with the help of the Government of Gujarat funding and the University budget. I thank the team and the concerned colleagues in the University for their consideration and assistance.

Submitted Jointly by

Dr. Bimal N. Patel and Mr Abhay Bhardwaj (Part-Time Members, 21st Law Commission of India)

Gandhinagar

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LIST OF ABBREVIATIONS

AFT	ARMED FORCES TRIBUNAL
AAR	AUTHORITY FOR ADVANCE RULLING
CAT	CENTRAL ADMINISTRATIVE TRIBUNAL
CESTAT	CUSTOM EXCISE SERVICE TAX APPELLATE TRIBUNAL
DRT	DEBT RECOVERY TRIBUNAL
DRAT	DEBT RECOVERY APPELLATE TRIBUNAL
FA	FINANCE ACT
FCAT	FILM CERTIFICATION APPELLATE TRIBUNAL
HC	HIGH COURT
IPAB	INTELELTUAL PROPERTY APPELLATE BOARD
ITAT	INCOME TAX APPELLATE TRIBUNAL
NCLT	NATIONAL COMPANY LAW TRIBUNAL
NCLAT	NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NGT	NATIONAL GREEN TRIBUNAL
NCDRC	NATIONAL CONSUMER DISPUTE REDRESSAL COMMISSION
RCT	RAILWAY CLAIMS TRIBUNAL
SC	SUPREME COURT
TDSAT	TELECOM DISPUTE SETTLEMENT APPELLATE TRIBUNAL

EXECUTIVE SUMMARY

Indian Judicial System is one of the peculiar systems in the world. Like other judicial systems, it is continuously in search and efforts to tackle the issue of backlog of cases which are running in millions. Innumerable studies, recommendations and programs have been initiated including the Law Commission of India efforts, but the lasting solution remains elusive, if not impossible. Whether and to what extent the introduction and functioning of the Tribunals and other quasi-judicial bodies, nearly 50 of them, have contributed and can contribute to the lasting solution is the basic scope of this inquiry. **As on 15 November 2017, 416,333 cases are pending in 20 Tribunals (for more details see annexure 2).** In addition to the backlog of cases, inherent institutional issues, such as, uniformity of rules, appointments, funding, needs to be addressed. As a wholesome inter-disciplinary approach, i.e. law, economics and management, only can give some relief from what appears to be an unsurmountable problem. Desperate with the state of affairs, the Finance Ministry has enacted bill merging eight tribunals and introducing rules pertaining to selection, age, term of heads of tribunals and members. This reformative measure which has been challenged before the Supreme Court has to meet the test of the time in terms of judicial scrutiny and efficacy. While the matter remains before the Supreme Court, this individual Report aims to supplement the Report submitted by the Law Commission.

This Joint Supplemental Report is mainly based on empirical research and makes recommendations on the basis of first-hand experience of nearly 500 counsel and advocates practicing before the Tribunals in Delhi. As per the empirical survey, 411 (86%) are in favour of continuing the existing composition of the Tribunals. 410 (86%) consider that the procedures are adequate for effective administration of justice. 342 (72%) agree that the workloads of Tribunals have increased due to various reforms. 325 (68%) consider that substantive and procedural provisions stipulated in respective Acts are adequate.

404 (85%) consider that the Tribunals are adopting similar approach in consistent way for similar purposes. 359 (75%) consider that the information on the website is available. 178 (37%) believe that the Tribunals compromise in delivering quality of justice due to departing from normal courts procedures. 401 (84%) agree that the appointment procedures should be made uniform and standards. 223 (47%) suggest in favour of granting the Tribunals status equivalent to District Courts. 329 (69%) are in favour of discontinuing the practice of appointing retired Supreme Court and High Court judges as chair and members of the Tribunals. 323 (68%) are in favour of making appointments through all India Judicial Services examination. 223 (47%) suggest in favour of appointing jurists, academicians and eminent persons as Chairpersons and members. 236 (49%) have favoured merger of Tribunals effected through the Finance Act, 2017. 136 (28%) agree to discontinue the Tribunals and replace them with the regular Court system. A clear and categorical conclusion emerges that the Tribunal system is working well and delivering the goals and objectives and yet at the same time, a continuous injunction of reforms in terms of appointments, procedures, infrastructure, delivered by the executive can indeed meet the expectations of the stakeholders and the justice system as a whole. Some of the fundamental concerns expressed by the practitioners are already addressed in the Finance Act, 2017 and there is further scope of reforms based on this Supplemental Report. It is therefore expected that the implementation of the reforms introduced in the Finance Act, 2017 will further augment the efficacy and efficiency of the role and responsibilities of the Tribunals in the overall justice system of the country.

Five chapters constitute this Report. **Chapter 1** is devoted to introduction to Tribunals and other quasi-judicial bodies along with literature review and research methodology. **Chapter 2** highlight pertinent aspects of legislative and institutional framework of select tribunals and quasi-judicial bodies. **Chapter 3** presents the data collection, analysis and interpretation. **Chapter 4** concludes the report with recommendations based, mainly on the empirical data.

TABLE OF CONTENTS

CHAPTER	PARTICULARS	PAGE NO.
	<i>ACKNOWLEDGEMENT</i>	I
	<i>LIST OF ABBREVIATIONS</i>	IV
	<i>EXECUTIVE SUMMARY</i>	V
1.	INTRODUCTION	1-6
2.	LEGISLATIVE FRAMEWORK OF TRIBUNAL	7-117
	2.1 Industrial Tribunal.....	7
	2.1.1 Employee Provident Fund Appellate Tribunal....	9
	2.2 Income Tax Appellate Tribunal.....	14
	2.3 Custom, Excise and Service Tax Appellate Tribunal....	19
	2.4 Appellate Tribunal for Forfeited Property and Money Laundering.....	24
	2.4.1 Prevention of Money Laundering Appellate Tribunal.....	27
	2.4.2 Appellate Tribunal for Foreign Exchange.....	29
	2.5 Central Administrative Tribunal.....	33
	2.6 Railway Claims Tribunal.....	37
	2.6.1 Railway Rates Tribunal.....	43
	2.7 Securities Appellate Tribunal.....	46
	2.8 Debt Recovery Tribunal.....	49
	2.9 Debt Recovery Appellate Tribunal.....	53
	2.10 Airport Appellate Tribunal.....	55
	2.10.1 National Highways Tribunal.....	57
	2.11 Telecom Dispute Settlement and Appellate Tribunal..	60
	2.11.1 Cyber Appellate Tribunal.....	63
	2.11.2 Airports Economic Regulatory Authority Appellate Tribunal.....	66
	2.12 Intellectual Property Appellate Board.....	69
	2.12.1 The Copyright Board.....	74

2.13	National Company Law Tribunal.....	78
2.14	National Company Law Appellate Tribunal.....	84
	2.14.1 Competition Appellate Tribunal.....	88
2.15	Authority for Advance Ruling.....	91
2.16	Film Certification Appellate Tribunal.....	94
2.17	National Consumer Dispute Redressal Commission...	97
2.18	Appellate Tribunal For Electricity.....	102
2.19	Armed Forces Tribunal.....	106
2.20	National Green Tribunal.....	110
3	DATA ANALYSIS & INTERPRETATION.....	118-153
3.1	Data Analysis and Interpretation.....	118
3.2	Industrial Tribunal.....	120
3.3	Income Tax Appellate Tribunal.....	122
3.4	Custom, Excise and Service Tax Appellate Tribunal....	124
3.5	Appellate Tribunal for Forfeited Property & Money Laundering.....	127
3.6	Central Administrative Tribunal.....	128
3.7	Railway Claims Tribunal.....	130
3.8	Debt Recovery Tribunal.....	132
3.9	Debt Recovery Appellate Tribunal.....	134
3.10	Telecom Dispute Settlement Appellate Tribunal.....	136
3.11	National Company Law Tribunal.....	138
3.12	National Company Law Appellate Tribunal.....	140
3.13	Authority for Advanced Ruling.....	142
3.14	Film Certification Appellate Tribunal.....	143
3.15	National Consumer Dispute Redressal Commission....	145
3.16	Appellate Tribunal for Electricity.....	147
3.17	Armed Forces Tribunal.....	149
3.18	National Green Tribunal.....	152
4.	FINAL OBSERVATIONS & RECOMMENDATIONS.....	154-160

CHAPTER-1

INTRODUCTION

The establishment and initial success of the Income Tax Appellate Tribunal generated euphoria that days of Tribunalisation of Justice have arrived. The motto of the Income Tax Appellate Tribunal enshrining the core values of impartiality, ease and expeditious delivery of justice indeed can be said to have initiated the movement of Tribunalisation of Justice in India. This led to law-makers to implant the institution of Tribunal in several laws which they started enacted in the subsequent years. Based on the recommendations of the Swaran Singh Committee, Part XIV-A was added in the Constitution (Forty-second Amendment) Act, 1976, titled as 'Tribunals' which provided for the establishment of 'Administrative Tribunals' under Article 323-A and 'Tribunals for other matters' under Article 323-B. The main objectives of establishing Tribunals have been to reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress. It had been considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under Article 136 of the Constitution.¹ With the enactment of Administrative Tribunals Act, 1985, a large number of cases relating to service matters pending before various courts were brought within the jurisdiction of the Tribunals. The Tribunal has to exercise its powers by observing the principles of natural justice or in accordance with the statutory provisions under which the Tribunal is established.

With the onset of economic liberalization, one can observe that there has been a sustained increase in the creation of Tribunals, virtually covering each major areas of the economy, be it railways, roads, telecommunication, competition, etc. The fundamental hope that a dedicated tribunal will cater to all issues of adjudication, interpretation and clarification that arise from a particular major legislation, however, over a period of time has started suffering from various setbacks, such as, delay in disposal of cases, procedural irregularities, multiple adjudicatory bodies, jurisdiction on collateral issues for different forums, conferring appellate and review jurisdictional issues, etc. Thus, the effectiveness and efficiency of the Tribunal system, either with regard to the domain laws or overall goal of reduction of burden of the higher judiciary has been questioned. The higher

¹ As set out in the Statement of Objects and Reasons of The Constitution (Forty-Second Amendment) Act, 1976

judiciary, by way of judicial pronouncements and the government from time to time by establishing committees and commissions have started addressing the issues and challenges facing the Tribunalisation of Justice.

In *S. P. Sampath Kumar v. Union of India*,² the constitutional validity of the Administrative Tribunals Act was challenged on the ground that the exclusion of judicial review of the High Court violated the basic structure of the Constitution. The Supreme Court pronounced measures that would ensure the functioning of the Administrative Tribunals in accordance with the well-laid down principles by the Constitution. Subsequently, several changes were introduced by an Amending Act (Act 19 of 1986) and jurisdiction of the Supreme Court under article 32 was restored. Hence the Constitutional validity of the Act was finally upheld in *S. P. Sampath Kumar*³ subject, of course, to certain amendments relating to the form and content of the administrative Tribunals. The suggested amendments were carried out by another Amending Act (Act 51 of 1987).⁴ Later the Act was amended and the jurisdiction of the Apex Court under Article 32 was restored. Under Article 226 High Courts also had jurisdiction to enforce fundamental rights. But that was not saved. Subsequently in *Sakinala Harinath v. Andhra Pradesh*⁵ the High Court of Andhra Pradesh declared Article 323 A (2)(d) as unconstitutional. It held that the provision was repugnant to the ruling in *Kesavananda Bharati v. Kerala*.⁶ Meanwhile the Apex Court in *R.K. Jain v. Union of India*⁷ recommended that the ruling in *Sampath Kumar* be reconsidered.

Therefore a Bench of seven judges of the Supreme Court examined the issues in a wider perspective including the constitutionality of Article 323A (2) (d). In *L. Chandra Kumar v. Union of India*,⁸ the Supreme Court held that clause 2 (d) of Article 323A and clause 3(d) of Article 323B, to the extent they empower the Parliament to exclude the jurisdiction of the High Courts and the Supreme Court under articles 226/227 and 32 of the Constitution, are unconstitutional. The “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The Court held that the jurisdiction conferred upon the High Courts under articles 226/227 and upon the Supreme Court under article 32 of the Constitution

² (1985) 4 SCC 458

³ 1987) 1 SCC 124

⁴ Section 3(a) of the Administrative Tribunals (Amendment) Act 1987

⁵ (1994)1 APLJ (H.C) 1.

⁶ (1973)4 SCC 225.

⁷ (1993) 4 SCC119

⁸ AIR 1997 SC 1125

is part of the inviolable basic structure of the Constitution. All decisions of the Administrative Tribunals are subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls and administrative Tribunals cannot perform a substitutional role to the High Court, it can only be supplemental.⁹ As a result, orders of the Administrative Tribunals are being routinely appealed against in High Courts. This is probably a rare instance where a court created an appellate jurisdiction for itself though it can be created only by exercise of the legislative power.

The Law Commission of India in the background of decision took up a *suo motu* study on the issue and submitted its report with a recommendation that Hon'ble Supreme Court in *L. Chandra Kumar's* case requires reconsideration by a larger Bench of the Supreme Court in the interest of the government servants, both Central and the State, to achieve the object of the Act, namely, speedy and less expensive justice.¹⁰ The Law Commission of India undertook another exercise in 2009 and suggested the need for the uniformity in the service conditions and retirement age of Chairperson and members of the Tribunals.¹¹ In *T K Rangarajan v. Government of Tamil Nadu*,¹² the Supreme Court dealt with the case of police personnel of the State of Tamil Nadu who had gone on strike and the State of Tamil Nadu, after bringing a subordinate legislation, terminated their services. The State Police personnel approached the High Court challenging the order of their termination and the issue arose as to whether the said petition was maintainable when the remedy before the Administrative Tribunal was available. The Supreme Court referring to *L. Chandrakumar* held that, '[H]owever, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier because of very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.' In addition to the theory of 'substitute rule' applied in the *Sampath Kumar* and subsequent overruling of this rule by the Supreme Court in *L. Chandra Kumar* and creating appellate jurisdiction for itself through stepping

⁹ This is probably a rare instance where a court created an appellate jurisdiction. It is the law that appellate jurisdiction can be created only by exercise of legislative power.

¹⁰ Report of Law Commission of India, *L. Chandra Kumar* be revisited by Larger Bench of Supreme Court, Report No.215, available at <http://lawcommissionofindia.nic.in/reports/report215.pdf>

¹¹ Law Commission of India, Retirement Age of Chairpersons and Members of Tribunals—Need For Uniformity, Report No. 232, August 2009, at <http://lawcommissionofindia.nic.in/reports/report232.pdf>

¹² AIR 2003 SC 3032

into exclusive domain of legislative competency, another legal theory of ‘very exceptional circumstance’ was coined brought through the *T.K. Rangarajan* case.

The High Court of Mumbai at Nagpur bench in the case of *Central India Ayush Drugs v. State of Maharashtra*,¹³ considered the judicial review pertaining to the provisions of Sections 23 and 24 of the Biological Diversity Act, 2002 and held that the National Green Tribunal can only decide civil cases, where substantial questions of environment legislations are involved. NGT can only implement the provisions stipulated in the respective environmental legislation. NGT cannot decide on the power pertaining to the jurisdiction upon the vires of any statutory provisions under those environmental legislations, as the High Court only can have the power. This is very good example to understand between the judicial review power of the High Court, as conferred by the Constitution and the interpretation of the substantive law, which is conferred on the Tribunal through the Act.

The Supreme Court, expressing the concern regarding the provisions for the statutory appeals directly before the Supreme Court, in the *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Limited*,¹⁴ desired that the 21st Law Commission of India studies the following questions with the involvement of all the stakeholders, namely:

- (a) Whether any changes in the statutory framework constituting various Tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of judgment of this Court in *Madras Bar Association (Supra)* or on any other consideration from the point of view of strengthening the rule of law?
- (b) Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time?
- (c) Whether direct statutory appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affect access to justice to litigants in remote areas of the country?

¹³ W.P. 6360/2015, decided on 28 September, 2016

¹⁴ Civil Appeal No. 3455 of 2010 available at 2016 SCC Online SC 803

- (d) Whether it is desirable to exclude jurisdiction of all courts in absence of equally effective alternative mechanism for access to justice at grass root level as has been done in provisions of TDSAT Act (Sections 14 and 15)?
- (e) Any other incidental or connected issue which may be considered appropriate?’

The Government of India initiated the merger of eight Tribunals acting upon the Finance Act, 2017¹⁵ and issued the Tribunal, Appellate Tribunal and other Authorities (Qualification, Experience and other Conditions of Service of Members) Rules, 2017 under the power conferred by Section 184 and 185 of the Finance Act, 2017, in June 2017.¹⁶ Accordingly, changes have been introduced with reference to the qualification of the appointments, selection process, terms of the office and maximum retirement age of the Chairperson and members of all the 19 Tribunals notified under it. This Individual Report of a part-time member aims to supplement Report No. 272 prepared by the 21st Law Commission of India pursuant to the above reference by the Supreme Court.

Objectives of the Individual Report

1. To study the statutory framework and functioning of various Tribunals and other quasi-judicial bodies in India,
2. To evaluate the appeal and review provisions in the respective parent Acts wherein Tribunals have been established,
3. To assess the impact of Tribunalisation on the functioning of the Supreme Court,
4. To find the factors that contribute the delay in disposal cases by the Tribunals,
5. To study and collect the opinions from the professionals on the feasibility of appointing advocates / academicians / others as Chairperson or members of the Tribunal,
6. To study the implications on functioning of the Tribunals due to changes such as merger of certain Tribunals and appointment procedures effected through the Finance Act, 2017, and
7. To suggest effective mechanisms for revamping of the entire Tribunalisation of justice system in India.

¹⁵ The Finance Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. Government of India

¹⁶ Effected on 1st June, 2017, Gazette of India

Methodology

This Report examines the statutory provisions and the evaluation of the functioning of various Tribunals in India, by way of doctrinal as well as empirical research. The empirical research focusses on the preparation of questionnaire and interactions with the counsel and advocates who deal primarily with tribunals, created under Central Acts and are based in New Delhi. As two tribunals, Intellectual Property Appellate Tribunal and Airport Appellate Tribunal, are apparently non-functioning for the given reasons of non-appointment of Chairpersons, these are excluded from the empirical research. The Report is based on 495 samples collected from 17 Tribunals and uses 477 samples. The responses for each question are considered for recommendation only if more than 50% of respondents have answered as 'yes'. In other words, only if a question is responded as 'yes' by more than 239 respondents, then only, such response is considered for the recommendation purposes. The same methodology and 50% criteria is utilized for the individual Tribunals.

Significance of the study

This study is based on the empirical research with a view to elucidate the opinions on problems existing in the working of Tribunals and also to consider fresh ideas for complete revamping of the Tribunals system. Not less than 4.5 lakh cases, in total, are pending in these 17 Tribunals.

Selection of Tribunals

The conclusions and recommendations emerge from this Individual report are based on the doctrinal and empirical research of the following Tribunals: Industrial Tribunal, Income Tax Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunal, Appellate Tribunal for Forfeited Property & Money Laundering, Central Administrative Tribunal, Railway Claims Tribunal, Debt Recovery Tribunal, Debt Recovery Appellate Tribunal, Telecom Dispute Settlement And Appellate Tribunal, National Company Law Tribunal, National Company Law Appellate Tribunal, Authority For Advanced Ruling, Film Certification Appellate Tribunal, National Consumer Dispute Redressal Commission, Appellate Tribunal For Electricity, Armed Force Tribunal, National Green Tribunal. Intellectual Property Appellate Tribunal and Airport Appellate Tribunal are excluded from this Report.

CHAPTER-2 LEGISLATIVE FRAMEWORK OF TRIBUNALS

2.1 INDUSTRIAL TRIBUNAL

(Conferred Jurisdiction for the purpose of Section 7D of the Employees' Provident Funds and Miscellaneous Act, 1952)

Establishment: The Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of Industrial disputes and for performing such other functions as may be assigned to them under this Act (Section 7). The Industrial Tribunal has been established under the Industrial Disputes Act, 1947 (Section 7A(I) of the Industrial Disputes Act, 1947) shall also conferred jurisdiction, powers and authority for the purpose of Section 7D of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.¹⁷

Objectives of the Tribunal: The CGIT-cum-LCs have been set up with the objective of adjudicating labour disputes raised by Industrial workers under various provisions of labour Laws/Act.

Benches/Total Number of Tribunal: There are 22 CGIT-cum-LCs set up in various States, out of which 10 are under Non-Plan and 12 under Plan Scheme. The CGIT-cum-LC No.1, Mumbai and CGIT-cum-LC, Kolkata also function as National Tribunals.

Composition: A Tribunal shall consist of one person only, to be appointed by the appropriate Government (Section 7A (2)). A Labour Court shall consist of one person only to be appointed by the appropriate Government (Section 7(2)).

Qualifications of Chairperson, Members etc.: The qualification for appointment as the presiding officer of a Labour Court & Industrial Tribunal is as follows:-

- He is, or has been, a Judge of a High Court or,
- He has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
- He has held any judicial office in India for not less than seven years; or

¹⁷ The Industrial Disputes Act, 1947 has been amended through the Finance Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. From the date of commencement of the above said amendment, with reference to the qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of presiding officer of the Industrial Tribunal appointment by the central government under sub-Section (I) of Section 7A, shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.

- He has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.
- He is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the Labour department including three years of experience as Conciliation Officer.
- He is an officer of Indian Legal Service in Grade III with three years' experience in the grade.¹⁸

Tenure of Chairperson, Members etc.: Members will be in office till they attain age of 65 yrs.¹⁹

Removal of Chairperson, Members etc.: No person shall be appointed to, or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if— (a) He is not an independent person; or (b) He has attained the age of sixty-five years.²⁰

Powers and Functions of the Tribunal: Labour Court, Tribunal or National Tribunal:-

- May for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.
- Shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908.
- Inquiry or investigation shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.
- May appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise.
- May be deemed to be a civil court for the purpose of Sec. 345, 346 and 348 of Cr. PC. 1973.²¹
- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by

¹⁸ Section 7(3) & 7A(3) of the Industrial Disputes Act, 1947

¹⁹ Section 7C of the Industrial Disputes Act, 1947

²⁰ Section 7C of the Industrial Disputes Act, 1947

²¹ Section 11 of the Industrial Disputes Act, 1947

its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit.²²

Procedure adopted by Tribunal: Section 10 of Industrial Deputes Act, 1947 stipulates the disputes that are referred to the court or Tribunal by appropriate government.

- Labour Court, Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.²³
- A Scheme of Holding of Lok Adalats as an “Alternative Grievance Redressal Mechanism” for speedy disposal of industrial disputes has been made indispensable part of the adjudication system from XI Plan.²⁴

Maximum Time Limit for Disposal of Case: An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government and if the dispute is connected to a single workman than time period should not exceed 3 months. This can be further extended by the presiding officer if so applied by the parties.²⁵

Case Disposal Rate: There were around 13,847 cases and 3,615 applications pending in the CGIT and 13,864 cases and 3,864 applications pending in National Tribunal for the year 2015-16.²⁶ Almost around 1800-1900 cases are added each year in the already backlogged cases of around 13,000 and only 2000 cases are disposed of in a year. This shows that the disposal rate is very slow as the backlogged cases are not at all reducing, even when the Labour courts have shown speedy disposal of cases in the year 2016-17.

2.1.1 EMPLOYEE PROVIDENT FUND APPELLATE TRIBUNAL (Merged With the Industrial Tribunal)

Establishment: The Employee Provident Fund Appellate Tribunal has been constituted under the provisions of Section 7 D of Employees’ Provident Fund and Miscellaneous Provisions Act 1952 by Central Government by notification in the Official Gazette for exercising powers and to discharge functions conferred on such Tribunal by this Act.

²² Section 11A of the Industrial Disputes Act, 1947

²³ Section 11(1) of the Industrial Disputes Act, 1947

²⁴ Available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=85783> accessed on 19-08-2017

²⁵ Section 10 (2A) of the Industrial Disputes Act, 1947

²⁶ Available at

<https://www.indiastat.com/table/labourandworkforce/380987/labourcourts/151/1000106/data.aspx> accessed on 19-08-2017

Every such Tribunal shall have the jurisdictions in respect of establishments situated in such areas as may be specified in the notification constituting the Tribunal. The Employees' Provident Funds Appellate Tribunal (EPF Appellate Tribunal), constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act), will cease to exist and its role will be taken over by the Industrial Tribunal constituted under the Industrial Disputes Act, 1947.²⁷

Objectives of the Tribunal: Employee Provident Fund Appellate Tribunal is a body constituted by the Central Government. Any person aggrieved by a notification issued or an order passed by the Central Government or any authority (Central Board or State Board) may prefer an appeal to the Tribunal. After giving the party an opportunity of being heard, the Tribunal may pass an order as it thinks fit. It generally address claims against employers as to failure or default in contribution to Employee Provident Fund, Employee Deposit Linked Insurance Scheme, Employee Pension Scheme. The Tribunal has power of confirming, modifying or annulling the order appealed against or referring it back to the authority with necessary directions. The object is to ensure that the employees' interest is protected and a forum other than the Board constituted under the Act is available where their grievances can be redressed.

Benches/Total No. of Tribunal

- The Tribunal has two Benches on in Delhi and other in Bangalore.
- The territories of the States of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, Telangana and Goa, and the Union Territories of Andaman and Nicobar Islands and Puducherry come under the new Employees' Provident Funds Appellate Tribunal which would be functioning from Bengaluru.²⁸
- However effective from 26 May 2017 the Employees' Provident Funds Appellate Tribunal (EPF Appellate Tribunal), constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act), will cease to exist and its role will be taken over by the Industrial Tribunal constituted under the Industrial Disputes Act, 1947.²⁹ Any appeal, application or proceeding pending before the EPF Appellate Tribunal before 26 May 2017 will be transferred to the Industrial Tribunal. The Industrial Tribunal will deal with such appeal,

²⁷ Entry 1 of Ninth Schedule and Amendment through Section 185 of the Finance Act 2017, Published under the Gazette of India, dated 31st March, 2017

²⁸ Notification on 7.11.2014 as was issued by Central Government. The Notification further states that from the date of publication of the notification, the Presiding Officer of the Employees' Provident Funds Appellate Tribunal in Delhi shall transfer the cases pending before the said Tribunal in respect of establishments falling within the southern states as stated in the Notification.

²⁹ Ministry of Finance Notification dated 26 May 2017.

application or proceeding from the beginning or from the stage at which it was pending before the date of transfer.

Composition: A Tribunal shall consist of one person to be appointed by the Central Government (Clause 1, Section 7D). Section 7H of the Act provides for Staff of the Tribunal according to which the Central Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit. The officers and other employees of a Tribunal shall discharge their functions under the general superintendence of the Presiding Officer.

Qualifications of Chairperson, Members etc.: The Presiding officer of a Tribunal shall be qualified for appointment only if he is (i) Judge of a High Court; or (ii) A district judge (Clause 2 and 3, Section 7D).

Tenure of Chairperson, Members etc.: The Presiding officer of a Tribunal shall hold office for a term of two years from the date on which he enters upon his office or until he attains the age of 62 year, whichever is earlier (S. 7E).

Removal of Chairperson, Members etc.: The conditions for removal of Presiding Officer of Tribunal are provided as follows (S. 7F):

- The Presiding Officer may, by notice in writing under his hand addressed to the Central Government, resign his office; provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
- The Presiding Officer shall not be removed from his office except by an order made by the President on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the High Court in which such Presiding Officer had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
- The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the Presiding Officer.

Powers and Functions of the Tribunal

- As per Section 7J, a Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings. A Tribunal shall,

for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in Section 7A and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

- Section 7A provides that in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute and to determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.
- The officer conducting the inquiry shall, for the purposes of such inquiry have the same powers as are vested in a court under the code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:- (a) enforcing the attendance of any person or examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavit; (d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code 45 of 1960.

Procedure Adopted by the Tribunal: Any person aggrieved by (a) a notification issued by the Central Government or (b) an order passed by the Central Government or any authority may prefer an appeal to the Tribunal against such notification or order in the following cases –

- (i) Issue of notifications by the Central Government applying the provisions of this Act to any establishment,
- (ii) Issue of notification by the Central Provident Fund Commissioner applying the provisions of this Act to any establishment;
- (iii) Power of the Central Government applying this Act to an establishment which has a common Provident Fund with another establishment;
- (iv) Determination of moneys due from employers under Section 7-A;
- (v) Review of orders passed under Sec. 7-A except an order rejecting an application for review;
- (vi) Determination of escaped amount;

(vii) Power of the Central Provident Fund Commissioner to recover damages u/s. 14-

B. The appeal shall be filed with the Registrar of Tribunals in the manner provided in Rule 4 of The Employees' Provident Fund Appellate Tribunal (Procedure) Rules 1997. The appeal is to be filed within 60 days of the date of order accompanied by a demand draft of Rs. 500 in favour of a nationalized bank.³⁰ The Tribunal shall scrutinize the appeal and send notices to the concerned parties. The respondent shall file a reply and date and place of hearing shall be notified to the parties. The order of the Tribunal shall be signed by the Presiding Officer and shall be pronounced in open court (Rule 31). The order shall be communicated to the concerned parties by delivery by hand or registered post.

Maximum Time Limit for Disposal of Case: The Tribunal shall draw up a calendar for the hearing of cases and, as far as possible, hear and decide the cases according to the calendar. Every appeal shall be heard and decided, as far as possible, within six months from the date of its registration. The Tribunal shall have the power to decline an adjournment and also to limit the time for oral arguments (Rule 14).

Case Disposal Rate: The work load of EPFAT was comparatively less as the number of appeals preferred to it were minimized due to travel hassles and expenses. After a company is fined by the regional Employees Provident Fund Organization (EPFO), they had only appellate Tribunal in Delhi to challenge the decision. Often, the logistical costs of travelling to Delhi and hiring a lawyer override the benefits of a reversed order. Due to the heavy expenditure involved in travelling and the cost of litigations, many parties are unable to file appeals. Under these circumstances, it would be in the interest of litigants to provide Industrial Tribunals where Appellate Tribunals were there.

The Changes Introduced through the Finance Act, 2017

Industrial Tribunal

Qualifications: A person shall not be qualified for appointment as Presiding Officer, unless he, - (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) he has, for a period of not less than three-years, been a District Judge or an Additional District Judge; or (c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, management, industry, public affairs, administration, labour relations, industrial disputes or any other matter which in the opinion of the Central Government is useful to the Industrial Tribunal.

³⁰ The place of filing the appeal by the appellant is provided in Rule 6 as the place where the appellant resides or respondent resides or where the cause of action has arisen.

Committee: for the post of the Presiding Officer, (i) a person to be nominated by the Central Government- chairperson; (ii) Secretary to the Government of India, Ministry of Labour and Employment- member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts to be nominated by the Central Government- members.

Office term: 3 Years

Age limit: President – 65 years

2.2 INCOME TAX APPELLATE TRIBUNAL

Establishment: ITAT was constituted on 25/01/1941 by virtue of Section 5A of the Income Tax Act, 1922. ITAT is a quasi-judicial institution and specializes in dealing with appeals under the Direct Taxes Acts. In exercise of the powers conferred under Section 252 of the Income Tax Act, 1961 the Central Government constituted the Income Tax Appellate Tribunal (ITAT) to hear appeals against the orders passed by various authorities stated under Section 253 of the Act. Section 252 to 255 of the Income Tax Act, 1961 deals with Appellate Tribunal, procedure, filing of appeal etc.³¹ The Income Tax Act has been further amended through the Finance Act, 2017. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of presiding officer of the Income Tax Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.³²

³¹ Section 252: Appellate Tribunal, Section 253: Appeals to the Appellate Tribunal, Section 254: Orders of the Appellate Tribunal, Section 255: Procedure of Appellate Tribunal

³² In the Income Tax Act, 1962,—(a) after section 245-O, the following section shall be inserted, namely:—

"245-OA. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman, Vice- Chairman and other Members of the Authority appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act: Provided that the Chairman, Vice-Chairman and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.";

(b) after section 252, the following section shall be inserted, namely:— "252A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

Objectives of Tribunal: The main object of ITAT is imparting justice to the litigants by an inexpensive, forum free from technicalities and its expert knowledge on the subject of Direct Taxes. The main objective of establishing Tribunal is to provide justice with most inexpensive; accessibility; freedom from technicalities; expedition; and expert knowledge of their particular subject.

Benches/Total No. of Tribunal: The Tribunal Started in 1941 with six Members constituting three Benches, one each at Delhi, Kolkata and Mumbai, the numbers of Benches have progressively increased and presently ITAT has 63 Benches at 27 different stations covering almost all the cities having a seat of the High Court. The other benches are at Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Chandigarh, Chennai, Cochin, Cuttack, Guwahati, Hyderabad, Indore, Jabalpur, Jaipur, Jodhpur, Kolkata, Lucknow, Nagpur, Panaji, Patna, Pune, Raipur, Rajkot, Ranchi, Visakhapatnam.

Composition: The Composition of the Tribunal - each Bench consists of one Judicial Member and one Accountant Member.

Qualifications of Judicial Member, Members etc.: (1) A person shall not be qualified for appointment as President unless he is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court or a Vice-President of the Income-tax Appellate Tribunal.

(2) The Central Government may appoint one or more members of the Income-tax Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.

(3) A person shall not be qualified for appointment as a Judicial Member, unless,— (a) he has for at least ten years held a judicial office in the territory of India; or (b) he has been a member of the Indian Legal Service and has held a post in Grade II of the Service or any equivalent or higher post for at least three years; or (c) he has been an advocate for at least ten years;

(4) A person shall not be qualified for appointment as an Accountant Member, unless,— (i) he has for at least ten years been in the practice of accountancy,— (a) as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or (b) as a registered accountant under any law formerly in force; or partly as such registered accountant and partly as a chartered accountant; or (ii) he has been a member of the Indian Revenue Service (Income-tax Service Group 'A') and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

Tenure of President, Members etc.: The President, Vice President and every other Member shall hold office for such period, not exceeding three years, as may be specified by the Central Government in the order of his appointment, but shall be eligible for reappointment. Provided that no person shall hold office as the person or other Member after he has attained the age of sixty-two years.

Removal of Chairperson, Members etc.: Removal of Member.—The Central Government may, on the recommendation of a Committee constituted by it in this behalf, remove from office any Member, who— (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (c) has become physically or mentally incapable of acting as such a Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that where a Member is proposed to be removed on any ground specified in clauses (b) to (e), the Member shall be informed of the charges against him and given an opportunity of being heard in respect of those charges. Provided further that the Chairperson or member of the National Company Appellate Tribunal shall be removed from office in consultation with the Chief Justice of India.³³

Powers and Functions of the Tribunal: The Income Tax Tribunal Rules, 1963 provides powers and functions to the Tribunal to deal with the income tax cases as well as it is aimed at providing justice to the aggrieved party from the decision of the Commissioner of Income Tax. The act and rules provides the method of filing, time limit, disposal of the appeal, procedure for conducting the appeal and powers of the Tribunal.

Power to Restore an Ex-parte order: It provides that where in case the Appellate fails to appear in the Tribunal on the day decided for hearing the appeal in person or through an authorized representative, the Tribunal may dispose of the appeal on merits after hearing the respondent provided that when the appellant furnishes 'sufficient cause' for his non-appearance on the so day decided the Tribunal on being satisfied on its truth may make an order setting aside the ex-parte order and restoring the appeal (Rule 34).

³³ Tribunal Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules 2017

- Power of Remand-Power of remand is an additional power to the power of an appellate authority for obtaining all relevant information for a fair conclusion. However, this power shall not be exercised as a routine matter.
- Power to Admit New Plea-Generally, a new plea is not admitted in appeal and the Tribunal cannot entertain a new plea which has not been raised before the lower authorities.
- Power of Review
- Power of Rectification
- Power to Recall its Order

Procedure Adopted by the Tribunal

- **Filing of Paper Book:** The appellant or the respondent, as the case may be, may submit a paper book in duplicate containing documents or statements or other papers referred to in the assessment or appellate order, which it may wish to rely upon. The paper book duly indexed and page numbered is to be filed at least a day before the hearing of the appeal along-with proof of service of copy of the same on the other side at least a week before. The Bench may in appropriate cases condone the delay and admit the paper book. The Tribunal can also, on its own direct preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal. Each paper in the paper book is to be certified as true copy by the party filing the same. Additional evidence, if any, should not be part of the paper book and it should be filed separately.
- **Hearing of the appeal:** The Appellate Tribunal fixes the date for hearing the appeal and notifies the parties specifying date and place of hearing of the appeal. A copy of memorandum of appeal is sent to the respondent either before or along with such notice. The appeal is heard on the date fixed and on other dates to which it may be adjourned. If the appellant does not appear in person or through an authorized representative when appeal is called on for hearing, the ITAT may dispose of the appeal on merits after hearing the respondent. However, where after disposal of appeal ex parte, the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for non-appearance, the Tribunal can set aside the ex parte order and restore the appeal. Similar procedure is applicable where appeal is disposed in the absence of respondent.

- **Production of additional evidence before the Tribunal:** The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the Tribunal. However, if the Tribunal requires production of any document, examination of any witness or filing of any affidavit to enable it to pass orders, it may allow such document to be produced, witness to be examined, affidavit to be filed and such evidence to be adduced.
- **Proceedings before the Tribunal to be open to the public:** Normally the proceedings in the Tribunal are public except in cases decided to be otherwise by the Tribunal as per its discretion.

Maximum Time Limit for Disposal of Case: Where it is possible, the ITAT shall dispose of the appeal within a period of four years from the end of the financial year in which appeal is filed.

Changes Introduced through the Finance Act, 2017

Income Tax Appellate Tribunal

Qualifications: (1) A person shall not be qualified for appointment as President unless he is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court or a Vice-President of the Income-tax Appellate Tribunal.

(2) The Central Government may appoint one or more members of the Income-tax Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.

(3) A person shall not be qualified for appointment as a Judicial Member, unless, — (a) he has for at least ten years held a judicial office in the territory of India; or (b) he has been a member of the Indian Legal Service and has held a post in Grade II of the Service or any equivalent or higher post for at least three years; or (c) he has been an advocate for at least ten years;

(4) A person shall not be qualified for appointment as an Accountant Member, unless, — (i) he has for at least ten years been in the practice of accountancy, - (a) as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or (b) as a registered accountant under any law formerly in force; or partly as such registered accountant and partly as a chartered accountant; or (ii) he has been a member of the Indian Revenue Service (Income-tax Service Group 'A') and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

Search-cum-Selection: (A) Search-cum-Selection Committee for the post of the President and Vice-President, - (i) a sitting Judge of Supreme Court to be nominated by the Chief Justice of India- chairperson; (ii) the President, Income-tax Appellate Tribunal-member; and (iii) the Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)- member.

(B) Search-cum-Selection Committee for the Accountant Member and Judicial Member, – (i) a nominee of the Minister of Law and Justice- chairperson; (ii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)- member; (iii) President of the Income- tax Appellate Tribunal – member; and (iv) such other persons, if any, not exceeding two, as the Minister of Law and Justice may appoint- member.

Office term: 3 Years

Age limit: President – 65 years, Vice-President – 62 years, Member – 62

2.3 CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

Establishment: The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) was formerly known as Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT), was created to provide an independent forum to hear the appeals against orders and decisions passed under the Customs Act, 1962, Central Excise Act, 1944 as amended from time to time and Gold (Control) Act, 1968. Since the Gold (Control) Act has been repealed, now the Tribunal is known as the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) was established on 11 October 1982. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of presiding officer of the CESTAT appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.³⁴

Objectives of Tribunal: The main objective of the Tribunal is to provide speedy disposal of appeals by hearing appeals against the orders passed by the Designated Authority in the Ministry of Commerce and the appeals under the Service Tax.

³⁴ In the Customs Act, 1962, in section 129, after sub-section (6), the following sub-section shall be inserted, namely:—“(7) Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President or other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.”

Benches/Total No. of Tribunal: It has 3 benches in Delhi and 4 benches in Mumbai and one each at Allahabad, Ahmedabad, Bengaluru, Chandigarh, Chennai, Hyderabad and Kolkata.

Composition: The Tribunal shall consist of President, Vice-President and as many Judicial Members and Technical Members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal. The Senior Vice-President or the Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

Qualifications of President, Vice-President and Members: President- (1) The Central Government shall appoint- (a) a person who is or has been a Judge of a High Court; or (b) one of the members of the Appellate Tribunal, to be the President thereof. (2) Where a Member (other than a sitting or retired Judge of a High Court) is appointed as President, he shall hold the office as President for a period of 3 years or till he attains the age of 65 years, whichever is earlier. (3) Where a serving or retired Judge of a High Court is appointed as President, he shall hold the office as President for a period of 3 years from the date he enters upon the office or till he attains the age of 65 years, whichever is earlier. (4) Where a sitting or retired Judge of a High Court is appointed as President, the conditions of service will be the same as are applicable to a serving Judge of a High Court under the High Court Judges (Conditions of Service) Act, 1954 and the rules framed under that Act.

Vice-President-(1) [The Central Government may, on the recommendation made by the Selection Committee under sub-rule (3) of rule 6, appoint] one or more members to be the Vice-President or, as the case may be, the Vice-Presidents thereof. (2) The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

Judicial Members-(1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Service Tax Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act (S. 129 of the Customs Act). (2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least

three years, or who has been an advocate for at least ten years.³⁵ Explanation. - For the purposes of this sub-Section,-(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office, or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate. (2A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of [Commissioner of Customs]³⁶ or Central Excise or any equivalent or higher post for at least three years.

Tenure of President, Members: President- He shall hold the office as President for a period of 3 years from the date he enters upon the office or till he attains the age of 65 years, whichever is earlier. **Member-**A member shall hold office until he attains the age of 62 Years.³⁷

Powers and Functions of the Tribunal: CESTAT functions with the following limitations as it cannot –

- Grant compensation owing to unlawful action of revenue authorities.
- Review its own order as any quasi-judicial authority cannot review its own order.
- Exercise powers beyond statute as it is a creature of statute only. It cannot issue writs or grant relief which ought to be granted by a High Court.
- Comment on legitimacy of statute and has to presume legal validity of the provisions of Act and Rules.
- Punish for its own contempt but has to forward it to high court for its consideration.
- Acts as a court as it is a Tribunal and cannot be equated to a court. Members of Tribunal are not judges and their decisions are orders, not judgments.
- Over rule any high court judgment and are bound by judgments of High Courts and the Supreme Court.

³⁵ Substituted w.e.f. 11.5.1984 by the Finance Act, 1984

³⁶ Substituted by the Finance Act, 1995

³⁷ Rule 6, 10, 12 of the Customs, Excise and Service Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987

Procedure Adopted by the Tribunal

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions contained in sub-Section (4), a Bench shall consist of one judicial member and one technical member.

(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where –(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or (c) the amount of fine or penalty involved, does not exceed ten lakhs rupees.

(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

- (a) Discovery and inspection;
- (b) Enforcing the attendance of any person and examining him on oath;
- (c) Compelling the production of books of account and other documents; and
- (d) Issuing commissions.

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Changes Introduced by the Finance Act, 2017

The Customs, Excise and Service Tax Appellate Tribunal

Qualifications: (1) A person shall not be qualified for appointment as President unless, - (a) he is or has been a Judge of a High Court; or (b) he is the member of the Appellate Tribunal.

(2) A person shall not be qualified for appointment as a Judicial Member, unless, - (a) he has for at least ten years held a judicial office in the territory of India; or (b) he has been a member of the Indian Legal Service and has held a post in Grade-I of that Service or any equivalent or higher post for at least three years; or (c) he has been an advocate for at least ten years.

(3) A person shall not be qualified for appointment as a Technical Member unless he has been a member of the Indian Revenue Service (Customs and Central Excise Service Group 'A') and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.

Search-cum-Selection: (A) Search-cum- Selection Committee for the post of President, - (i) Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India as chairperson; (ii) Secretary to the Government of India, Department of Revenue- member; (iii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)- member; (iv) Secretary to the Government of India, Department of Personnel and Training-member.

(B) Search- cum- Selection Committee for post of Judicial Member, - (i) a Judge of the Supreme Court as nominated by the Chief Justice of India- chairperson; (ii) Secretary to the Government of India, Ministry of Finance (Department of Revenue)- member; (iii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs) -member; (iv) President of the Customs, Excise and Service Tax Appellate Tribunal- member; and (v) such other persons, not exceeding two, as the Central Government may nominate- member;

(C) Search-cum-Selection Committee for the post of Technical member,- (i) Cabinet Secretary to the Government of India – chairperson; (ii) Secretary to the Government of India, Ministry of Finance (Department of Revenue)- member; (iii) Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) – member; Secretary to the Government of India, Ministry of Law (Department of Legal Affairs)

Office term: 3 Years

Age limit: President – 67 years, Member – 62 years

2.4 APPELLATE TRIBUNAL FOR FORFEITED PROPERTY & MONEY LAUNDERING

(In addition to the SAFEMA, NDPSA, PMLA, jurisdiction is also conferred under the Appellate Tribunal for Foreign Exchange under the Foreign Exchange Management Act, 1999)

Establishment: Initially, the Appellate Tribunal for Forfeited Property (ATFP) was constituted and started functioning from 3 January 1977. The Appellate Tribunal for Forfeited Property is one of the oldest and earliest Tribunals of India. The act empowers the Central Government to lay down provision for the establishment of the Appellate Tribunal for Forfeiture Property by Central Government.³⁸ The Appellate Tribunal for Forfeited Property was conferred jurisdiction under (i) Smugglers and Foreign Exchange Manipulators (forfeited of property) Act, 1976 (SAFEMA) and (ii) Narcotic Drugs & Psychotropic Substances Act, 1985 (NDPSA). The Appellate Tribunal for Prevention of Money Laundering Act (AT PMLA) started working from the premises of ATFP and started hearing the appeals against the orders passed by Adjudicating Authority under PMLA from the year 2009. The Appellate Tribunal under SAFEMA Act was constituted by merger of ATFP and AT PMLA to hear the appeals filed against the orders of Competent Authority under SAFEMA/NDPS Acts and against the order of Adjudicating Authority under PMLA Act. This tribunal also functions as the Appellate Tribunal for Foreign Exchanges under the Foreign Exchange Management Act, 1999.³⁹

The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of presiding officer of the above Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁴⁰

³⁸ Section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

³⁹ Entry-4 of the Ninth Schedule and Amendment through Section 185 of the Finance Act 2017, Published under the Gazette of India, dated 31st March, 2017

⁴⁰ In the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976,—

"12A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and other members appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder

as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

Objectives of Tribunal: To hear appeals against the order passed by competent authority under the Smugglers and Foreign Exchange Manipulation Act, 1976 (SAFEMA Act).

- To hear appeals against the order passed competent authority under the Narcotics and Psychotropic Substances Act, 1985 (NDPS Act).
- To hear appeals against the order passed by Adjudicating authority under the Prevention of Money Laundering Act, 2002 (PMLA).
- To hear the appeal against the order passed under the Foreign Exchange Management Act, 1999 (FEMA).

Benches/Total Number of Tribunal: The headquarters of the Tribunal shall be at New Delhi. All appeals and petitions shall ordinarily be heard at the headquarters but may, at the discretion of the Chairman, be heard at Chennai, Kolkata and Mumbai or any other place in the public interest.

Composition: The Appellate Tribunal comprises a Chairman and four members to be appointed by Central Government. For the purpose of appointment to the post of Chairman, there shall be a Selection Committee.

Qualifications of Chairperson, Members etc.: The chairperson shall be a person who is or has been a Judge of the High Court or Supreme Court.⁴¹ The other four members may be a person who is or has been a Judge of High Court or who is a member of an Indian Revenue Service and has held the post of Commissioner/Joint Secretary or equivalent post in Indian Legal Service, Income Tax, Indian Economy Service Indian Customs and Central Excise Service or Indian Audit and Account Service in that service for at least 3 years.

Tenure of Chairperson, Members etc.: Where a serving Judge of the Supreme Court or of a High Court is appointed as Chairman, he shall hold office as Chairman for a period of three years or till he attains the age of 65 years or 62 years, whichever is earlier, as the case may be.⁴² Where a person serving as retired Judge of Supreme Court or of a High Court is appointment as Chairman, he shall hold office for a period of three years, or till he attains the age of 65 years, whichever happens earlier and shall not be eligible for re-appointment. A person appointed as member shall hold office till he attains the age of 60 years.

⁴¹ Section 12(2) of the Smugglers and Foreign Exchange Manipulation Act, 1976

⁴² The Appellate Tribunal for Forfeited Property (Conditions of Service of Chairman and Members) Rules, 1978.

Powers and Functions of the Tribunal: Powers of the Tribunal

- The Appellate Tribunal for Forfeited Property is vested with the powers of a civil court. These powers are in respect of the following matters:
- The summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
- The discovery and production of any document or other material object producible as evidence;
- The reception of evidence on affidavits;
- The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- Issuing of any commission for the examination of any witness, and

Functions of the Tribunal: The Tribunal adjudicates Appeals and allied petitions filed against the attachments / forfeitures order passed by the Competent Authorities under SAFEMA / NDPS Acts and orders of attachments/forfeitures of properties involved in Money Laundering by Adjudicating Authority under PMLA. It also Adjudicates appeals filed against the orders imposing fine passed by the Director-Financial Intelligence Unit India (FIU-India). The Benches of the Appellate Tribunal sit at New Delhi without any benches elsewhere in the country.

Procedure adopted by Tribunal: (a) A memorandum of appeal shall be in Form A annexed hereto and shall be in English or in Hindi and shall set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative, and such grounds shall be numbered consecutively. (b) Every memorandum of appeal, filed within 45 days of service of the order of the competent authority, being in Form-A annexed hereto and otherwise in order, shall be registered and numbered by the Registrar who shall intimate the appellant or his authorized representative accordingly. (c) On receipt of an appeal, the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.⁴³

⁴³ Section 12(5) of the Smugglers and Foreign Exchange Manipulation Act, 1976

2.4.1 PREVENTION OF MONEY LAUNDERING APPELLATE TRIBUNAL

Objectives of the Tribunal: The PML Act seeks to combat money laundering in India and has three main objectives.- (a) to prevent and control money laundering, (b) to confiscate and seize the property obtained from the laundered money; and (c) to deal with any other issue connected with money laundering in India.

Benches/Total no. of Tribunal: A Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit. The Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson.

Composition: The Tribunal consists of a Chairperson and two other Members. The Chairman and one Member of ATFP holds additional charge of the post of Chairman and Member of Tribunal under PMLA.

Qualifications of Chairperson, Members etc.: A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court.

(2) A person shall have these qualified for appointment as a Member unless — (b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least 3 years; or (c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service for at least three years; (d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years; or (e) has been a member of the Indian Customs and Central Excise Service and has held the post of a Joint Secretary or equivalent post in that Service for at least three years; or (f) has been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949) or as a registered accountant under any law for the time being in force or partly as a registered accountant and partly as a chartered accountant for at least ten years: Provided that one of the members of the Appellate Tribunal shall be from category mentioned in clause (f); or (g) has been a member of the Indian Audit and Accounts Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.

Removal of Chairperson, Members etc.: (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office. (2) An order made by the Central Government on the ground of proved

misbehavior or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

Powers and Functions of the Tribunal: Appellate Tribunal has been constituted to hear appeals against the orders of the Adjudicating Authority and the authorities under the said Act. The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of 45 days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.⁴⁴

- (1) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit.
- (2) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
- (3) Distribution of business amongst Benches
- (4) Power of Chairperson to transfer cases

Procedure Adopted by Tribunal: Appellate Tribunal has been constituted to hear appeals against the orders of the Adjudicating Authority and the authorities under the said Act. The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period [Section 26.]) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) Summoning and enforcing the attendance of any person and examining him on oath;

⁴⁴ Section 26 of the Prevention of Money Laundering Act, 2002

- (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 (1 of 1872), requisitioning any public record or document or 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 a representation for default or deciding it ex parte;
- (h) Setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter, which may be, prescribed by the Central Government.

Maximum time limit for Disposal of Case: The Act empowers the Director to attach and confiscate the tainted property *suo-moto*, for a maximum period of 180 days, provided that he has reasons to believe that the property has been acquired out of criminal proceeds of a scheduled offence.

2.4.2 APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE

(The Tribunal is merged with the Appellate Tribunal for Forfeiture Property)

Establishment: The Appellate Tribunal for Foreign Exchange was established on 1 June 2000 as a successor to the Foreign Exchange Regulation Appellate Board, which ceased to exist with the repealing of the Foreign Exchange Regulation Act, 1973 by the power conferred by Section 18 of the Foreign Exchange Management Act (hereinafter FEMA), 1999, which was enacted with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. Recently as per the Finance Act, 2017, it has been merged with the Appellate Tribunal under smugglers and foreign Exchange Manipulator (Forfeiture of property) Act, 1976 w.e.f. 26-05-2017 and no cases will be entertained regarding fresh appeal, review, revision petitions at ATFE. The Appellate Tribunal for Foreign Exchange has been defined under Sec 2(b), as "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under Section 18⁴⁵ also under Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 in its definition, Section 2(d) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange

⁴⁵ Section 2(b) of the Foreign Exchange Management Act, 1999

established under Section 18 of the Act.⁴⁶ According to Section 18 of FEMA, the Central Government shall, by notification, establish an Appellate Tribunal to be known as Appellate Tribunal for Foreign Exchange to hear appeals against the orders of Adjudicating Authorities and the Special Director (Appeals) under this Act.

Objectives of Tribunal: The objective of the Tribunal was to have the speedy delivery of justice and adjudicate the case of appeal before it regarding the error of special appeals and adjudicating authorities. As foreign exchange management requires special bench, as it is a technical matter. Some objectives can be highlighted as follow:

- to hear appeals against the orders of the Adjudicating Authorities [Competent Authorities] and the Special Director (Appeals).
- For the protection of violation of fundamental rights by the adjudication authority

Benches/Total Number of Tribunal: The Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify.⁴⁷ The Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.⁴⁸ The Chairperson may transfer a Member from one Bench to another Bench.⁴⁹ If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.⁵⁰ It had only one appellate Tribunal for matter relating to foreign exchange.

Composition: The composition of the Appellate Tribunal as statutory provided under Section 20 of FEMA Act, lays down the members including Chairperson as a Head of Tribunal to adjudicate or hear appeal arising out of an order from "Adjudicating Authority" and "Special Director (appeal)." The Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit (S. 20(1), FEMA, 1999). As per Subject to the provisions of this Act under Sec 20(2) sub clause,

- (a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

⁴⁶ Section 2(d) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000

⁴⁷ Section 20(2)(c) of the Foreign Exchange Management Act, 1999

⁴⁸ Section 20(2)(d) of the Foreign Exchange Management Act, 1999

⁴⁹ Section 20(3) of the Foreign Exchange Management Act, 1999

⁵⁰ Section 20(4) of the Foreign Exchange Management Act, 1999

(b) a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit (S. 20(2), FEMA, 1999);

Qualifications of Chairperson, Members etc.: The Act prescribed for appointment and Qualification of Chairpersons, Members of the Tribunal, which is as follows:- Section 21(1) provides the provision of chairperson, A person shall not be qualified for appointment as the Chairperson or a Member unless he— in the case of Chairperson, is or has been, or is qualified to be, a Judge of a High Court; and (b) in the case of a Member, is or has been, or is qualified to be, a District Judge (S. 21(2)(a), FEMA, 1999).

Tenure of Chairperson, Members etc.: The FEMA Act, 1999 provides the specified time period regarding the service to the Appellate Tribunal. Per Section 22, the Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office: Provided that no Chairperson or other Member shall hold office as such after he has attained,— (a) In the case of the Chairperson, the age of 65 years; (b) In the case of any other Member, the age of 62 years. The minimum number of year to serve as a chairperson and other member has been fixed for 5years.

Removal of Chairperson, Members etc.: Section 25 (1) provides the provision of resignation from the post designated by the chairperson or any member of the Tribunal. He/she can by notice in writing under his hand addressed to the Central Government, resign his office but unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest (S. 25(1), FEMA, 1999). Beside that Sec 25(2) of FEMA Act, Provides the provision of Removal of Chairperson and other members. The Chairperson or a Member shall not be removed from his office except by an order by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges (S. 25(2), FEMA, 1999).

Powers and Functions of the Tribunal: It has same powers as are vested in a civil court under the CPC, 1908 (5 of 1908), while trying a suit of following matters: Summoning and enforcing the attendance of any person and examining him on oath;

- Requiring the discovery and production of documents;

- Receiving evidence on affidavits;
- Subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- Issuing commissions for the examination of witnesses or documents;
- Reviewing its decisions;
- Dismissing a representation of default or deciding it *ex parte*;
- Setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- Any other matter which may be prescribed by the Central Government (S. 28(2), FEMA, 1999).

Section 30 of the FEMA Act provides the Power of Chairperson to transfer cases as his discretionary function. The chairperson has the power to transfer any case pending before one Bench, for disposal, to any other Bench upon on the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice.

Procedure adopted by Tribunal: Regarding the power and functions of the appellate Tribunal of FEMA, statutory provision under Sec 28. Under, Sec 28(1) of the Act, the appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal have powers to regulate its own procedure (S. 28(1), FEMA, 1999). Also an order by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree as a decree of civil court and for this purpose, the Appellate Tribunal shall have all the powers of a civil court. It also may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court. All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Maximum time limit for Disposal of Case: Section 19 of FEMA Act, provides the limitation of time to dispose the appeal made before it by the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those

referred to in sub-Section (1) of Section 17,⁵¹ may prefer an appeal to the Appellate Tribunal within 45 days of on which a copy of the order made by adjudicating authority or Special Director (appeals) (S. 19(2), FEMA, 1999), so it has to dispose of the appeal finally within 180 days from the date of receipt of the appeal (S. 19(1), FEMA, 1999). In case if the Tribunal does not dispose the same within 180 days, it shall record its reasons in writing for not disposing off the appeal within the said period.

Changes Introduced through the Finance Act, 2017

Appellate Tribunal Under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act

Qualifications: (1) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of a Supreme Court or a Judge of a High Court.

(2) The Member of the Appellate Tribunal shall be a person not below the rank of Joint Secretary to Government of India.

Search-cum-Selection: Search-cum-Selection Committee for the post of Chairman, - (i) Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India – chairperson; (ii) Secretary to the Government of India (Department of Revenue)- member; (iii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)- member; (iv) Secretary to the Government of India, Department of Personnel and Training- member.

(B) Search-cum Selection Committee for the post of Member, - (i) Cabinet Secretary – chairperson; (ii) Secretary to the Government of India, Department of Personnel and Training- member; (iii) Secretary to the Government of India (Department of Revenue) member; Two Secretaries to the Government of India to be nominated by the Central Government members.

Office term: Three Years

Age limit: Chairperson – 65 years, Member – 62 years

2.5 CENTRAL ADMINISTRATIVE TRIBUNAL

Establishment: The foundation of establishing Central Administrative Tribunal lies in Article 323 A of the Constitution of India, on the basis of which, the Central Government enacted the Administrative Tribunals Act, 1985. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of presiding officer of the Administrative Tribunal

⁵¹ The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating under this Section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.

appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁵²

Objectives of Tribunal: The objective of enacting the Administrative Tribunals Act, 1985 and establishing Central Administrative Tribunal was to give an effect to the constitutional provision, which provides that, there should be a body established for the adjudication of disputes and complaints regarding recruitment and condition of service of civilians appointed to public services or posts in connection with the affairs of the Union government. Therefore taking into consideration of the idea of not overburdening the existing courts structure with the adjudication of disputes of public servants and other government officials, the Act provided for the establishment of Central Administrative Tribunal to deal exclusively with the service matters.

Benches/Total No. of Tribunal: The Tribunal has 17 benches in total including 1 Principal Bench at New Delhi and other benches at Ahmedabad, Allahabad, Lucknow, Bengaluru, Kolkata, Chandigarh, Cuttack, Ernakulum, Guwahati, Hyderabad, Jabalpur, Jodhpur, Jaipur, Chennai, Mumbai and Patna.

Composition: The Principal Bench of the Tribunal comprises of a Chairman and 2 judicial members and 4 Administrative members. Section 5(1) and 5(2) of Administrative Tribunals Act, 1985 clearly states that every bench must have a Chairman and at least 1 Administrative and 1judicial member. The number of Judicial and Administrative members in a bench can be increased by the discretion of appropriate government.

Qualifications of Chairperson, Members etc.: Chairperson- The Administrative Tribunal Act provides that the person who has been appointed as a judge of the High Court, such person can only be qualified and appointed as Chairman of the Central Administrative Tribunals (S. 6(1)). **Administrative Member-** The Act provides the qualification of Administrative member, qualifying only such person who has held for at least two years the post of Secretary to the Government of India or any other post under the Central or State Government and carrying the scale of pay which is not less than that of a Secretary to the Government of India for at least two years or held a post of

⁵² In the Administrative Tribunals Act, 1985, after section 10A, the following section shall be inserted, namely:—

10B. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman and other Members of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairman and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

Additional Secretary to the Government of India for at least five years or any other post under the Central or State Government carrying the scale of pay which is not less than that of Additional Secretary to the Government of India at least for a period of five years: Provided that the officers belonging to All-India services who were or are on Central deputation to a lower post shall be deemed to have held the post of Secretary or Additional Secretary, as the case may be, from the date such officers were granted proforma promotion or actual promotion whichever is earlier to the level of Secretary or Additional Secretary, as the case may be, and the period spent on Central deputation after such date shall count for qualifying service for the purposes of this clause (S. 6(2)(a)). **Judicial Member-** A person can be appointed as Judicial member, who is or qualified to be a Judge of a High Court or he has for at least two years held the post of a Secretary to the Government of India in the Department of Legal Affairs or the Legislative Department including Member-Secretary, Law Commission of India or held a post of Additional Secretary to the Government of India in the Department of Legal Affairs and Legislative Department at least for a period of five years (S. 6(2)(b)).

Tenure of Chairperson, Members etc.: According to the Act, Chairman shall hold the office for maximum 5 years after he enters the office and no Chairman shall hold the office after he has attained the age of 68 years. Reappointment of a same person as a Chairman of the Tribunal is not permitted by the Act (S. 8(1)). Members shall hold the office for the term of 5 years from the date of their entering the office which can be further extended to another term of 5 years. Also no Member shall hold the office after he has attained the age of 65 years (S. 8(3)).

Removal of Chairperson, Members etc.: The Chairman or any other Member of the Tribunal can be removed from his office only by the order of the President on the ground of proved misbehavior or incapacity after an inquiry being made by the Judge of the Supreme Court in which the accused Chairman or the Member was informed of the charges against him and was also given the reasonable opportunity of being heard (S. 9).

Powers and Functions of the Tribunal: The Chairman shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by appropriate government (S.12). The Act grants powers in the hands of Tribunal in respect of Contempt of itself as a High Court has and may exercises for this purpose, all the concerned provisions of Contempt of Court Act, 1971 (S. 17). The Act provides that for discharging the functions and also to adjudicate upon the application received, the Tribunal shall exercise the same powers as are vested in civil courts under

Code of Civil Procedure, 1908 (S.22). The Act gives power to the Tribunal to adjudicate all the matters concerning recruitment and conditions of service to any 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 or in the defence services, being in any case a post that is filled by any civilian (S. 14(1)).

Procedure Adopted by Tribunal: The Tribunal is not bound to follow the procedure laid down by Code of Civil Procedure, 1908 but shall be guided by the principle of natural justice and it is also subject to the other rules and provisions as are framed by the Central Government for the working of this Tribunal (S.22).

- Any aggrieved person can submit an application to the jurisdiction of Tribunal accompanied by all the relevant documents and other evidences supporting his claims and also with payment of necessary fees.
- The Tribunal shall thereafter summon and enforce the attendance of all the concerned person and examine them on oath.
- The Tribunal also requires the discovery, inspection and production of documents.
- It requires evidences on affidavit.
- It can also requisition any public record or document or copy of such record or any other document from the office.
- Issuing commission for examining of witnesses and other documents.

Maximum time limit for Disposal of Case

According to the rules, the Tribunal shall hear and decide upon the application filed before it within period of 6 months from the date of its registration.⁵³

Changes Introduced through the Finance Act, 2017

Central Administrative Tribunal

Qualifications: (1) A person shall not be qualified for appointment as the Chairman, unless he, – (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has, for a period of not less than three years, held office as Administrative Member or Judicial Member in the Central Administrative Tribunal; (c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs or administration, or any other matter which in the opinion of the Central Government is useful to the Central Administrative Tribunal.

(2) A person shall not be qualified for appointment:

(a) as a Judicial Member, unless he, - (i) is, or has been, or is qualified to be, a Judge of a High Court; or (ii) has, for at least one year, held the post of Secretary to the

⁵³ Rule 14 of the Central Administrative Tribunal (Procedure) Rules, 1987

Government of India in the Department of Legal Affairs or the Legislative Department including Member –Secretary, Law Commission of India; or (iii) has, for at least two years, held a post of Additional Secretary to the Government of India in the Department of Legal Affairs or Legislative Department; or (iv) has, for at least ten years, held a judicial office in the territory of India.

(b) as an Administrative Member, unless he: (i) has, for at least one year, held the post of Secretary to the Government of India or any other post under the Central Government or a State Government and carrying the scale of pay which is not less than that of a Secretary to the Government of India for at least one year; or (ii) has, for at least two years, held a post of Additional Secretary to the Government of India, or any other post under the Central or State Government carrying the scale of pay which is not less than that of Additional Secretary to the Government of India at least for a period of two years: Provided that the officers belonging to the All-India services who were or are on Central deputation to a lower post shall be deemed to have held the post of Secretary or Additional Secretary, as the case may be, from the date such officers were granted proforma promotion or actual promotion whichever is earlier to the level of Secretary or Additional Secretary, as the case may be, and the period spent on Central deputation after such date shall count for qualifying service for the purpose of this clause.

Search-cum-Selection: Search-cum-Selection Committee for the post of Chairman and Judicial Member, – (i) Chief Justice of India or his nominee- chairperson; (ii) Chairman of the Central Administrative Tribunal, Principal Bench – member; (iii) Secretary to the Government of India, (Department of Personnel and Training)- member; (iv) Secretary to the Government of India, Ministry of Law and Justice -member; (v) one expert, to be nominated by the Central Government of India- member.

(B) Search-cum-Selection Committee for the post of Administrative Member, – (a) a person to be nominated by the Central Government - chairperson; (b) Chairman of the, Central Administrative Tribunal – member; (c) Secretary to the Government of India, (Department of Personnel and Training)- member; (d) Secretary to the Government of India, Ministry of Law and Justice -member; (e) one expert, to be nominated by the Government of India - member.

Office term: 3 years

Age limit: Chairman – 68 years, Member – 65 years

2.6 RAILWAY CLAIMS TRIBUNAL

(Conferred Jurisdiction also to exercise powers under the Railways Act, 1989.

Henceforth, Railway Rates Tribunal has been merged with this Tribunal)

Establishment: The Railway Claims Tribunal Act came into force from 8 November 1989. As per Section 2 sub Section 3 of Railways Act 1989, "Claims Tribunal" means the Railway Claims Tribunal established under Section 3 of the Railway Claims Tribunal Act, 1987.⁵⁴ The Central Government shall, by notification, establish a Claims Tribunal, to be known as the Railway Claims Tribunal, to exercise the jurisdiction, powers and authority

⁵⁴Section 2(3) the Railways Act, 1989

conferred on it by or under this Act.⁵⁵ The Railway Claims Tribunal shall also be the Tribunal for the purpose of the Railway Rates Tribunal establishing under the Railways Act, 1989.⁵⁶

The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of presiding officer of the Income Tax Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁵⁷

Objectives of the Tribunal: The main objective of setting up of the Tribunal is to provide quicker relief and early payment of compensation for:-

1. Death and injury in case of railway accident & untoward incident - the claimant has to file the claim directly before the Railway Claims Tribunal.

⁵⁵Section 3 of the Railways Claims Tribunal Act, 1989

⁵⁶ In the Railways Act, 1989,—(a) in section 2, for clause (40), the following clause shall be substituted, namely:—

'(40) "Tribunal" means the Tribunal referred to in section 33; (b) in Chapter VII, for the heading, the following heading shall be substituted, namely:—"TRIBUNAL";

(c) for section 33, the following section shall be substituted, namely:—

"33. The Railway Claims Tribunal established under section 3 of the Railway Claims Tribunal Act, 1987 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, authority and powers conferred on it by or under this Act.;"

(d) sections 34 and 35 shall be omitted;

(e) in section 48, in sub-section (2), clause (a) shall be omitted.

⁵⁷ In the Railway Claims Tribunal Act, 1987,—

(a) in section 3, after the words "under this Act", the words, letters and figures "and under Chapter VII of the Railways Act,1989" shall be inserted;

(b) after section 9, the following section shall be substituted, namely:—

"9A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairman, Vice-Chairman and other Members of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairman, Vice-Chairman and Members appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made there under as if the provisions of section 184 of the Finance Act, 2017, had not come into force.;"

(c) in section 13, after sub-section (IA), the following sub-section shall be inserted, namely:—"(1B) The Claims Tribunal shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, the jurisdiction, powers and authority conferred on the Tribunal under Chapter VII of the Railways Act,1989.;"

(d) in section 15, for the words, brackets, figures and letter "sub-sections (1) and (1A)", the words, brackets, figures and letters "sub-sections (1), (1A) and (1B)" shall be substituted;

(e) in section 24, in sub-section (1), for the words, brackets, figure and letter "or, as the case may be, the date of commencement of the provisions of sub-section (1A)", at both the places where they occur, the words, brackets, figures and letters "or the date of commencement of the provisions of sub-section (1A), or, as the case may be, the date of commencement of the provisions of sub-section (1B)" shall be substituted.

2. For loss, destruction, damage, deterioration, non-delivery of animal/goods booked by railway or for the refund of fare or freight in case the claimant is not satisfied with the relief provided by the railway administration.

Benches/Total no. of Tribunal: There are 21 Benches of Tribunals set up in 19 locations across India.

Composition: 1. The Claims Tribunal shall consist of a Chairman, four Vice-Chairmen and such number of Judicial Members and Technical Members as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Claims Tribunal may be exercised by Benches thereof. 2. Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member.⁵⁸

Qualifications of Chairperson, Members etc.: Section 5 of Railway Claims Tribunal Act 1989, provides for “Qualifications for appointment as Chairman, Vice-Chairman or other Member”

1. A person shall not be qualified for appointment as the Chairman unless he -
 - a. Is, or has been, a Judge of a High Court; or b. Has, for at least two years, held the office of a Vice-chairman.
2. A person shall not be qualified for appointment as the Vice-Chairman unless he -
 - (a) Is, or has been, or is qualified to be, a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post in Grade I of that service or any higher post for at least five years; or (c) has, for at least five years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India; or (d) has, for at least five years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways; or (e) has, for a period of not less than three years, held office as a Judicial Member or a Technical Member.
3. A person shall not be qualified for appointment as a Judicial Member unless he -
 - (a) Is, or has been, or is qualified to be, a Judge of a High Court; or (b) Has been a Member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or (c) Has, for at least three years, held a civil judicial post

⁵⁸Section 4, Sub Sections 1 and 2, of the Railway Claims Tribunal Act, 1989

carrying as scale of pay which is not less than of a Joint Secretary to the Government of India.

4. A person shall not be qualified for appointment as a Technical Member unless he has, for at least three years, held a Post under a railway administration carrying a scale of pay which is not less than that of a Joint secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways.
5. Subject to the provisions of sub-Section (6), the Chairman, Vice-Chairman and every other Member shall be appointed by the President.
6. No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India (S.5).

Tenure of Chairperson, Members etc.: The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains,-

- a. In the case of the Chairman, the age of sixty-five years; and
- b. In the case of the Vice-Chairman or any other Member, the age of sixty-two years, whichever is earlier (S.7).

Removal of Chairperson, Members etc. (1) The Chairman, Vice-Chairman or other Member may, by notice in writing under his hand addressed to the President, resign his office: Provided that the Chairman, Vice-Chairman or other Member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest. (2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. (3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman or other Member referred to in sub-Section (2) (S.8).

Powers and Functions of the Tribunal: The Claims Tribunal shall have, for the purposes of charging its functions under this Act, the same powers as are vested in a civil

court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

- 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. Issuing commissions for the examination of witnesses or documents;
- e. Reviewing its decisions;
- f. Dismissing an application for default or deciding it ex parte;
- g. Setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- h. Any other matter which may be prescribed (S. 18(3)).

Procedure Adopted by the Tribunal: The Procedure adopted by the Tribunal is provided under Chapter 4 of Railway Claims Tribunal Act, which consisting in Sections 18, 20, 21, 22 and are as follows:-

(1) The Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.

(2) The Claims Tribunal shall decide every application as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as may be advanced.

(3) The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same power as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :

- (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 (1 of 1872), requisitioning any public record or document or 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;
- (i) Any other matter which may be prescribed (S.18).

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one bench, for disposal, to any other Bench (S.20). If the members of a Bench differ in opinion on any point, they shall state the point or points on which they differ and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it (S.21).

Execution of order of Claims Tribunal: (1) An order made by the Claims Tribunal under this Act shall be executable by the Claims Tribunal as a decree of Civil Court and, for this purpose, the Claims Tribunal shall have all the powers of a Civil Court. (2) Notwithstanding anything contained in sub-Section (1), the Claims Tribunal may transmit any order made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the order as if it were a decree made by that Court (S.22).

Appeals from the Orders and Judgments: Section 23 of Railway Claims Tribunal Act 1989, provides for “Appeals”, which reads as follows:-

1. Save as provided in sub-Section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.
2. No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.
3. Every appeal under this Section shall be preferred within a period of ninety days from the date of the order appealed against.

Maximum time limit for Disposal of Case: Rule 19 of Railway Claims Tribunals (Procedure) Rules, 1989 provides for ex-parte hearing and disposal of application:-

- Where on the date fixed for hearing the application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the application is called for hearing, the Tribunal may, in its discretion adjourn the hearing or hear and decide the application Ex-parte. (2) Where an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfy the Tribunal that the notice was duly served, or that he or they were prevented by any sufficient cause from appearing (when the application was called) for hearing the Tribunal may make an order setting aside the ex-parte hearing as against them or them upon such terms as it thinks fit, and shall appoint a day for proceeding with the application :
- Provided that where the ex-parte hearing of the application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.
- The Tribunal shall decide every application as expeditiously as possible on perusal of documents, affidavits and other evidence, if any, and after hearing such oral arguments as may be advanced.⁵⁹
- The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than twenty-one days from the final hearing".
- An order made by the Tribunal shall be executable by the Tribunal as a decree of a Civil Court and the provisions of the Code of Civil Procedure, 1908, so far as may be, shall apply as they apply in respect of decree of a Civil Court.⁶⁰
- Every order of the Tribunal shall be in writing and shall be signed by the Member or Members constituting the Bench which pronounced the order.

2.6.1 RAILWAY RATES TRIBUNAL

(Merged with Railway Claims Tribunal)

Establishment: The Railways Act, 1989, the central government has established this Tribunal (S.33, Railways Act, 1989). The Railway Claims Tribunal shall exercise, on and

⁵⁹Rule 30 of the Railway Claims Tribunals (Procedure) Rules, 1989

⁶⁰Rule 31 of the Railway Claims Tribunal (Procedure) Rules, 1989

from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, the jurisdiction, powers and authority conferred on this Tribunal. This Tribunal shall cease to exist and its role shall be taken over by the Railway Claims Tribunal.

Objectives of Tribunal: To hear and decide matters and grant the relief in such matters related to contravening to provisions of the Railway Act and if there is any fair charged or levied unreasonably.

Benches/Total no. of Tribunal: There is only one Railway Rates Tribunal till date and its head office located in Chennai. As per the information of the official website, others benches of the Tribunal is going to be established soon.

Composition: The Tribunal shall consist of a Chairman and two other Members to be appointed by the Central Government (S.33(2), Railways Act, 1989).

Qualifications of Chairperson, Members etc.: A person shall not be qualified for appointment as the Chairman of the Tribunal unless he is, or has been, a Judge of the Supreme Court or of a High Court and of the other two Members, one shall be a person, who, in the opinion of the Central Government, has special knowledge of the commercial, industrial or economic conditions of the country, and the other shall be a person, who, in the opinion of the Central Government, has special knowledge and experience of the commercial-working of the railways(S.33(3), Railways Act, 1989).

Tenure of Chairperson, Members etc.: The Chairman and the other Members of the Tribunal shall hold office for such period, not exceeding five years, as may be prescribed (S.33(4), Railways Act, 1989).

Removal of Chairperson, Members etc.: Under Section 33(5) In case the Chairman or any other Member is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government may appoint another person to act in his place during his absence.

Powers and Functions of the Tribunal: Under Section 38 - (1), the Tribunal shall have the powers of a Civil Court under the Code of Civil Procedure, 1908 [5 of 1908] for the purposes of taking evidence on oath, enforcing the attendance on witnesses, compelling the discovery and protection of documents, issuing commissions for the examination of witnesses and of review and shall be deemed to be a civil court for all the purposes of Section 195 and chapter XXXV of the Code of Criminal Procedure, 1973 and any reference in such Section or Chapter to the Presiding Officer of a Court shall be deemed to include a reference to the Chairman of the Tribunal.

(2) The Tribunal shall also have power to pass such interim and final orders as the circumstances may require, including orders for the payment of costs.

The Tribunal also have the power to make regulations. Under Section 48-

- (1), the Tribunal may, with the previous approval of the Central Government, make regulations consistent with this Act and rules generally to regulate its procedure for the effective discharge of its functions under this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-
 - (a) the terms and conditions of service of the officers and employees of the Tribunal;
 - (b) the award of costs by the Tribunal in any proceedings before it;
 - (c) the reference of any question to a Member or to an officer of the Tribunal or any other person appointed by the Tribunal, for report after holding a local inquiry;
 - (d) the right of audience before the Tribunal, provided that any party shall be entitled to be heard in person, or by a representative duly authorised in writing, or by a legal practitioner;
 - (e) the disposal by the Tribunal of any proceedings before it, notwithstanding that in the course thereof there has been a change in the persons sitting as Members of the Tribunal;
 - (f) a scale of fees for and in connection with the proceedings before the Tribunal.

Changes Introduced through the Finance Act, 2017

Railway Claims Tribunal

Qualifications: (1) A person shall not be qualified for appointment as the Chairman, unless he, – (a) is, or has been, or is qualified to be a Judge of a High Court; or (b) has, for a period of not less than three years, held office as Vice-Chairman, Judicial Member or Technical Member, as the case may be; or (c) is a person of ability, integrity and standing, and having a special knowledge of, and professional experience of not less than twenty-five years in claims and commercial matters relating to railways.

(2) A person shall not be qualified for appointment as the Vice-Chairman (Judicial), unless he, – (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years; or (c) has, for at least five years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India; or (d) has, for a period of not less than three years, held office as a Judicial Member.

(3) A person shall not be qualified for appointment as the Vice-Chairman (Technical), unless he: (a) has, for a period of not less than three years, held office as a Technical Member; (b) has, for at least five years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government

of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways.

(4) A person shall not be qualified for appointment as a Judicial Member, unless he: (a) is, or has been, or is qualified to be, a Judge of a High Court; (b) has, for at least ten years, held a judicial office in the territory of India.

(5) A person shall not be qualified for appointment as a Technical Member unless he is a person of ability, integrity and standing having special knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways of not less than twenty years.

Search cum Selection:

(A) Search cum Selection Committee consisting for the post of the Chairman, Vice-Chairman (Judicial) or Member (Judicial): (i) Chief Justice of India or his nominee-chairperson; (ii) Chairman or Member (Traffic) of the Railway Board- member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts who should have knowledge and experience of Claims and Commercial matters pertaining to Railways to be nominated by the Central Government-members.

(B) Search-cum-Selection Committee for the post of the Vice-Chairman (Technical) or Member (Technical),- (i) a person to be nominated by the Central Government-chairperson; (ii) Chairman or Member (Traffic) of the Railway Board- member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts with knowledge and experience of Claims and Commercial matters relating to Railways to be nominated by the Central Government members.

Office term: 3 Years

Age limit: Chairman – 67 years, Vice-Chairman – 65 years and Member – 62 years

2.7 SECURITIES APPELLATE TRIBUNAL

Establishment: The Tribunal has been established under Section 15K of Securities and Exchange Board of India Act, 1992. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of Presiding officer and other members of the Securities Appellate Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁶¹

⁶¹ In the Securities and Exchange Board of India Act, 1992, after section 15Q, the following section shall be inserted, namely:—

"15QA. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Presiding Officer and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Objectives of Tribunal: The Securities Appellate Tribunal has been established under the provision of SEBI Act, 1992 to hear and dispose of the appeals that are filed by the aggrieved party being aggrieved by the order passed by Securities and Exchange Board of India or by any other adjudicating officer authorized by the Act to pass such an order and also to exercise the jurisdiction, power and authority granted to it by the Act.

Benches/Total Number of Tribunals: The Securities Appellate Tribunal has only one Bench, which sits at Mumbai having jurisdiction for the whole of India.

Composition: The Act provides that the Tribunal shall comprise of a Presiding Officer and such number of Judicial and Technical Members which are not less than 2 as the Central Government may decide (S.15L). At present the bench of SAT at Mumbai is composed on One Presiding Officer and 2 Members out of which one is Technical Member and another is Judicial Member.

Qualifications of Chairperson, Members etc.: The Qualifications for Presiding Officer and other Members of the Tribunal are as follows (S.15M):-

- **Presiding Officer:** He must be the Judge of Supreme Court of India or Chief Justice of any High Court or a Judge of any High Court for at least 7 years.
- **Judicial Member:** He has been Judge of High Court for at least 5 years.
- **Technical Member:** He is or has been a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or any State Government or any person of proven ability and knowledge in financial sector and securities market or pension funds with the experience of not less than 15 years.

Tenure of Chairperson, Members etc.: The Act provides that the Presiding Officer and other Members of the Tribunal shall hold the Office for the term of 5 years from the date of entering the office and are further eligible for reappointment for maximum tenure of 5 years. No member of the Tribunal shall hold the office after attaining the age of 70 years (S.15N).

Removal of Chairperson, Members etc.: The Presiding Officer or Judicial or Technical Member of the Tribunal can only be removed after an inquiry is conducted by the Judge of Supreme Court in case the Presiding Officer or Member is declared as an insolvent **or** has become physically or mentally instable to hold the office **or** has been

Provided that the Presiding Officer and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

convicted of any offence which involves moral turpitude **or** has abused his position so as to render his continuation in office detrimental to the public interest **or** has acquired financial interest or other like interest to prejudicially affect his functions as Presiding Officer or as a Member of the Tribunal.

Powers and Functions of the Tribunal: For the purpose of discharging the functions assigned to the Tribunal under the Act, it can exercise the same powers as are vested in the hands of civil court under Code of Civil Procedure, 1908 while trying a suit, in respect of following matters, namely (S.15U) :-

- i) Summoning and enforcing the attendance of any person and examining them on the oath;
- ii) Requiring the discovery and production of any documents;
- iii) Receiving evidence on affidavit;
- iv) Issuing commission for the examination of witnesses or documents;
- v) Reviewing its decisions;
- vi) Setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- vii) Any other matter which may be prescribed.

Where Benches are constituted, the Presiding Officer shall have the power to distribute the business among the benches of the Tribunal. Presiding Officer of the Securities Appellate Tribunal is also granted the power to transfer the case pending from one bench to the other bench.

Procedure adopted by the Tribunal: The Act provides that the Tribunal shall not follow the procedure as provided under the Code of Civil Procedure, 1908 but shall follow the procedure in consonance with the Principles of Natural Justice and subject to the other provisions of the Act and the Rules shall be free to lay down its own procedure (S.15U). The Provisions of Securities Appellate Tribunal (Procedure) Rules, 2000 provides that the Memorandum of Appeal, application, reply, representation or any other document in writing in a prescribed form shall be filed in the registry of Appellate Tribunal by the Aggrieved Party. The Tribunal shall also endorse the receipt of the copy filed and will also scrutinize the same and if found proper will register the same and grant a serial number to it.⁶²

⁶² The Provisions of Securities Appellate Tribunal (Procedure) Rules, 2000

Maximum Time Limit for Disposal of the Case: The appeals or any application that is filed to the Securities Appellate Tribunal shall be disposed of within reasonable time by the Presiding Officer and other Members of the Tribunal.

Changes Introduced Through the Finance Act, 2017

Securities Appellate Tribunal

Qualifications: (1) A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he, — (a) in the case of the Presiding Officer, is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of a High Court for at least seven years; (b) in the case of a Judicial Member, is, or has been, a Judge of a High Court for at least five years; or (c) in the case of a Technical Member, (i) is, or has been, an Additional Secretary or Secretary in the Ministry or Department of the Central Government or any equivalent Post in the Central Government or a State Government; or (ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sectors including securities market or pension funds or commodity derivatives or insurance.

(2) A Member or Part time Member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to Executive Director in the Board or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities.

(3) The Presiding Officer or Member of the Securities Appellate tribunal shall be a person who does not have any financial or other interest as are likely to prejudicial affect their functions as such Presiding Officer or Member.

Selection: (A) The Presiding Officer and Judicial Member of the Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

(B) Search-cum-Selection Committee for the post of Technical Member, – (i) Presiding Officer, Securities Appellate Tribunal– chairperson; (ii) Secretary to the Government of India (Department of Economic Affairs) – member; (iii) Secretary to the Government of India, (Department of Financial Services) – member; and (iv) Secretary to the Government of India, in the Legislative Department or Department of Legal Affairs– member.

Office term: 3 Years

Age limit: Presiding Officer – 70 years, Member – 67 years

2.8 DEBT RECOVERY TRIBUNAL

Establishment: The Debt Recovery Tribunal (DRT) and Appellate Tribunal (DRAT) enforce the provisions of Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993 and also Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interests (SARFAESI) Act, 2002. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of Presiding officer of the Debt Recovery Tribunal (DRT) appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁶³

Objectives of the Tribunal: (1) The Tribunal was established under the Debt recovery Tribunal act with the objective of the expeditious and speedier adjudication and recovery of the debt due from the banks and financial institutions. (2) For the realization of the debts due to the bank and financial institutions. (3) To adjudicate the applications filed by the Borrower/Mortgagor against the action of the Secured Creditor initiated under the Securitization Act.

Total Number of DRT: The Central Government by notification has established 38 Debts Recovery Tribunals (DRT) in different states to exercise the jurisdiction, power and authority confers under the Act.⁶⁴

Composition: The Debt Recovery Tribunal consists of one person only referred to as the Presiding Officer appointed by notification, by the Central Government. The Central Government may authorize the Presiding Officer of one Tribunal to discharge also the functions of the Presiding Officer of another Tribunal (S.4).

Qualifications of Presiding Officer: A person be qualified for appointment as the Presiding Officer of a Tribunal if he is, or has been, or is qualified to be, a District Judge (S.5).

Tenure: Presiding officer once appointed holds office for the five years term or until he attains the age of 62 years whichever is earlier as per section 6 of debt recovery tribunal act 1993.

Removal of the Presiding Officer: The Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall not be removed from his office except by an

⁶³ In the Recovery of Debts due to Banks and Financial Institutions Act, 1993,—

(a) after section 6, the following section shall be inserted, namely:—

"6A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Presiding Officer of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Presiding Officer appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

⁶⁴ Government of India, 'History of DRAT and DRT' (*Debt Recovery Tribunals and Appellate Tribunals*, 2 February 2017) <<https://www.drt.gov.in/FrmHistory.aspx>> accessed 18 August 2017

order made by the Central Government on the ground of proved misbehavior or incapacity after inquiry,--

(a) In the case of the Presiding Officer of a Tribunal, made by a Judge of a High Court (S.15);

Powers, Functions and Jurisdiction: A tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions (S.17). The DRT will not have the jurisdiction to see the cases if the claim of Bank or financial institution or to a consortium of banks or financial institutions is less than 10 lakh rupees (S.1(4)). Thus following conditions will be necessary for ousting a claim from the jurisdiction of the Tribunal;

(a) When the amount of debt has been less than Rs. 10 lakhs, or such other amount has not been less than one lakh rupees;

(b) For both the purposes the specification by the Central Government through notification is necessary; as a condition precedent.

Section 17 of the RDDBFI Act vests in the DRT the authority to entertain applications from banks. The DRAT has the power to address appeals made against any order made, or deemed to have been made, by the DRT. Section 18 of the Act bars all other Courts in relation to the matters of debt apart from the Supreme Court and High Court, whose authority flows from articles 226 and 227 of the Indian Constitution. The bottom line is that relief against a judgment of DRAT can be sought only from the High Court and the Supreme Court. Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorized officer under this Chapter, 16 may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.⁶⁵

Procedure of the Tribunal: Banks and financial institutions should follow the procedures set by the law for the recovery of the debt. As per the provisions incorporated in the Debt Recovery Tribunal act, bank and financial institutes may follow the process outlined below to recover dues:

- An application for recovery of debt shall be submitted to the Debt Recovery Tribunal by the Bank or Financial Institution for recovery of debts (S.19).

⁶⁵ Section 17(1) of the Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002

- The Tribunal shall conduct expeditious trial while at the same time the tribunal shall not be bound by the Code of Civil Procedure, 1908 and shall be guided by the principles of natural justice (S. 19 & 20).
- Debt Recovery Tribunal applies the Summary procedure for adjudication of dispute. Evidence is taken on affidavit and cross examination is not permitted except in few deserving cases. The opportunity for hearing is given to both the parties. The defendants can file counter claim or claim of set off against the claimed amount.
- The Tribunal may make an interim order against the defendant to debar him from transferring, alienating or otherwise dealing with or disposing of any property and assets belonging to him without prior permission of the Tribunal (S. 19(2)).
- The Tribunal shall dispose of the application expeditiously and effort shall be made to finally dispose of the application within 180 days from the receipt of the application (S. 19(4)).
- The Presiding Officer of the Tribunal shall issue a certificate for recovery of the amount of debt and any other relevant dues to the Recovery Officer (S. 19(7)).
- A borrower shall be able for an appeal against the order of the Tribunal within 40 days from the receipt of the order of DRT subject to the borrower depositing 75% of the debt as determined by the Tribunal (S. 22 and 21),

Recovery Officer shall use the following Modes for recovery of debts, namely:-

- (1) Attachment and subsequent sale of the movable /immovable property of the debtor;
- (2) Arrest the debtor for detention in prison; and
- (3) Appoint a receiver for managing the movable or immovable properties of the debtor (S. 25).

Maximum Time Limit for the Disposal of Cases: The Debt Recovery Tribunal shall dispose of the application expeditiously and effort shall be made to finally dispose of the application within 180 days from the receipt of the application (S. 19(24) and 20(24)).

Changes Introduced Through the Finance Act, 2017

Debts Recovery Tribunal

Qualifications: A person shall not be qualified for appointment as Presiding Officer of the Debts Recovery Tribunal, unless he,— (a) is, or has been, or is qualified to be, a District Judge; or (b) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics,

business, commerce, law, finance, accountancy, management, industry, public affairs, administration, banking, debt recovery or any other matter, which in the opinion of the Central Government is useful to the Debt Recovery Tribunal.

Search-cum-Selection: Search-cum-Selection Committee for the post of Presiding Officer of the Debts Recovery Tribunal,—(i) Chief Justice of India or his nominee-chairperson; (ii) Secretary to the Government of India, Ministry of Finance (Department of Economic Affairs)- member; (iii) Secretary to the Government of India, Ministry of Law and Justice- member; (iv) Governor of the Reserve Bank or the Deputy Governor of the Reserve Bank of India nominated by the Governor of the Reserve Bank of India-member; and (v) Secretary to the Government of India or Additional Secretary to the Government of India, Ministry of Finance, (Department of Financial Services)- member.

Office term: 3 years

Age-limit: Presiding Officer – 65 years

2.9 DEBT RECOVERY APPELLATE TRIBUNAL

Establishment: According to Section 8 of the Debt Recovery Tribunal Act 1993, the Central Government shall, by notification, establish one or more Appellate Tribunals, to be known as the Debts Recovery Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the Act. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of Chairperson of the Debts Recovery Appellate Tribunal (DRAT) appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁶⁶

Objectives: (1) To hear the appeal from the parties who are not satisfied with the order of the DRT (2) For the expeditious and speedier adjudication and recovery of the debt due to the banks and financial institutions.

⁶⁶ In the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (b) after section 15, the following section shall be inserted, namely:—"15A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the terms and conditions of service of the Chairperson of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

Total Number of DRATs: There are total 5 DRATs in India. The Central Government by notification has established five Debts Recovery Appellate Tribunals (DRAT) in different states to exercise the jurisdiction, power and authority confers under the Act.⁶⁷

Composition: The Debt Recovery Appellate Tribunals consists of only one person who is referred as chairperson (S.9).

Qualifications of the Chairperson: A person shall be qualified for appointment as the Chairperson of an Appellate Tribunal if he— (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or (c) has held office as the Presiding Officer of a Tribunal for at least three years (S.10).

Tenure: The Chairperson of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier (S.11).

Removal of the Chairperson: The Chairperson of an Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after inquiry,--

- a. In the case of the Chairperson of an Appellate Tribunal, made by a Judge of the Supreme Court, in which the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges (S.15).

Power, Functions and Jurisdiction: As per section 17 (2) of Debt Recovery Tribunal act 1993 ,the Debt Recovery Appellate Tribunal shall exercise the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a tribunal under the Act. The chairperson of an Appellate Tribunal exercises general power of superintendence and control over the tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of presiding Officers (S.17-A).

Procedures followed by the Tribunal: Any person aggrieved by an order made, or deemed to have been, by a tribunal under the act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the parties. One cannot appeal in the appellate tribunal if the decision of the tribunal is reached by the consent of both the parties. Appeal must be filed within period of 45 days. On the receipt of the appeal, after giving the parties to the

⁶⁷ Government of India, 'History of DRAT and DRT' (*Debt Recovery Tribunals and Appellate Tribunals*, 2 February 2017) Available at <<https://www.drt.gov.in/FrmHistory.aspx>> accessed 18 August 2017

appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. The appellate Tribunal shall send a copy of every order made by it to dispose of the appeal finally within six months from the date of receipt of the appeal (S.20). DRAT shall not entertain unless such person from whom the debt is due to a bank and financial institution deposits 75% of the amount of debt so due from him as determined by the tribunal (S.21).

Maximum Time Limit for the Disposal of Cases: The Debt Recovery Appellate Tribunal shall dispose of the application expeditiously and effort shall be made to finally dispose of the application within 180 days from the receipt of the application (S.21(6)).

Changes Introduced Through the Finance Act, 2017

Debts Recovery Appellate Tribunal

Qualifications: A person shall not be qualified for appointment as Chairperson, unless he, — (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post in Grade I of that service; or (c) has held office as the Presiding Officer of a Debts Recovery Tribunal for at least three years.

Selection: Search-cum-Selection Committee for the Chair-person of the Debts Recovery Appellate Tribunal, (i) Chief Justice of India or his nominee- chairperson; (ii) Secretary to the Government of India, Ministry of Finance (Department of Economic Affairs)-member; (iii) Secretary to the Government of India, Ministry of Law and Justice-member; (iv) Governor of the Reserve Bank or the Deputy Governor of the Reserve Bank of India nominated by the Governor of the Reserve Bank of India-member; and (v) Secretary to the Government of India or Additional Secretary to the Government of India, Ministry of Finance, (Department of Financial Services)-member.

Office term: 3 years

Age limit: Chairperson – 70 years

2.10 AIRPORT APPELLATE TRIBUNAL

(Jurisdiction also conferred to exercise powers under the provisions of the Control of National Highways (Land and Traffic) Act, 2002. Henceforth, National Highways Tribunal has been merged with this Tribunal)

Establishment: The Tribunal has been established under Section 28 I of the Airports Authority of India Act, 1994.⁶⁸ The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of

⁶⁸ Available at http://www.civilaviation.gov.in/sites/default/files/moca_000719_0.pdf accessed on 02-08-2017

Chairperson of the Airport Tribunal appointment by the Central Government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁶⁹

Objectives of Tribunal: The Tribunal hears appeal against the order of Eviction Officer appointed under Section 28(B) of the Act.

Benches: The head office of the tribunal shall be at New Delhi.

Composition: The tribunal shall consist of a Chairperson (S.28I(2)).

Qualifications of the Chairperson: The Chairperson of the Tribunal shall be appointed by the Central Government after consultation with the Chief Justice of India. A person shall not be qualified for appointment as Chairperson of the Tribunal unless he is, or has been, or is qualified to be, a Judge of a High Court (S.28I(5)).

Tenure of the Chairperson: The Chairperson of the Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office or until he attains the age of 62 years, whichever is earlier.

Removal and Resignation of Chairperson: (1) The Chairperson of the Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office: Provided that the Chairperson of the Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest. (2) The Chairperson of the Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson had been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges. (3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson of the Tribunal (S.28J).

⁶⁹ In the Airports Authority of India Act, 1994,—

(a) in section 28-I, in sub-section (1), after the words "under this Act", the words, brackets and figures "and the Control of National Highways (Land and Traffic) Act, 2002" shall be inserted;

(b) after section 28J, the following section shall be inserted, namely:—

"28JA. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

Powers and Functions of the Tribunal: The Tribunal shall have, for the purpose of discharging its functions under this Chapter, the same powers as are vested in a civil court under the 33 Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely, (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) any other matter which may be prescribed (S.28L(2)).

Procedure adopted by Tribunal: The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to lay down and regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private (S.28L(1)).

Maximum time limit for Disposal of Case: The Tribunal shall dispose of the appeal within thirty days from the date of filing the appeal (S.28K(3)).

2.10.1 NATIONAL HIGHWAYS TRIBUNAL

(Merged with Airport Appellate Tribunal)

Establishment: The National Highways Tribunals has been established under Section 5 of the Control of National Highways (Land and Traffic) Act, 2002.⁷⁰ This Tribunal has been merged with the Airports Appellate Tribunal established under the Airport Authority of India Act, 1994.⁷¹ The Control of National Highways (Land and Traffic) Act, 2002 has been amended through the Finance Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. The Airport Appellate Tribunal established under section 28-I of the Airports Authority of India Act, 1994 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.⁷²

⁷⁰ Section 5 (1) of the Control of National Highways (Land and Traffic) Act, 2002-The Central Government may, by notification in the Official Gazette, establish one or more Tribunals, to be known as the National Highways Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

⁷¹ The Entry 5 of Ninth Schedule and Amendment through Section 185 of the Finance Act 2017, Published in the Gazette of India, dated 31st March, 2017

⁷² In the Control of National Highways (Land and Traffic) Act, 2002,—(a) in section 2, for clause (1), the following clause shall be substituted, namely:—“(1) "Tribunal" means the Airport Appellate Tribunal referred to in sub section (1) of section 5;

Objectives of the Tribunal: The Tribunal has been established to provide for control of land within national highways, right of way and traffic moving on the national highways and most importantly removal or unauthorized occupation.

Benches/Total No. of Tribunals: There are 8 National Highway Tribunals set up at Chandigarh, Lucknow, Jabalpur, Kolkata, Guwahati, Chennai, Bengaluru and Mumbai.

Composition: The Tribunal shall consist of only one person i.e. Presiding Officer appointed by the Central Government, as per Section 6 (1).

Qualifications of the Presiding Officer: Section 7 lays down the qualifications required for the appointment of the Presiding Officer of the Tribunal (S.73). The person is eligible only if he is- (a) Is qualified to be a Judge of a High Court; or (b) Has been a member of the Indian Legal Service and has held a post not less than Grade II of that Service. According to Section 8, the Presiding Officer of a Tribunal shall hold office till he attains the age of 62 years.

Removal and Resignation of Presiding Officer: The Presiding Officer of a Tribunal shall be removed only by an order made by the Central Government on the ground following grounds:-Proved misbehavior or Incapacity, after an inquiry made by a Judge of a High Court, in which the Presiding Officer has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges (S.12(2)). The rules to regulate the procedure for investigation of the above disqualifying grounds shall be made by the Central Government. As per Section 12(1) of the Act, the resignation shall be made in the following manner:-

- Notice in writing under his hand addressed to the Central Government

(b) In Chapter II, for the heading, the following heading shall be substituted, namely:—"HIGHWAYS ADMINISTRATION AND TRIBUNALS, ETC.";

(c) in section 5,— (i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Airport Appellate Tribunal established under section 28-I of the Airports Authority of India Act, 1994 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.";

(ii) in sub-section (2), for the words, brackets and figure "shall also specify, in the notification referred to in sub-section (1)", the words "shall specify, by notification in the Official Gazette", shall be substituted;

(d) sections 6, 7, 8, 9, 10, 11, 12 and 13 shall be omitted;

(e) for section 44, the following section shall be substituted, namely:—

"44. The officer or officers constituting the Highways Administration and any other officer authorized by such Administration under this Act, shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.";

(f) in section 45, for the words "the Presiding Officer of the Tribunal or any other officer of the Central Government or an officer or employee of the Tribunal", the words

"any other officer of the Central Government" shall be substituted; (g) in section 50, in sub-section (2), clauses (b), (c), (d) and (e) shall be omitted

- Relinquishment of office (S.12(2)) -only if permitted by Central Government; Continue to hold office until expiry of three months from the date of receipt of such notice or until his successor enters office or until the expiry of his term of office, whichever is earlier.

Powers and Functions of the Tribunal:

- The Tribunal has the same power as of the Civil Court conferred under the Code of Civil Procedure (S.16(3)).
- The presiding officer of Tribunal can exercise financial and administrative powers as prescribed (S.13).
- Power to entertain Appeals from the orders passed or actions taken under Sections 26, 27, 28, 36, 37 and 38 by the Highway Administration or an officer authorized on its behalf, as the case may be (S.14).
- Any proceeding before the Tribunal shall be 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) and the Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974) (S.16(4)).
- Power to regulate its own proceedings which includes the places at which it shall have sittings (S.16(1)).
- To deal with the appeals under Section 14 of the Act from the orders passed by Highway Administration or authorized persons expeditiously as possible (S.16(2)).

Procedure Adopted by the Tribunal:

- The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) (S.16(1))
- Guided by the principles of natural justice (S.16(1)).
- Dispensation of procedure of Interim Order as exceptional measure; reasons to be recorded in writing; 14 days validity of effect of Interim Order (S.17).
- Appeal to the Tribunal to be preferred within 60 days; permitted after expiry of limitation period if court is satisfied of the reason for such delay (S.19).
- Decision made on appeal under this Act by the Tribunal shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any

action taken or to be taken in pursuance of any power conferred by or under this Act to the Highway Administration or Tribunal (S.41).

• Additionally, the National Highways Tribunal (Procedure) Rules, 2003; the National Highways Tribunal (Procedure for Appointment as Presiding Officer of the Tribunal) Rules, 2003; the National Highways Tribunal (Procedure for Investigation of Misbehavior or Incapacity of Presiding Officer) Rules 2003 and the National Highways Tribunal (Financial and Administrative Powers) Rules, 2004 have also been framed under this Act to regulate the procedures of the Tribunal.

Maximum Time Limit for Disposal of Case: The Tribunal is to dispose the appeal finally within 4 months from the date of receipt of Appeal as per Section 16(2).

Changes Introduced Under the Finance Act, 2017

Airport Appellate Tribunal

Qualifications: A person shall not be eligible appointment as Chairperson, unless he, (a) is or has been, or is qualified to be, a judge of a High Court; or (b) is a person of ability, and standing, and special knowledge of, and professional experience of not less than twenty-five years economics, business, commerce, law, finance, accountancy, management public affairs, administration or any other matter which in the opinion of Central Government, is to the Appellate Tribunal.

Search-cum-Selection: Search-cum-Selection Committee for Chairperson of Appellate Tribunal,— (i) a person to be nominated by the Central Government- chairperson; (ii) Secretary to the Government of India, Ministry of Civil Aviation- member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts, to be nominated by the Central Government-members.

Office term: 3 years

Age limit: Chairperson – 62 years

2.11 TELECOM DISPUTE SETTLEMENT AND APPELLATE TRIBUNAL

(Jurisdiction has also been conferred under the Information Technology Act & Airport Economic Regulatory Authority of India Act, 2008. Henceforth, Cyber Appellate Tribunal & Airport Economic Regulatory Authority Appellate Tribunal has been merged with this Tribunal)

Establishment: The TDSAT came into existence on 29th May, 2000 and started hearing cases from January, 2001 and it is established under Section 14 of the Telecom Regulatory Authority of India Act, 1997. The Telecom Regulatory Authority of India Act, 1997 has been amended through the Finance Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. This Tribunal shall also perform as a Cyber Appellate Tribunal for the purpose of Section 48(1) of the

Information Technology Act, 2000.⁷³ The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of presiding officer of the Telecom Dispute Settlement And Appellate Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁷⁴

Objectives of the Tribunal: The appellate tribunal are to adjudicate any dispute between a licensor and 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

Benches/Total Number of Tribunal: The head office of the TDSAT is at New Delhi.

Composition: It consists of one Chairperson and not more than two members.⁷⁵ The composition of the Tribunal with members possessing judicial as well as technical and administrative expertise has led to a harmony of approach and a comprehensive understanding and a balanced perspective in respect to issues dealt with by the TDSAT. This has also lent greater credibility to the Tribunal and its stature within the Indian judicial / legal system.⁷⁶ An integral feature which marks TDSAT in comparison to similar bodies across various international jurisdictions is that in cases where Appeals against orders of the TRAI heard, such orders are not automatically suspended upon being appealed. Appeals against TRAI orders are evaluated on a case-to-case basis by the TDSAT taking into account factors such as balance of probabilities, irreparable loss/ injury to parties and a *prima facie* case. The Petitioner has to establish immediate loss etc. to seek stay / suspension of TRAI's orders. This feature harmonises the role of the

⁷³In the Telecom Regulatory Authority of India Act,1997,—(a) in section 14, after clause (b), the following clause shall be inserted, namely:—“(c) exercise jurisdiction, powers and authority conferred on— (i) the Appellate Tribunal under the Information Technology Act, 2000; and (ii) the Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008.”

⁷⁴ In the Telecom Regulatory Authority of India Act,1997— (b) after section 14G, the following section shall be substituted, namely:—“14GA. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if

the provisions of section 184 of the Finance Act, 2017 had not come into force.”

⁷⁵ Section 14B of the Telecom Regulatory Authority of India Act, 1997

⁷⁶ Available at <http://www.tdsat.nic.in/Register.htm>, accessed on 18-08-2017

regulator and the appellate authority and sets a fine balance between their powers and responsibilities.⁷⁷

Qualifications of Chairperson, Members etc.: Section 14C provides the required qualification of chairperson and members of the Tribunal-

- Chairperson – Judge of the Supreme Court or the Chief Justice of High Court
- Members –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.

Tenure of Chairperson, Members etc.: The Chairperson and every other Member of the Appellate Tribunal shall hold office as such for a term not exceeding three years from the date on which he enters upon his office; Provided that no Chairperson or other Member shall hold office as such after he has attained⁷⁸— (a) in the case of Chairperson, the age of seventy years; (b) in the case of any other Member, the age of sixty five years.⁷⁹

Powers and Functions of the Tribunal:

- The Chairperson of the TDSAT has various powers relating to the functioning and procedure of the TDSAT under the Sections incorporated post-amendment of the TRAI Act in 2000. Under Section 14B (3)(b), the Chairperson has the authority to constitute a bench as he/she thinks fit. Further, under Section 14I, the Chairperson is responsible for the distribution of business between the different benches. Under Section 14J, the Chairperson has the power to transfer pending cases.⁸⁰
- The primary objective of the 2000 Amendment to the TRAI Act, which set up the TDSAT, was to separate adjudicatory functions of TRAI from its administrative and legislative functions and ward off the criticism that the one who is empowered to make regulations and issue directions or pass orders, is clothed with the power to decide their legality.

Procedure Adopted by the Tribunal:

- Section 16 of the act lays down the procedure to be followed by the Tribunal. Section 16(3) recognizes that every proceeding before the Appellate Tribunal shall be deemed to be a “judicial proceeding”. Thus, the orders of the Appellate

⁷⁷ Available at <http://www.tdsat.nic.in/Register.htm> accessed on 17-08-2017

⁷⁸ Section 14D of the Telecom Regulatory Authority of India Act, 1997

⁷⁹ Available at <http://tdsat.gov.in/admin/introduction/uploads/bare%20acts.pdf> accessed on 18-08-2017

⁸⁰ Available at http://tdsat.nic.in/TDSAT_Report_Vidhi_Final_Updated.pdf accessed on 18-08-2017

Tribunal would be judicial orders, and would attain finality, if not appealed against. Any unilateral dispute resolution by any other entity not vested with such powers would be without jurisdiction and cannot be binding or final as against the non-consenting parties.

- The Telecom Disputes Settlement and Appellate Tribunal Rules 2005 were incorporated into the existing procedures for filing of Petitions in TDSAT. The rules were amended in 2005 to provide for exemption from payment of fees. The Bench of the Telecom Disputes Settlement and Appellate Tribunal, either on an application made by the party filing a Petition/Claim/Suit/Misc. Application or suo moto, may exempt the party, in deserving cases, from payment of fees required under procedures 4(ix), 4(ix) (A) and proviso to procedure 4(ix) (A) of the Telecom Disputes Settlement and Appellate Tribunal Procedures, 2005.⁸¹

Maximum Time Limit for Disposal of the Case: There is no particular provision under which the time limit for the disposal of the case has been mentioned.

Case disposal rate: As per the report as on 15 May 2017 from 2001 to 2017, total number of disposal of cases are 9364 and total number of pendency of cases are 2146.⁸²

2.11.1 CYBER APPELLATE TRIBUNAL

(Merged with the Telecom Disputes Settlement Appellate Tribunal)

Establishment: The Cyber Appellate Tribunal has been established by the Central Government in accordance with the provisions contained under Section 48(1) of the Information Technology Act, 2000. This Tribunal has been merged with the Telecom Disputes Settlement and Appellate Tribunal established under Section 14 of the Telecom Regulatory Authority of India Act, 1997 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under the Act.⁸³

⁸¹ Available at <http://www.tdsat.nic.in/Register.htm> accessed on 17-08-2017

⁸² Available at <http://tdsat.gov.in/admin/notice/uploads/notice.pdf> accessed on 17-08-2017

⁸³ In the Information Technology Act, 2000,—

(a) for the words "Cyber Appellate Tribunal", wherever they occur, the words "Appellate Tribunal" shall be substituted;

(b) in section 2, in sub-section (1),— (i) after clause (d), the following clause shall be inserted, namely:—
' (da) "Appellate Tribunal" means the Appellate Tribunal referred to in sub-section (1) of section 48;

(ii) clause (n) shall be omitted;

(c) in section 48,— (i) for the marginal heading, the following marginal heading shall be substituted, namely:—

Objectives of Tribunal: Cyber Appellate Tribunal (originally Cyber Regulations Appellate Tribunal) is an appellate body established under Information Technology Act to hear appeals from the decision of Adjudicating Officers under the 'Act'. The primary function of an "adjudicating officer" would be to hold an inquiry into whether any person has contravened the provisions of the I.T. Act and impose penalty accordingly.

Benches/Total no. of Tribunal: Only one Tribunal has been set-up in New Delhi.

Composition: One Chairperson (earlier known as Presiding officer) and such other members as the Central Government by notification in its official gazette provide.⁸⁴

Qualifications of Chairperson and Other Members

A person shall not be qualified for appointment as the Chairperson of a Cyber Appellate Tribunal unless he is, or has been, or is qualified to be a Judge of a High Court;

Qualification for Judicial Members: The Judicial Members of the Cyber Appellate Tribunal shall be appointed by the Central Government from amongst persons who is or has been a member of the Indian Legal Service and has held the post of Additional Secretary for a period of not less than one year or Grade I post of that service for a period of not less than five years.

Qualification for Other Members: The Members of the Cyber Appellate Tribunal, except the Judicial Member to be appointed under sub-Section (3), shall be appointed by the Central Government from amongst persons, having special knowledge of and professional experience in, information technology, telecommunication, industry, management or consumer affairs. Provided that a person shall not be appointed as a Member, unless he is, or has been, in the service of the Central Government or a State Government, and has held the post of Additional secretary to the Government of India

"APPELLATE TRIBUNAL";

(ii) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act."

(iii) in sub-section (2), for the words, brackets and figure "shall also specify, in the notification referred to in sub-section (1)", the words "shall specify, by notification" shall be substituted;

(d) sections 49, 50, 51, 52, 52A, 52B, 52C, 53, 54 and 56, shall be omitted;

(e) for section 82, the following section shall be substituted, namely:—

"82. The Controller, the Deputy Controller and the Assistant Controllers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.";

(f) in section 84, for the words "the Chairperson, Members, adjudicating officers and the staff of the Cyber Appellate Tribunal", the words "and adjudicating officers" shall be substituted;

See also, Entry 6 of Ninth Schedule and Amendment through Section 185 of the Finance Act 2017, Published under the Gazette of India, dated 31st March, 2017

⁸⁴ Section 49 of the Information Technology Act, 2000

or any equivalent post in the Central Government or State Government for a period of not less than one year or joint secretary to the Government of India or any equivalent post in the central Government or State Government for a period of not less than seven years. The selection of Chairperson and Members of the Cyber Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India. (S.49(2)).

Tenure of Chairperson, Members etc.: The Presiding Officer of a Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty five years, whichever is earlier (S.51).

Removal of Chairperson, Members etc.: The Presiding officer Chairperson or Member of the Cyber Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office.⁸⁵ The Presiding officer or Member of a Cyber Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairperson or Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges (S.54).

Powers and Functions of the Tribunal: The Cyber Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely –

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of documents or other electronic records;
- (c) Receiving evidence on affidavits;
- (d) Issuing commissions for the examination of witnesses or documents;
- (e) Reviewing its decisions;
- (f) Dismissing an application for default or deciding it ex parte
- (g) Any other matter which may be prescribed

Every proceeding before the Cyber Appellate Tribunal shall be 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 and the Cyber Appellate Tribunal shall be deemed to be a

⁸⁵ Section 54 of the Information Technology Act, 2000

Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (S.58(2)).

Procedure adopted by the Tribunal: The Tribunal shall hear appeals from the decisions of Adjudicating Officers appointed under the I.T. Act, 2008. Any person aggrieved by an order made by a Controller or an adjudicating officer under this Act may prefer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter.

- Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings (S.58(1)).

Maximum Time Limit for Disposal of Case: No mandatory time limit, however a recommended time limit is 6 months (S.57(6)).

Case disposal rate: A total of 17 judgments have been passed by the Cyber Appellate Tribunal prior to the retirement of the chairperson, while the backlog of cases is continuously growing.⁸⁶ Although the position of the Chairperson of the Appellate Tribunal, has been left vacant since 2011, after the appointed Chairperson attained the age of superannuation and retired. Though judicial and technical members have been appointed at various points, the Tribunal cannot hold hearings without a chairperson and consequently no case has been decided by the Tribunal since 2011 owing to the said vacancy.

2.11.2 AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

(Merged With the Telecom Disputes Settlement and Appellate Tribunal)

Establishment: The Airport Economic Regulatory Authority Appellate Tribunal is established under Section 17 of the Airport Economic Regulatory Authority of India Act, 2008.⁸⁷ The jurisdiction of this tribunal is conferred to the telecom disputes settlement and appellate tribunal and exercise all the powers under this Act.⁸⁸

⁸⁶ Available at <http://catindia.gov.in/Judgement.aspx> accessed on 18-08-2017.

⁸⁷ Establishment of Appellate Tribunal. – The Central Government shall, by notification in the Official Gazette, establish an Appellate Tribunal to be known as the Airports Economic Regulatory Authority Appellate Tribunal.

⁸⁸ In the Airports Economic Regulatory Authority of India Act, 2008,—

Objectives of Tribunal: The Tribunal is to adjudicate any dispute between two or more service providers, between a service providers and a group of consumer and to hear and dispose appeal against any direction / decision / order of the Airport Economic Regulatory Authority.

Benches/Total no. of Tribunal: Tribunal is setup only in New Delhi

Composition: The Appellate Tribunal consists of a Chairperson and not more than two Members which are appointed by the Central Government. The selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India or his nominee (S.19).

Qualifications of Chairperson, Members etc.: (a) Qualification of Chairperson: He should be a Judge of the Supreme Court or the Chief Justice of a High Court; (b) Qualification of a Member: He 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 total period of not less than two years in the Ministries or Departments dealing with aviation or economics or law or a person who is well-versed in the field of aviation or economics or law (S.20).

Tenure of Chairperson, Members etc.: Tenure of the Chairperson and every other Member is 3 years from the date on which he enters upon his office. Provided that no Chairperson shall hold office as such after he has attained the age of seventy years and sixty- five years in case of other Member (S.21).

Removal of Chairperson, Members etc.: The Chairperson or any Member of the Appellate Tribunal may be removed by the Central Government in following cases-

- a. has been adjudged an insolvent; or

(a) in the long title, the words "and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals" shall be omitted;

(b) in section 2, for clause (d), the following clause shall be substituted, namely:—

'(d) "Appellate Tribunal" means the Telecom Disputes Settlement and Appellate Tribunal referred to in section 17;'

(c) in section 17,—

(i) for the marginal heading, the following marginal heading shall be substituted, namely:—

"APPELLATE TRIBUNAL"

(ii) for the portion beginning with the words "The Central Government" and ending with words "Appellate Tribunal", the words and figures "The Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act" shall be substituted;

(d) sections 19, 20, 21, 22, 23, 24, 25, 26 and 27 shall be omitted;

(e) in section 51, in sub-section (2), clauses (i), (j) and (k) shall be omitted.

Refer Entry 6 of Ninth Schedule and Amendment through Section 185 of the Finance Act 2017, Published under the Gazette of India, dated 31st March, 2017

- b. has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- c. has become physically or mentally incapable of acting as the Chairperson or a Member; or
- d. has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or
- e. has so abused his position as to render his continuance in office prejudicial to the public interest.

Reference need to be made to Supreme Court for Clause (d) and (e) (S.24).

Powers and Functions of the Tribunal: The Appellate Tribunal have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely (S.29(2)):-

- 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 of any application for default or any order passed by it, ex parte; and
- i. any other matter which may be prescribed.

Procedure adopted by Tribunal: The Appellate Tribunal shall be guided by the principles of natural justice and it has powers to regulate its own procedure (S.29).

Maximum time limit for Disposal of Case: The application made or the appeal preferred from the decision of the authority shall be dealt as expeditiously as possible and dispose of finally within 90 days from the date of receipt of application or appeal (S.18).

Changes introduced through the Finance Act, 2017

Telecom Disputes Settlement and Appellate Tribunal

Qualifications: (1) A person shall not be qualified for appointment as Chairperson, unless he,—(a) is, or has been, or is qualified to be, a Judge of Supreme Court; or (b)

is, or has been, Chief Justice of a High Court; or (c) has, for a period of not less than three years held office as Member; or (d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, telecommunications or other matter which in opinion of the Central Government is useful to the Telecom Disputes Settlement and Appellate Tribunal. A person shall not qualified for appointment Member unless he is a person ability, integrity standing having special knowledge of, professional experience of, not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, telecommunications or other matter which in opinion of the Central Government is useful to the Telecom Disputes Settlement and Appellate Tribunal

Selection: (A) Search-cum-Selection Committee for the post of the Chairperson, — (i) Chief Justice of India or his nominee-chairperson; (ii) Secretary to the Government of India, (Department of Telecommunications)- member; (iii) Secretary to the Government of India to be nominated by the Central Government- member; (iv) two experts, to be nominated by the Central Government members.

(B) Search-cum Selection Committee for the post of Member, (i) a person to be nominated by the Central Government-chairperson; (ii) Secretary to the Government of India, (Department of Telecommunications)- member; (iii) Secretary to the Government of India to be nominated by the Central Government- member; (iv) two experts to be nominated by the Central Government- members.

Office term: 3 years

Age limit: Chairperson – 70 years, Members – 65 years

2.12 INTELLECTUAL PROPERTY APPELLATE BOARD

(Jurisdiction was also conferred under the Copy Right Act. Henceforth, Copy Right Board has been merged with this Tribunal)

Establishment: Intellectual Property Appellate Board was established by the Central Government on 15th September 2003 with the intention of hearing and adjudicating appeals against the decisions of the registrar under the Indian Trademarks Act, 1999 and Indian Geographical Indication of Goods Act, 1999. IPAB exercises jurisdiction over Trademarks, Patents and geographical indications as on date. IPAB is an administrative body that has the appellate jurisdiction over the decision of the Controller of Patents. However, IPAB has no statutory powers to trial infringement proceedings. Subject to Section 117G of the Patents (Amendment) Act, 2002 and Section 100 of the Trademarks Act, 1999, all cases that are related to decisions or orders of the Controller which are pending in the High Court must be transferred to IPAB. The Intellectual Property Appellate Board (Procedure) Rules, 2003 were made by the Intellectual Property Appellate Board to regulate its proceedings in exercise of powers conferred upon it. The

decision of the Board shall be final and binding. The Indian Trademarks Act, 1999 has been amended through the Finance Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. The jurisdiction was also conferred under the Copy Right Act, 1957. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions Chairmen, Vice-Chairmen and other members of the Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.⁸⁹

Objectives of Tribunal: The main objective of the Intellectual Property Appellate Board is to provide Speedy disposal of appeals and Rectification of applications.

Benches: The Board has its headquarters at Chennai whereas there are 4 other circuit benches at Mumbai, Delhi, Kolkata and Ahmedabad.

Composition: The provisions under the Indian Patent Act over the composition of IPAB are in consonance with the provisions given under Section 84 sub-section (2) to (6) and Section 87 of the Trademarks Act, 1999.

- The IPAB shall consist of a Chairman, a Vice-Chairman and such number of other members, as the Central Government may deem fit and subject to the other provisions of this act, the jurisdiction, powers and authority of the Appellate Board may be exercised by the benches thereof.
- The Bench shall consist of 1 Judicial Member and 1 Technical Member.
- The Chairman may in addition to discharging the functions of the judicial member or the technical member of the bench to which he is appointed, discharge the functions of a judicial member or Technical member of any other bench.
- The Chairman may transfer a member from one bench to another bench.

⁸⁹ In the Trade Marks Act, 1999,—

(a) for the word "Chairman" or "Vice-Chairman", wherever it occurs, the word "Chairperson" or "Vice-Chairperson" shall be substituted;

(b) in section 83, after the words "under this Act", the words and figures "and under the Copyright Act, 1957" shall be inserted;

(c) after section 89, the following section shall be inserted, namely:—

"89A. Notwithstanding anything in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson, Vice-Chairperson and other Members of the Appellate Board appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act: Provided that the Chairperson, Vice-Chairperson and other Members appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017, had not come into force."

- He may authorize the vice-chairman or a judicial member or a technical member to discharge the functions of judicial member or a technical member of another bench.
- The Central Government shall distribute the business of appellate board amongst the benches and specify the matters which would be dealt by every bench.
- The Chairman shall decide as under which bench the subject matter falls under if a question relating to purview of subject matter arises.
- The Chairman's opinion shall help in forming the opinion of majority if there is a dissent on decision of a judicial member and the technical members of the IPAB.

Qualifications of Chairperson, Members etc.: Chapter XI of the Trade Marks Act, 1999 deals with the Appellate Board's establishment, composition, qualifications for appointment, term of office, functioning, salaries, etc. Section 85 deals with the qualifications for appointment as Chairman, Vice-Chairman or other Members. Now, we are dealing with the constitutionality of this provision. For better appreciation, the said provision is reproduced hereunder:

1. A person shall not be qualified for appointment as the Chairman unless he –
 - a. is, or has been, a Judge of a High Court; or
 - b. has, for at least two years, held the office of a Vice-Chairman.
2. A person shall not be qualified for appointment as the Vice-Chairman, unless he –
 - a. has, for at least two years, held the office of a Judicial Member or a Technical Member; or
 - b. has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years.
3. A person shall not be qualified for appointment as a Judicial Member, unless he –
 - a. has been a member of the Indian Legal Service and has held the post in Grade I of that Service for at least three years; or
 - b. has, for at least ten years, held a civil judicial office.
4. A person shall not be qualified for appointment as a Technical Member, unless he—
 - a. has, for at least ten years, exercised functions of a tribunal under this Act or under the Trade and Merchandise Marks Act, 1958 (43 of

1958), or both, and has held a post not lower than the post of a Joint Registrar for at least five years; or

b. has, for at least ten years, been an advocate of a proven specialised experience in trade mark law.

5. Subject to the provisions of sub-section (6), the Chairman, Vice-Chairman and every other Member shall be appointed by the President of India.

6. No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India.

Tenure of Chairperson, Members etc.: The Chairman, Vice-Chairman or other Members shall hold office as such for a term of 5 years from the date on which he enters upon his office or until he attains,— (a) in the case of Chairman and Vice-Chairman, the age of sixty-five years; and (b) in the case of a Member, the age of sixty-two years, whichever is earlier.⁹⁰

Removal of Chairperson, Members etc.: The Chairman, Vice-Chairman or any other Member may, by notice in writing under his hand addressed to the President of India, resign his office: Provided that the Chairman, Vice-Chairman or any other Member shall, unless he is permitted by the President of India to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

1. The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President of India on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

2. The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman or other Member referred to in sub-section (2).⁹¹

Powers and Functions of the Tribunal: (a) The IPAB shall be deemed to be a civil court for all purpose of prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in

⁹⁰ Section 86 of Trademarks Act, 1999

⁹¹ Section 89 of Trademarks Act, 1999

evidence under Section 195 of the Criminal Procedure Code, 1973, (b) IPAB shall exercise its power and Punish whosoever who gives false evidence, Inflicts Intentional insult or interruption to public servant sitting in judicial proceeding and uses evidence known to be false. (Section 117-B of Indian Patents Act, 1970), (c) The Chairman of IPAB has the power to transfer cases from one bench to another under the powers given under Section 117-B of the Indian Patents Act, 1970, (d) The IPAB has the power to frame rules under section 117-H over conduct of proceedings and procedures under this act, (e) All cases of appeals against order of the controller and all the cases pertaining to revocation of patent other than on a counter-claim in a suit for infringement and rectification of register pending before any High Court, shall be transferred to the Appellate board under provision given under Section 117-G of the Indian Patents Act 1970.

Procedure adopted by Tribunal: The provisions under the Indian Patent Act over the powers and procedure of IPAB are in consonance with the powers and procedures enshrined in Section 92 of The Trademarks Act, 1999.

- IPAB is not bound by the procedure laid down in the Civil Procedure Code but is guided by the principles of natural justice. It has the power to regulate its own proceedings including fixing of time and place
- It has the same powers as the civil court under the civil procedure code. They are as follows :
 - Receiving Evidence.
 - Issuing commission for examination of witnesses.
 - Requisitioning any public record.
 - Any other matter as may be prescribed.
- Any proceeding before the Appellate Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860), and the Appellate Board shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Maximum time limit for disposal of Case: There is no as such prescribed time limit for the disposal of case by the Intellectual Property Appellate Board.

2.12.1 THE COPYRIGHT BOARD

(Merged with the Intellectual Property Appellate Board)

Establishment: The Copyright Board was constituted by virtue of Section 11 of the Copyright Act, 1957. The Copyright Board was part of the original enactment i.e. the Copyright Act, 1957 and has been around since the year 1958. The Central Government was empowered to constitute the Copyright Board as soon as after the commencement of the act. The jurisdiction of this tribunal is conferred on the Appellate Board established under section 83 of the Trade Marks Act, 1999 and exercise all the powers under this Act.⁹²

Objectives of Tribunal: The broad objectives of the Copyright Board includes providing speedy redressal for the disputes pertaining to

- copyright registration,
- assignment of copyright,
- grant of Licenses in respect of works withheld from public,
- Unpublished Indian works, production and publication of translations and works for certain specified purposes.
- The Copyright Board also aims at hearing and disposing of other miscellaneous matters instituted before it under the Act.

Benches: Ordinarily it will hear any proceeding instituted before it within the zone in which the person instituting the proceedings actually and voluntarily resides and carries on business or personally works for gain. For this purpose the territory of India has been divided into five zones – The northern, southern, eastern, western and central zone. Here zone means a zone specified in Sec. 15 of the States Reorganization Act, 1956.

- The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members.

⁹² In the Copy Right Act, 1957,—

(a) for the words "Copyright Board", wherever they occur, the words "Appellate Board" shall be substituted;

(b) in section 2, after clause (a), the following clause shall be inserted, namely:—

'(aa) "Appellate Board" means the Appellate Board referred to in section 11';

(c) for section 11, the following section shall be substituted, namely:—

"11. The Appellate Board established under section 83 of the Trade Marks Act, 1999 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.";

(d) in section 12, sub-sections (3) and (4) shall be omitted;

(e) in section 78, in sub-section (2), clause (a) shall be omitted."

- Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger bench, he may refer the matter to a special bench consisting of five members;⁹³

Composition: Initially the copyright board had the provision to consist of a Chairman and not less than two members and more than fourteen other members. The Copyright (amendment) Act, 2012⁹⁴ which came into force with effect from 21 June 2015 provided for a full time Copyright Board under Section 11 with a Chairman and two other members. The size of the board has been reduced from fourteen members to three, including the chairman, indicating a positive step towards making the board a permanent body, as opposed to the ad-hoc one before the amendment. The Chairman and other members of the board shall be appointed by the Central Government after consultation with the Chief Justice of India.

Qualifications of Chairperson, Members etc.: A person shall not be qualified to be appointed as the chairman of the copyright board 1957 unless he:-

- a. is, or has been a judge of a high court;
- b. is qualified to be appointed as the judge of a high court⁹⁵

A person shall not be qualified for appointment as a member unless he- (a) is or has been a member of the Indian Legal Service and has held a post in Grade-I of that service for at least three years or (b) has, for at least ten years, held a judicial office or (c) is, or has been a member of a Tribunal or Civil Service not below the rank of a Joint Secretary to the Government of India with three years' experience in the field of Copyright or (d) has, for at least ten years, been an advocate of a proven specialized experience in Copyright Law.⁹⁶

Tenure of Chairperson, Members etc.: The Chairman and other members of the Board shall be appointed for such period not exceeding five years as the Central Government may in each case deems fit. Provided that the Chairman and the other member shall not hold office as such after he has attained- a. in the case of Chairman, the age of sixty-five years; and b. in the case of any other member, the age of sixty two years.⁹⁷

⁹³ Sub-Section 2 of Section 12 of the Copyright Act, 1957

⁹⁴ Ministry of Law & Justice (Legislative Department) New Delhi, 8June, 2012/Jyaishta 18,1934(Saka) (Act No. 27 of 2012)

⁹⁵ Rule 3(2)(i) of Copyright Rules,2013

⁹⁶ Rule 3(1) of Copyright Rules,2013

⁹⁷ Rule 3(2)(i) of Copyright Rules,2013

Removal of Chairperson, Members etc.: The Chairman or any other member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairman or the other member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.⁹⁸

Powers and Functions of the Tribunal: The Copyright Board shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings: Provided that the Copyright Board shall ordinarily hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain. The Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

- Summoning and enforcing the attendance of any person and examining him on oath;
- Requiring the discovery and production of any document;
- Receiving evidence on affidavits;
- Issuing commissions for the examination of witnesses or documents;
- Requisitioning any public record or copy thereof from any court or office;
- Any other matter which may be prescribed.⁹⁹

Procedure adopted by Tribunal: The Copyright Board shall have the power to regulate its own procedure.

- If there is a difference of opinion among the members of the Copyright Board or any Bench thereof in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail:

Provided that where there is no such majority, the opinion of the Chairman shall prevail.

- The Chairman may authorize any of its members to exercise any of the powers conferred on it by section 74 of the act and any order made or act done in exercise of those powers by the member so authorized shall be deemed to be the order or act, as the case may be, of the Board.

⁹⁸ Rule 3(5) of Copyright Rules, 2013

⁹⁹ Section 74 of the Copyright Act, 1957

- No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.
- The Copyright Board shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973, and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.¹⁰⁰

Maximum time limit for Disposal of Case: The Copyright Act, 1957 as well as the Copyright Rules, 2013 does not provide any maximum time limit for the disposal of cases pending before the Copyright Board but frequently, directions are given by the higher judiciary to expedite the proceedings of the cases pending before the Copyright Board.

Changes introduced through the Finance Act, 2017

Appellate Board under the Trade Marks Act, 1999 (47 of 1999)

Qualifications:

(1) A person shall not be qualified for appointment as Chairman, unless he, - (a) is, or has been, or is qualified to be, a Judge of High Court; or (b) has, for a period of not less than three years, held office as Vice-Chairperson of the Appellate Board.

(2) A person shall not be qualified for appointment as Vice-Chairman, unless he, — (a) is, or has been, or is qualified to be, a Judge of High Court; or (b) has, for at least two years, held the office of Judicial Member or a Technical Member, and has a degree in law with at least 12 years of practice at bar or 12 years' experience in a State Judicial Service.

(3) A person shall not be qualified for appointment as Judicial Member, unless he, - (a) is, or has been, or is qualified to be a Judge of High Court; or (b) has, for at least ten years, held a judicial office in the territory of India.

(4) A person shall not be qualified for appointment as Technical Member (Trademark), unless he,—

(a) has, for at least ten years, exercised functions of a tribunal under the Trade Marks Act, 1999 (47 of 1999)

and has held a post not lower than the post of Joint Registrar for at least five years and has a degree in law with at least twelve years of practice at bar or twelve years' experience in a State Judicial Service, or (b) has, for at least ten years, been an advocate of a proven specialized experience in trade mark law.

(5) A person shall not be qualified for appointment as Technical Member (Patent), unless he, - (a) has, for at least five years, held the post or exercised the functions of the Controller under the Patents Act, 1970 (39 of 1970); or (b) has, for at least ten years, functioned as a registered patent agent and possesses a degree in engineering or

¹⁰⁰ Section 12 of the Copyright Act, 1957

technology or a master's degree in science from any University established under law for the time being in force.

(6) A person shall not be qualified for appointment as Technical Member (Copyright), unless he, – (a) is, or has been a member of the Indian Legal Service and is holding, or has held a post in Grade I of that Service for at least three years; or (b) has, for at least ten years, held a judicial office in the territory of India; or (c) is, or has been a member of a Tribunal or Civil Service not below the rank of a Joint Secretary to the Government of India with three years' experience in the field of Copyright; or (d) has, for at least ten years, been an advocate of a proven specialized experience in Copyright Law: Provided that at least one member of the Appellate Board for purposes of the Copyright Act shall have qualification as in (a), (b) or (d) above.

Selection: (A) Search-cum-Selection for the post of the Chairman, Vice-Chairman or Judicial Member of the Appellate Board, - (i) Chief Justice of India or his nominee-chairperson; (ii) Secretary to the Government of India, (Department of Industrial Policy and Promotion) member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts, to be nominated by the Central Government- members.

(B) Search-cum-Selection Committee for the post of Technical Member (Trademark), Technical Member (Patent) and Technical Member (Copyright) of the Appellate Board

(i) a person to be nominated by the Central Government - chairperson; (ii) Secretary to the Government of India, (Department of Industrial Promotion and Policy) -member; (iii) Secretary to the Government of India to be nominated by the Central Government - member; (iv) two experts, to be nominated by the Central Government - members.

Office term: 3 years

Age limit: Chairman – 67 years, Vice-Chairman – 65 years, Member – 65 years

2.13 NATIONAL COMPANY LAW TRIBUNAL

Introduction: In the past there were number of quasi-judicial forums and tribunals to provide speedier and specialized judicial settlement in a wide range of business issues for dispensation of justice to companies. Later, the Companies (Second Amendment) Act, 2002 provided for a National Company Law Tribunal (NCLT) for combining the jurisdiction of various bodies administering the Companies Act, 1956. The Companies Act, 2013 provides for the constitution of National Company Law Tribunal (NCLT) & National Company Law Tribunal and Appellate Tribunal (NCLAT). NCLT has replaced the Company Law Board, the Board for Industrial and Financial Reconstruction and the Appellate Authority for Industrial and Financial Reconstruction and have judicial and technical members. The NCLT under the new Companies Act, 2013 is being set up to bring all lawsuits pertaining to companies under one body. The provisions dealing with

the various parts of NCLT and NCLAT are covered under the Chapter XXVII of the Companies Act, 2013. Earlier, the same were covered in the Part I-B of the Companies Act, 1956. Relevant sections relating to the constitution of NCLT & NCLAT, qualifications and selection, term of office, salary, allowance and other terms and conditions of service of members being covered under sections 407 to 414 in the Companies Act, 2013 were notified on 12th of September, 2013. The Companies Act, 2013 has been amended through the Finance Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of Presiding and other members of the Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.¹⁰¹

Establishment: As per Section 408 of companies Act, 2013 The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.¹⁰² National Company Law Appellate Tribunal (NCLT) is a quasi-judicial body in India that adjudicates issues relating to companies in India. The NCLAT was constituted on 1 June 2016. The Companies (Second Amendment) Act, 2002, provided the legislative framework for constitution of the NCLT. However a constitutional challenge against constitution of NCLT delayed the process. The Government on 1 June 2016 issued notifications bringing into effect several key sections of the Companies Act, 2013 and constituted NCLT and NCLAT.¹⁰³

¹⁰¹ In the Companies Act, 2013,—

After section 417, the following section shall be inserted, namely: —

"417A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

¹⁰² Section 8 of the Companies Act, 2013

¹⁰³ There are 11 benches of NCLT have been constituted in the following places: (1) New Delhi (consists of two benches); (2) Ahmedabad; (3) Allahabad; (4) Bengaluru; (5) Chandigarh; (6) Chennai; (7) Guwahati; (8) Hyderabad; (9) Kolkata; (10) Mumbai

Objectives of the Tribunal:

1. Single Window: The most significant benefit likely to arise from the constitution of the NCLT and the NCLAT is that the tribunals effectively, act as a single window for settlement of all company law related disputes. The newly constituted tribunals has replaced the existing Company Law Board ('CLB'), the Board of Industrial and Financial Reconstruction ('BIFR') and its appellate authority. Thus, the unnecessary fragmentation and multiplicity of the proceedings before various courts and tribunals in the same matter will be now curbed.

2. Class Action Claims: If 100 or more shareholders or depositors find that the company's affairs are not being managed in its best interests, they may approach the NCLT and they can file class action suit, in which shareholders can collectively sue directors or auditors of the company for their misconduct or unwarranted acts. With the increase of shareholder activism in India such a remedy would be a valuable remedy in the hands of shareholders against their boards.

3. Greater Field Impact: Under the old law, the CLB was operating through only 5 benches. However, the NCLT will commence with 11 benches, with the Principal Bench being in New Delhi. This will undoubtedly aid in ensuring a wider reach for adjudicating company law matters in India.

4. Speedy Disposal of Cases: The NCLT and the NCLAT are under a mandate to dispose of cases before them as expeditiously as possible. In this context, a time limit of 3 months has been provided to dispose of cases, with an extension of 90 days for sufficient reasons to be recorded by the President or the Chairperson, as the case maybe.

Appellate Authority of NCLT: The NCLAT will act as the appellate forum and all appeals from the orders of the NCLT will be heard by it. Appeals from the NCLAT will be heard by the Supreme Court of India.

No	Bench	Location	Territorial Jurisdiction of the bench
1	(a) National Company Law Tribunal, Principal Bench. (b) National Company Law Tribunal, New Delhi Bench.	New Delhi	Rajasthan and Union territory of Delhi.
2	National Company Law Tribunal, Ahmedabad Bench.	Ahmedabad	Gujarat, Madhya Pradesh, Union territory of Dadra and Nagar Haveli and Union territory of Daman and Diu.
3	National Company Law Tribunal, Allahabad Bench.	Allahabad	Uttar Pradesh and Uttarakhand.

4	National Company Law Tribunal, Bengaluru Bench.	Bengaluru	Karnataka.
5	National Company Law Tribunal, Chandigarh Bench.	Chandigarh	Himachal Pradesh, Jammu and Kashmir, Punjab, Union territory of Chandigarh and Haryana.
6	National Company Law Tribunal, Chennai Bench.	Chennai	Kerala, Tamil Nadu, Union territory of Lakshadweep and Union territory of Puducherry.
7	National Company Law Tribunal, Guwahati Bench.	Guwahati	Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Sikkim, Tripura
8	National Company Law Tribunal, Hyderabad Bench.	Hyderabad	Andhra Pradesh and Telangana.
9	National Company Law Tribunal, Kolkata Bench.	Kolkata Bench	Bihar, Jharkhand, West Bengal, Odisha and Union territory of Andaman and Nicobar Islands
10	National Company Law Tribunal, Mumbai Bench.	Mumbai	Chhattisgarh, Goa and Maharashtra.

In case of National company law appellate tribunal there is only one appellate tribunal at New Delhi prevailing in whole country.

Composition of Tribunal: NCLT consists of president, and such number of (Judicial and Technical) members, as the Central Government may deem necessary appointed by way of notification in the official gazette. The total number of members in the Tribunal however cannot at any point of time exceed 62 in number.

Qualification of president of NCLT: President –Sitting or ex Judge of High Court for at least 5 years

Qualification of Members of NCLT: A person shall not be qualified for appointment as a Judicial Member unless he— (a) is, or has been, a judge of a High Court; or (b) is, or has been, a District Judge for at least five years; or (c) has, for at least ten years been an advocate of a court.

- A person shall not be qualified for appointment as a Technical Member unless he— (a) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or (b) is, or has been, in practice as a chartered accountant for at least fifteen years; or (c) is, or has been, in practice as

a company secretaries for at least fifteen years; or (d) is, or has been, in practice as a company secretary for at least fifteen years; or (e) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or (f) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (S.409).

Tenure of Chairperson & Members: Initial Term of 5 years but can be renewed for next 5 years and Chairperson of Appellate Tribunal shall be after attainment of 70 years

Age Limit: President of Tribunal: Till attainment of 67 years, and other members till attainment of 65 years. No person shall be appointed as a Member unless he has completed 50 years (S.413).

Removal of Chair Person or Member of NCLT: (1) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who— (a) has been adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest (S.417)

Powers and Functions of Tribunal: The NCLT has been empowered to exercise the following powers:

1. Most of the powers of the Company Law Board under the Companies Act, 2013.
2. All the powers of BIFR for revival and rehabilitation of sick industrial companies;
3. Power of High Court in the matters of mergers, demergers, amalgamations, winding up, etc.;
4. Power to order repayment of deposits accepted by Non-Banking Financial Companies as provided in section 45QA of the Reserve Bank of India Act, 1934;
5. Power to wind up companies;
6. Power to Review its own orders.

The NCLT shall have powers and jurisdiction of the Board for Industrial and Financial Reconstruction (BIFR), the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), Company Law Board, High Courts relating to compromises, arrangements, mergers, amalgamations and reconstruction of companies, winding up etc.

Procedure adopted by the Tribunal: Following are the requisite points for consideration before filing petition, appeal or application before NCLT as per NCLT Rules:

1. The document to be filed before NCLT shall be in English and if in any other language, it shall be accompanied with copy of Translation in English.
2. It shall be type written, printed in double space, on one side of legal paper, with margins: Top 4 c.m., Right-2.5 c.m. and left-5c.m.
3. It shall be duly paginated, indexed and stitched together in paper book form.
4. Every petition, application, appeal or document shall be filed in Triplicate.
5. All the documents filed shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
6. Copy of petition, application or appeal shall also be filed to the opposite party.
7. True Copy of Resolution for authorisation to sign, verify and institute on behalf of the company shall also be enclosed.
8. Every petition, application or appeal shall be filed in Form No. NCLT.1 along with the attachment of Notice of admission in Form NCLT-2.
9. Title Heading for Proceeding shall be in Form No. NCLT.4.
10. Every petition or application shall be verified by an Affidavit in Form No. NCLT.6.
11. Notice of Motion shall be filed in Form No. NCLT.3.
12. Notice to the opposite Party shall be issued in Form No. NCLT.5
13. Where any petition or application is required to be advertised, it shall be advertised in Form No. NCLT-3A in vernacular language and in English Newspaper. Advertisement if published shall also be placed on the website of the company, if any.
14. Every Party may appear either in person or through authorized Representative, who shall make an appearance through filing *Vakalatnama* or Memorandum of Appearance in Form No. NCLT.12 representing the respective parties.

15. No intern employed by Authorized Representative shall appear, access to the records or obtain copies of order, unless his name is entered in Register of intern maintained by bench. Authorized Representative shall make application in Form NCLT.10 for registering his intern.
16. Special Procedure has also been specified from Rule 66 to Rule 88 specifying the procedures or additional requirement for the applicant to be followed while filing application under various provisions of Companies Act, 2013. Additional requirements inter alia includes accompanying documents as mentioned in Annexure-B (which includes copy of Memorandum and Articles, copy of balance sheet, Resolution, Bank Draft for filing fees etc.), content of application, Advertisement of application etc.
17. An application for rectification of Final order shall be filed within Two years in Form No. NCLT.9.
18. The certified copy of the order of NCLT shall be filed with ROC in Form NO. INC-28 along with the fees of Rs. 500/- within 30 days.

Maximum Time Limit for Disposal of Case: The NCLT and NCLAT are expected to dispose-off appeals, applications and petitions filed before it within a period of 3 months from the date of the filing. An extension of 90 days may be granted by the President of NCLT or Chairperson of NCLAT for disposal of the matter (S.422).

Appeal from Order of the Tribunal: Any person aggrieved by an order or decision of the Tribunal, within the period of 45 days from the date on which a copy of the order or decision of the tribunal, may prefer an appeal to Appellate Tribunal. The Appellate Tribunal shall be made to dispose the appeal within 6 months from the date of the receipt of the appeal (S. 421).

2.14 NATIONAL COMPANY LAW APPELLATE TRIBUNAL

(Jurisdiction also been conferred under the Competition Act, 2002. Hence forth, Competition Appellate Tribunal (COMPAT) has been merged with this Tribunal)

Establishment: As per section 410 of the Companies Act, 2013, the Central Government shall, by constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known notification, as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be

appointed by it by notification, for hearing appeals against the orders of the Tribunal.¹⁰⁴ The Companies Act, 2013 has been amended through the Finance Act, 2017, Gazette of India, 31 March, 2017, Legislative Department, Ministry of Law of Justice. The NCLAT shall also exercise the jurisdiction and shall be the Appellate Tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under the Competition Act, 2002. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of presiding officer of the Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.¹⁰⁵

Objectives of Tribunal: The constitution of the National Company Law Appellate Tribunal is to provide a simpler, speedier and more accessible dispute resolution mechanism to cases which are appealed from NCLT - To hear appeals against the orders passed by NCLT(s) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC), with effect from 1 December 2016. To hear appeals against the orders passed by Insolvency and Bankruptcy Board of India under Section 202 and Section 211 of IBC. To hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI) – as per the amendment brought to Section 410 of the Companies Act, 2013 by Section 172 of the Finance Act, 2017, with effect from 26 May, 2017.

Benches/Total no. of tribunals: There is only one bench of National Company Law Appellate Tribunal at Delhi which hears all disputes raised in appeal from National Company Law Tribunal.¹⁰⁶

¹⁰⁴ Section 10 of the Companies Act, 2013

¹⁰⁵ In the Companies Act, 2013,—

(a) in section 410, for the words "for hearing appeals against the orders of the Tribunal", the following shall be substituted, namely:—

"for hearing appeals against,—

(a) the order of the Tribunal under this Act; and

(b) any direction, decision or order referred to in section 53N of the Competition Act, 2002 in accordance with the provisions of that Act.";

(b) after section 417, the following section shall be inserted, namely: —

"417A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if

the provisions of section 184 of the Finance Act, 2017 had not come into force."

¹⁰⁶ Available at <http://nclat.nic.in/bench.html>, accessed August 30, 2017

Composition: NCLAT consists of a chairperson and such number of judicial and technical members, not exceeding eleven, as the Central Government may deem fit.

Qualifications of Chairperson and Members: The Companies Act, 2013 prescribes the qualifications of the chairperson and the members of the Appellate Tribunal.¹⁰⁷ (i)

Qualification of Chairperson: The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court. (ii) Qualification of members: (1) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years. (2) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years in various specified disciplines related to the management, conduct of affairs, revival, rehabilitation and winding up of companies (S.411).

Tenure of Chairperson and Members: The Act provides the term for the holding of office for the members constituting Appellate Tribunal along with the age bar on the holding of the same (S.413).

Term of holding office in the case of Appellate Tribunal: The chairperson or a Member of the Appellate Tribunal shall hold office for a term of 5 years from the date on which he enters upon his office, and shall be eligible for re-appointment for another term of 5 years.(S.413(3))

Restriction on holding of office: Under section 413(4), a member of the Appellate Tribunal shall hold office as such until he attains,—

- (a) in the case of the Chairperson, the age of 70 years;
- (b) in the case of any other Member, the age of 67 years.

Provided that a person who has not completed 50 years of age shall not be eligible for appointment as Member.

Provided further that a member may retain his lien with his parent cadre or Ministry or Department, while holding office for a period not exceeding 1 year (S.413).

Removal/Suspension of Chairperson and Members: (1) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who— (a) has been adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or (d) has acquired such financial or other

¹⁰⁷ Section 411 of the Companies Act, 2013

interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest (S.417):

Powers and Functions of the Tribunal: The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (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 (1 of 1872), requisitioning any public record or document or 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 a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.

Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,— (a) in the case of an order against a company, the registered office of the company is situate; or (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain. All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal and the Appellate Tribunal

shall be 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).

Procedure adopted by the Tribunal: NCLAT shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

Maximum Time Limit for Disposal of the Case: On receipt of an appeal from an aggrieved person, the Appellate Tribunal may pass such orders, after giving an opportunity of being heard, as it thinks fit, confirming, modifying or setting aside the order appealed against. The Appellate Tribunal shall be made to dispose the appeal within six months from the date of the receipt of the appeal.

2.14.1 COMPETITION APPELLATE TRIBUNAL

(Merged with National Company Law Appellate Tribunal)

Establishment: The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal (COMPAT) under the Competition Act, 2002.¹⁰⁸ The jurisdiction of this Tribunal has been conferred to the National Company Law Appellate Tribunal through an amendment in the Competition Act, 2002, effected through the Finance Act, 2017.¹⁰⁹

Objectives of Tribunal: (a) To act as an appellate body against any decision, direction or order of the Competition Commission of India (CCI); (b) Adjudication by COMPAT

¹⁰⁸ Section 53 A of the Competition Act, 2002

¹⁰⁹In the Competition Act, 2002,—(a) in section 2, for clause (ba), the following clause shall be substituted, namely:—'(ba) "Appellate Tribunal" means the National Company Law Appellate Tribunal referred to in sub-section (1) of section 53A;';(b) in Chapter VIIIA, for the heading, the following heading shall be substituted, namely:—

"APPELLATE TRIBUNAL"; (c) for section 53A, the following section shall be substituted, namely:—

"53A. The National Company Law Appellate Tribunal constituted under section 410 of the Companies Act, 2013 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall—

(a) hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act; and

(b) adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act."

(d) sections 53C, 53D, 53E, 53F, 53G, 53H, 53-I, 53J, 53K, 53L, 53M and 53R shall be omitted;

(e) in section 63, in sub-section (2), clauses (mb), (mc) and (md) shall be omitted.

of claims on compensation and passing of orders for the recovery of compensation.¹¹⁰; and (c) To achieve the objectives of the Parent Act i.e. the Competition Act, 2002.

Benches/Total no. of Tribunal: The Tribunal shall ordinarily have sittings at its headquarters at New Delhi. The headquarters/benches may be at such other places as the Chairperson may by order direct. No such direction has been made till date.¹¹¹

Composition: One Chairperson and not more than two other members.¹¹²

Qualifications of Chairperson, Members etc.: Section 53 D - Chairperson: A person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court. Member: A person of ability, integrity and standing having special knowledge of, and professional experience of not less than 20 years in competition matter.¹¹³

Tenure of Chairperson, Members etc.: Chairperson - 5 Years from the date on which he enters upon his office. However, the Chairperson shall not hold office after he has attained the age of 68 years. The Chairperson is eligible for re-appointment.¹¹⁴ Member - 5 Years from the date on which he enters upon his office. However, a Member shall not hold office after he has attained the age of 65 years. A Member is eligible for re-appointment.

Removal of Chairperson, Members etc.: The Central Government may, in consultation with CJI, remove the Chairperson or any member of COMPAT on any of the following grounds (S.53K):

- He has been adjudged an insolvent;
- He has engaged at any time, during his terms of office, in any paid employment;
- He has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude;
- He has become physically or mentally incapable of acting as such Chairperson or other member;
- He has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or member;
- He has so abused his position as to render his continuance in office prejudicial to the public interest.

¹¹⁰ Statement of Objects and Reasons - The Competition (Amendment) Bill 2007 (Bill No. 70 of 2007)

¹¹¹ Regulation 4 of the Competition Appellate Tribunal (Procedure) Regulations, 2011:

¹¹² Section 53 C of the Competition Act, 2002

¹¹³ 'Competition matters' includes competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal

¹¹⁴ Section 53 F of the Competition Act, 2002

Powers and Functions of the Tribunal: The primary function of the Tribunal is as follows (S.53A):

- Hear and dispose of appeals against any decision, direction or order of CCI; and
- Adjudicate on claim for compensation
- On receipt of an appeal against an order, direction or decision of CCI, the Tribunal may pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order, direction or decision appealed against (S.53(B)(3)).
- The Tribunal may award compensation for any loss or damage shown to have been suffered by a person as a result of contravention of provisions of Chapter II¹¹⁵ of the Competition Act, 2002 (Act 12 of 2003). The Tribunal may obtain the recommendations of the Commission before passing an order of compensation (S. 53N).
- The Tribunal shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908. Thus, the Tribunal can summon witnesses, enforce their attendance, require discovery and production of documents, receive evidence etc (S.53O).
- The Tribunal shall have the power to punish for contempt as that of a High Court. For this purpose, the provisions of the Contempt of Courts Act, 1971 are to have effect (S.53U).

Procedure Adopted by Tribunal: COMPAT shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. It shall be guided by the principles of natural justice. Also, the Tribunal has the power to regulate its own procedure. Every proceeding before the Appellate Tribunal shall be deemed to be judicial proceedings under Sections 193, 228 and 196 of the Indian Penal Code, 1869 (Act 45 of 1860). The Tribunal shall be deemed to be civil court under Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Act 2 of 1974) (S.53O). The Tribunal may adjourn the hearing to a later date or time on sufficient cause being shown. The Tribunal shall not grant more than 3 adjournments during the course of the whole proceedings.¹¹⁶ The Tribunal may continue with the proceedings in the absence of the party who does not appear on the day fixed for hearing.¹¹⁷

¹¹⁵ Prohibition of Certain Agreements, Abuse of Dominant Position and Regulation of Combinations

¹¹⁶ Regulation 10 of the Competition Appellate Tribunal (Procedure) Regulations, 2011

¹¹⁷ Regulation 11 of the Competition Appellate Tribunal (Procedure) Regulations, 2011:

Maximum Time Limit for Disposal of Case: An appeal filed before COMPAT against any direction, decision or order of CCI shall be disposed within 6 months from the date of receipt of appeal (S.53(B)(5)).

Changes Introduced Through the Finance Act, 2017

National Company Law Appellate Tribunal

Qualifications: (1) The Chairperson shall be a person who is or has been a judge of the Supreme Court or the Chief Justice of a High Court.

(2) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the National Company Law Tribunal for five years.

(3) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than twenty-five years, in law, industrial finance, Industrial management or administration, industrial reconstruction, investment, accountancy or any other matter which in the opinion of the Central Government is useful to the National Company law Appellate Tribunal.

Selection: (A) The Chairperson of the Appellate Tribunal shall appointed after consultation with the Chief Justice of India (B) Search-cum Selection Committee for the post of the Judicial Member Technical Member of Appellate Tribunal, - (i) Chief Justice of India or his nominee chairperson; (ii) a senior Judge of Supreme Court or a Chief Justice of a High Court-member; (iii) Secretary to Government of India, Ministry of Corporate Affairs- member; (iv) Secretary to Government of India, Ministry of Law and Justice-member.

Office term: 3 years

Age limit: Chairperson – 70 years, Members – 67 years

2.15 AUTHORITY FOR ADVANCE RULING

Establishment: The office of Authority for Advance Ruling was created by the Finance Act, 1993 under the Income Tax Act, 1961. The substantive provisions of law relating to this authority are contained in section 245N to 245V of the IT Act and the procedure is spelt out in Income Tax Rules, 1962. As per Finance Act, 2017, Authority established under Income Tax Act will be hearing the matters connected to Custom¹¹⁸, Excise¹¹⁹ and Service Tax also.¹²⁰

Objectives of the Authority: The scheme of advance rulings was introduced by the Finance Act, 1993. Chapter XIX-B of the Income-tax Act, which deals with advance

¹¹⁸ Section 93 & 94 of the Finance Act, 2017

¹¹⁹ Section 112 of the Finance Act, 2017

¹²⁰ Section 123 of the Finance Act, 2017

rulings, came into force with effect from 1-6-1993. Under the scheme the power of giving advance rulings has been entrusted to an independent adjudicatory body. Accordingly, a high level body headed by a retired judge of the Supreme Court has been set-up. This is empowered to issue rulings, which are binding both on the Income-tax Department and the applicant. The procedure prescribed is simple, inexpensive, expeditious and authoritative. Advance Ruling means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. It has been defined in section 245N (a) of the Income-tax Act, 1961 as amended from time-to-time.

Benches: Office of authority is located at New Delhi.

Composition: Authority for Advance Ruling shall consist of a Chairman and two other members.

Qualification of the Chairman & Members: Chairman - retired judge of the Supreme Court. One of the members from Indian Revenue Service and second from Indian Legal Service.

Tenure of the Chairman & Members: Term of the Chairman and members will be for three years till they attained age of 70 Years and 62 years whichever is earlier. They shall be eligible for re-appointment for another term of 3 years.¹²¹

Powers and Functions of the Authority: The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) as are referred to in section 131 of this Act. The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI, of the Code of Criminal Procedure, 1973 (2 of 1974) and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).¹²²

Procedure adopted by the Authority: The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.¹²³

¹²¹ Rule 8 of Authority for Advance Rulings (salaries and allowances, terms and conditions of service of Chairman and Members) Rules, 1994.

¹²² Section 245U of Income Tax Act, 1961

¹²³ Section 245V of Income Tax Act, 1961

Maximum time limit for Disposal of Case: As per sub-section (6) of section 245R of the Income-tax Act requires the Authority to pronounce its advance ruling in writing within 6 months of the receipt of the application.

Changes introduced through the Finance Act, 2017

Authority for Advance Ruling under the Income-tax Act, 1961 (43 of 1961)

Qualifications: A person shall be qualified for appointment as,— (a) Chairman, who:—

(i) is, or has been, or is qualified to be, a Judge of the Supreme Court; or (ii) is or has been a Chief Justice of a High Court; or (iii) has, for at least seven years, been a Judge of a High Court; or (iv) has, for at least three years, been a Vice -Chairman, Revenue Member or Law Member of the Authority for Advance Ruling; or (v) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, taxation or any other matter which in the opinion of the Central Government is useful to the Authority.

(b) Vice-chairman, who is, or has been, or is qualified to be, a Judge of a High Court;

(c) Revenue Member from the Indian Revenue Service who is qualified to be a Member of the Central Board of Direct Taxes Board and an officer of the Indian Customs and Central Excise Service, who is qualified to be a Member of the Central Board of Excise and Customs;

(d) Law Member from the Indian Legal Service, who is an Additional Secretary to the Government of India.

Selection:

(A) Search-cum Selection Committee for the post of Chairman and Vice Chairman, - (i) Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India – chairperson; (ii) Secretary to the Government of India (Department of Revenue) -member; (iii) Secretary to the Government of India (Department of Legal Affairs)- member; (iv) Secretary to the Government of India (Department of Personnel and Training) member.

(B) Search-cum-Selection Committee for the post of Member, - (i) Cabinet Secretary- Chairperson; (ii) Secretary to the Government of India, (Department of Personnel and Training)- member; (iii) Secretary to the Government of India, (Department of Revenue) member; (iv) two Secretaries to the Government of India to be nominated by the Central Government members.

Office term: 3 years

Age limit: Chairman – 70 years, Vice-Chairman – 65 years, Members – 62 years

2.16 FILM CERTIFICATION APPELLATE TRIBUNAL

Establishment: The Film Certification Appellate Tribunal (FCAT) is a statutory body, constituted under Section 5D of the Cinematograph Act, 1952 (37 of 1952), under the Ministry of Information and Broadcasting, Government of India. The Tribunal hears the appeals filed under Section 5C of the Act under which any applicant for a Certificate in respect of a film who is aggrieved by an order of the Central Board of Film Certification (CBFC) can file an Appeal before the Tribunal. The Cinematograph Act, 1952 has been amended through the Finance Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of services of Chairperson and other members of the Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.¹²⁴

Objectives of Tribunal: The objective of this Tribunal is to entertain appeals against restrictions and denials in grant of certificate to films. Film-makers and producers who believe that the Board has acted illegally in denying a certificate or requiring cuts, and have violated their right to free speech, can appeal to Appellate Tribunal. If a person is aggrieved by the Central Board of Film Certification's refusal to grant a certificate, or to grant a certificate that only allows restricted viewing, he may appeal to the Appellate Tribunal. If a person is further aggrieved by the order of Appellate Tribunal he may approach the High Court.

Benches/Total no. of Tribunal: The Film Certification Appellate Tribunal has only one bench in New Delhi.

Composition: The Tribunal shall consist of Chairman and not more than four members as per Clause 3 of Section 5D of Cinematograph Act 1952. The Central Government may take such steps as it thinks fit to appoint women members in the Board so that there is due representation for women.¹²⁵ For the purpose of enabling the Appellate Tribunal to perform its functions under the Act, the Central Government may appoint a Secretary

¹²⁴ In the Cinematograph Act, 1952, after section 5D, the following section shall be inserted, namely:—
"5E. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman and other members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act: Provided that the Chairman and member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

¹²⁵ Rule 3A of Cinematograph (Certification) Rules, 1983.(as per notification dated 16th November, 1994)

to the Appellate Tribunal and such other officers for the Appellate Tribunal as may be considered necessary. The Chairman of the Appellate Tribunal may grant leave to or suspend or remove from service any officer appointed by him under the powers delegated to him under this sub-rule.¹²⁶

Qualifications of Chairperson, Members etc.: Section 5D of Cinematograph Act 1952 further provides for the qualifications of Chairperson, Secretary and members of the Tribunal. They are as follows:

- A person shall not be qualified for appointment as the Chairman of the Tribunal unless he is a retired Judge of a High Court, or is a person who is qualified to be a Judge of a High Court.
- The Central Government may appoint such persons who, in its opinion, are qualified to judge the effect of films on the public, to be members of the Tribunal.
- Subject to such rules as may be made in this behalf, the Central Government may appoint a Secretary and such other employees as it may think necessary for the efficient performance of the functions of the Tribunal under this Act.
- The Secretary to, and other employees of, the Tribunal shall exercise such powers and perform such duties as may be prescribed after consultation with the Chairman of the Tribunal.

Tenure of Chairperson, Members etc.: The Chairman and members of the Appellate Tribunal shall hold office during the pleasure of the Central Government. Rule 43 of the Cinematograph (Certification) Rules, 1983 provides for certain rules as to the tenure of the Chairperson and members and they are as follows³:-

- A member of the Board shall hold office during the pleasure of the Central Government.
- The Chairman shall hold office for a period of 3 years and shall continue to hold office until his successors is appointed;
- Every other member shall hold office for a period not exceeding three years.
- A retiring member or a member whose term of office has expired by efflux of time shall be eligible for reappointment.
- Not with standing anything contained in the foregoing sub-rules, when the Chairman of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the Central Government may appoint

¹²⁶ Rule 43 of Cinematograph (Certification) Rules, 1983

another person to discharge the functions of the Chairman until the Chairman resumes his duties.

- The Central Government may, after consultation with the Chairman of the Appellate Tribunal, appoint any person whom it thinks fit to be a member of the Appellate Tribunal:
- Provided that the Central Government may, for reasons to be recorded in writing, dispense with such consultation.

Removal of Chairperson, Members etc.: The Central Government may remove from office any member of the Appellate Tribunal before the expiration of his term of office: Provided that a member appointed to the Appellate Tribunal after consultation with the Chairman of the Appellate Tribunal shall not be so removed except on the recommendation of or after consultation with the Chairman of the Appellate Tribunal.

Powers of the Tribunal: The Tribunal has power to entertain appeals from the decisions of the Board deliberates on the validity of the cuts, restrictions or denial to grant certificate.

- It has the power to direct the Central Board of Film Certification to allow certification and screening of a film.¹²⁷
- Section 7A gives powers of search and seizure to the Tribunal film certified as suitable for public exhibition restricted to adults is exhibited to any person who is not an adult or a film is exhibited in contravention of any of the other provisions contained in this Act of 1952.

Procedure adopted by Tribunal: An appeal can be made before the Film Certification Appellate Tribunal (FCAT) under Section 5C of the Cinematograph Act, 1952 by an applicant for a certificate in respect of a film in case he is aggrieved by an order of the Central Board of Film Certification (CBFC) –

- (a) refusing to grant a certificate; or
- (b) granting only an ‘A’ certificate; or
- (c) granting only a ‘S’ certificate; or
- (d) granting only a ‘UA’ certificate; or
- (e) directing the applicant to carry out any excisions or modifications.¹²⁸

The appeal can be filed within 30 days from the date of the order of the CBFC, or within a further period of 30 days in case he has been prevented by sufficient cause from filing

¹²⁷ Section 7C of the Cinematograph Act, 1952.

¹²⁸ Section 5C of the Cinematograph Act, 1952.

the Appeal within the initial period of 30 days. An appeal can be made before the Tribunal by an applicant in the form as in Appendix I.

Maximum Time Limit for Disposal of Case: If the applicant is aggrieved by the order of the board, an appeal can be made to the Film Certification Appellate Tribunal headed by a retired judge as a Chairperson. The appeal can be made within 30 days of the board's decision. The FCAT may hear both the applicant and the CBFC before coming to its judgment.

Changes Introduced By the Finance Act, 2017

Film Certification Appellate Tribunal under the Cinematograph Act, 1952 (37 of 1952)

Qualifications: (1) A person shall not be qualified for appointment as Chairman, unless he, -

(a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has, for a period of not less than three years, held office as member; or (c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in, law, management, industry, public affairs, administration, films or any other matter which in the opinion of the Central Government, is useful to the Appellate Tribunal. (2) The Central Government may appoint such persons, who, in its opinion, are qualified to judge the effect of films on the public, to be a member of the Appellate Tribunal.

Selection: Search-cum-Selection Committee for post of the Chairman and member of the Appellate Tribunal, — (i) a person to be nominated by the Central Government-chairperson; (ii) Secretary to the Government of India, Ministry of Information and Broadcasting-member; (iii) Secretary to the Government of India to be nominated by Central Government - member; (iv) two experts to be nominated by the Central Government-members.

Office term: 3 years

Age limit: Chairman – 67 years, Members – 65 years

2.17 NATIONAL CONSUMER DISPUTE REDRESSAL COMMISSION

Establishment: The National Consumer Disputes Redressal Commission (NCDRC), India is a quasi-judicial commission in India which was set up in 1988 under the Consumer Protection Act of 1986. Its head office is in New Delhi. Section-9 of the Consumer Protection Act, 1986 lays down provision for the establishment of National Consumer Dispute Redressal Tribunal as Apex Commission to resolve Consumer Disputes. The Consumer Protection Act of 1986 has been amended through the Finance

Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of services of the President and other members of the Commission appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.¹²⁹

Objectives of Commission: (a) To hear appeals as an Apex body against the decision of District Forum and State Commission, (b) To fulfill the objectives as laid in the Parent act i.e. The Consumer Protection Act, 1986, (c) To entertain the suit in its original jurisdiction in various suits whose monetary value exceeds 1 crore or more, (d) To overseeing the functioning of the State Commissions and the District Forums to ensure that the objects and purposes of the Act are best served, without interfering with their quasi-judicial freedom.

Benches: The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette, from time to time.¹³⁰

Composition: The National Commission shall consist of a President, and not less than four members and not more than eleven members and at least one of them shall be a woman.¹³¹ The disputes must be disposed of by at least three members of the National Commission, one of whom must be the president (or the senior most members authorized to work as president).¹³²

Qualifications of Chairperson, Members etc.: The President should be the one who is or has been a Judge of the Supreme Court. His appointment shall be made by Central Government in consultation with Chief Justice of India.¹³³ Appointment of members shall be done by central government on recommendation of selection committee

¹²⁹In the Consumer Protection Act, 1986, after section 22D, the following section shall be inserted, namely:—

"22E. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President and other members of the National Commission appointed after the commencement of Part XIV of Chapter VI of

the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President and member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

¹³⁰ Rule-5 of Consumer Protection Rules, 1987.

¹³¹ Section-20(1)(a),20(1)(b) of Consumer Protection Act,1986 and Rule-10B of Consumer Protection Rules,1987.

¹³² Rule-15A of Consumer Protection Rules, 1987.

¹³³ Ibid

constituted by it. The members should be the persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.¹³⁴

Tenure of Chairperson, Members etc.: (a) The President and the members of the National Consumer Dispute Redressal Commission shall hold office for 5 years or up to the age of 70 years, whichever is earlier. (b) The president as well as every member is eligible to re-appointment for another term of 5 years or up to the age of 70 years, whichever is earlier.¹³⁵

Removal of Chairperson, Members etc.: The Central Government may remove from office, the President or any member, who:

- has been adjudged as an insolvent; or
- has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- has become physically or mentally incapable of acting as the President or the member; or
- has acquired such financial or other interest as is likely to affect prejudicially his functions as the President or a member; or
- has so abused his position as to render his continuance in office prejudicial to the public interest; or
- Remain absent in three consecutive sittings except for reasons beyond his control.¹³⁶
- The President or any member of the National Commission shall not be removed from his office except by an order made by the Central Government on the grounds specified under the act and after an inquiry held by a sitting Judge of the Supreme Court.¹³⁷

Powers and Functions of the Tribunal: The National Consumer Disputes Redressal Commission is vested with the powers of a civil court. These powers are in respect of the following matters:

- The summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

¹³⁴ Section-20(1)(b) of Consumer Protection Act, 1986

¹³⁵ Section-20(3) of Consumer Protection Act, 1986.

¹³⁶ Rule-13(1) of Consumer Protection Rules, 1986.

¹³⁷ Rule-13(2) of Consumer Protection Rules, 1986.

- The discovery and production of any document or other material object producible as evidence;
- The reception of evidence on affidavits;
- The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- Issuing of any commission for the examination of any witness, and
- Any other matter which may be prescribed.¹³⁸

The National Commission shall have power to require any person:

- To produce before, and allow to be examined such books, accounts, documents or commodities in the custody or under the control of the person so required as may be specified or described in the requisition.
- Authorise any officer to exercise the power of entry and search of any premises including seizing of books, papers, documents or commodities as are required for the purpose of this Act.
- To furnish to an officer so specified, such information as may be required for the purpose of this Act.

The National Commission is empowered to issue instructions regarding:

- adoption of uniform procedure in the hearing of the matters
- prior service of copies of documents produced by one party to the opposite parties,
- speedy grant of copies of documents, and
- Generally over-seeing the functioning of the State Commissions and the District Forums to ensure that the objects and purposes of the Act are best served, without interfering with their quasi-judicial freedom.

Procedure adopted by Commission: A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the National Commission or be sent by registered post, addressed to the National Commission:

- the name, description and the address of the complainant;
- the name, description and address of the opposite party or parties, as the case may be, so far as they can be ascertained;
- the facts relating to the complaint and when and where it arose;
- documents in support of the allegations contained in the complaint;

¹³⁸ Section-13(4),(5),(6) & 22 of Consumer Protection Act,1986.

- the relief which the complainant claims.¹³⁹

Procedure for hearing the Cases: (a) If on the day of hearing before The National Commission, if complainant fails to appear before the commission, it may in its discretion either dismiss the complaint for default or decide it on merits, (b) Where the opposite party or its agent fails to appear on the date of hearing the National Commission may decide the complaint ex-parte, (c) Every order made by the National Commission shall be signed by the President or the senior most member and at least two members who conducted the proceeding and if there is any difference of opinion among themselves, the opinion of majority shall be the order of the National Commission.¹⁴⁰

Time Limit for Disposal of Appeals: The appeal shall be decided, as far as possible, within 90 days from the date of its admission. In the event of an appeal being disposed of after the period so specified, the National Commission shall record in writing the reasons of the same at the time of disposal of the said appeal.¹⁴¹

Time Limit for disposal of complaint under original jurisdiction: The complaint shall be decided as far as possible within a period of 3 months from the date of notice received by opposite party where complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities.¹⁴²

Case Disposal Rate: Total number of cases filed in the National Consumer Disputes Redressal Commission of India till date is 109,106. Out of the total number of cases filed, 96,034 cases have been disposed of; whereas 13,072 cases are still pending. Total 88.02% percent of the cases filed since inception of National Consumer Disputes Redressal Commission of India have been disposed of, and almost 12% of the cases filed since inception are still pending.

Changes Introduced Through the Finance Act, 2017

National Consumer Disputes Redressal Commission

Qualifications: A person shall not be qualified for appointment as President, unless he, —

- (a) is, or has been, or is qualified to be, a Judge of the Supreme Court; or (b) is, or has been, Chief Justice of a High Court; or (c) has, for a period not less than three years, held office of Member or Judicial Member; or (d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which in the opinion of the Central Government, is useful to the National Consumer Disputes

¹³⁹ Rule-14 of Consumer Protection Rules, 1987.

¹⁴⁰ Section 22D of Consumer Protection Act, 1986.

¹⁴¹ Rule-14(4) of Consumer Protection Rules, 1987.

¹⁴² Rule-14(4) of Consumer Protection Rules, 1987.

Redressal Commission.

(2) A person shall not be qualified for appointment as Member unless he is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which in the opinion of the Central Government, is useful to the National Consumer Disputes Redressal Commission:

Provided that a person shall not be appointed as a Judicial Member, unless he, — (a) is, or has been, or is qualified to be, a Judge of a High Court; (b) has, for at least ten years, held a Judicial office in the territory of India.

Selection: The President shall be appointed by the Central Government after consultation with the Chief Justice of India.

(B) Search-cum-Selection Committee for the post of member, (i) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India-chairperson; (ii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)- member; (iii) Secretary to the Government of India, Ministry of Consumer Affairs – member; (iv) two experts to be nominated by the Central Government- members.

Office term: 3 Years

Age limit: President – 70 years, Members – 70 years

2.18 THE APPELLATE TRIBUNAL FOR ELECTRICITY

Establishment: The Tribunal has been established under Section 110 of the Electricity Act, 2003 and also function for the purpose of Section 30 of the Petroleum and Natural Gas Regulatory Board Act, 2006. The Electricity Act, 2003 has been amended through the Finance Act, 2017, Gazette of India, 31 March, 2017, Legislative Department, Ministry of Law of Justice. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of services of the Chairmen and other members of the Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.¹⁴³

¹⁴³ In the Electricity Act, 2003, after section 47, the following section shall be inserted, namely:—

"117A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

Objectives of the Tribunal: The object of establishment of this Tribunal is to speedy disposal of matter. The Tribunal has both original and appellate jurisdiction on the orders by:

- Adjudicating officer
- Central electricity regulatory commission
- State electricity regulatory commission.

Any aggrieved person within 45 days of the order can appeal in the Tribunal provided the aggrieved party can approach later by recording the reason for the delay.¹⁴⁴

Benches/Total Number of Tribunal: The seat of the Tribunal originally is in New Delhi. The Central Government with the consultation from the Chairperson of Tribunal may notify the seating of benches at other places. The area of each bench shall also be notified by the Central Government and at present there is only one bench is functioning.

Composition: Section 112 of the Electricity Act, 2003 provides for the composition of the Tribunal. It shall consist of Chairperson and three other Members. The jurisdiction of the Tribunal shall be exercised by the Chairperson with two or more members provided that each bench contains at least one judicial member and one technical member. The Central Government may, for the purposes of this Act, appoint one or more Technical Members (Petroleum and Natural Gas) on the Appellate Tribunal for Electricity or designate a Technical Member of the said Tribunal having the qualifications specified in sub-Section (2) of Section 31 and when a Technical Member (Petroleum and Natural Gas) is appointed, he shall be in addition to the three other members appointed under the said Act.¹⁴⁵

Qualifications of Chairperson, Members etc.: According to the Electricity Act, 2003, the qualification of the Chairperson and the Member(s) are as follows¹⁴⁶:- **Chairperson-** A retired or serving of the Supreme Court or the Chief Justice of the High Court. **Judicial Member-** Serving/Retired High Court Judge or one who is qualified to be a judge of High Court. **Technical Member-** A person who is or has been a Secretary for at least one year in the Union Ministry/ Department dealing with economic affairs or infrastructure; or A person of ability or standing and having knowledge/experience in generation/ transmission/ distribution/ regulation/ economics/ commerce/ law/ management. **Appointment:** The Chairperson to be appointed by the Central

¹⁴⁴ Section. 111(2) of the Electricity Act, 2003

¹⁴⁵ Section 30 of the Petroleum and Natural Gas Regulatory board Act, 2006

¹⁴⁶ Section 113 of the Electricity Act, 2003

Government in the consultation with the Chief Justice of India. The members are to be appointed on the recommendations of the Selection Committee.¹⁴⁷

Tenure of Chairperson, Members etc.: The Act provides for the term of the Chairperson and Members. For the Chairperson is 3 years or 70 years of age, whichever is earlier and for the member its 3 years or 65 years of age or whichever is earlier. The Chairperson/members both are eligible for the second term subject to the age limitation.¹⁴⁸

Removal of Chairperson, Members etc.: The provisions of Act provides for the resignation and removal of the Chairperson or Members.¹⁴⁹ Accordingly through resignation and removal, by giving the notice to the Central Government but he shall continue in office

- For a period of 3 months;
- Till a successor joins; or
- expiry of his term, whichever is earliest;

The Chairperson or Members can be removed on the grounds of

- Proved misbehavior, or
- Incapacity

Before the removal of the Chairperson or Members from the office the inquiry must be made by a Supreme Court Judge and the Chairperson and Members must be given a notice and an opportunity to be heard.

Powers and functions of the Tribunal: The Tribunals shall have powers vested in a civil court under the code of Civil Procedure, 1908, while trying a suit in respect of the following:¹⁵⁰

- Summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavits;
- Subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- issuing commissions for the examination of witnesses or documents;

¹⁴⁷ Section 78 of the Electricity Act, 2003

¹⁴⁸ Section 114 of the Electricity Act, 2003

¹⁴⁹ Section 117 of the Electricity Act, 2003

¹⁵⁰ Section 120(2) of the Electricity Act, 2003

- reviewing its decisions;
- dismissing a representation of default or deciding it ex parte;
- setting aside any order of dismissal or any representation for default or any order passed by it ex parte;
- any other matter which may be prescribed by the Central Government.

Functions: To hear cases filed under Section 111 of the Electricity Act 2003 against the orders passed by the CERC, JERCs & various State Commissions and adjudicating Officers. APTEL is to entertain cases filed under Section 33 of the Petroleum and Natural Gas Regulatory Board Act, 2006 against the orders passed by the Petroleum and Natural Gas Regulatory Board

Procedure adopted by the Tribunal: The tribunal has power to regulate its procedures. The Tribunal is not bound by the procedures laid down by the Civil Procedure Code, 1908.¹⁵¹ The orders of the Tribunal shall be executable as a decree of civil court. All proceedings before the Tribunal shall be deemed to be a judicial proceedings within the meaning of S.198 and 228 of IPC and Tribunal shall be deemed as Civil Court.

Maximum Time Limit for Disposal of Case: The maximum time limit as per the Act for disposal of a case is 180 days¹⁵²

Changes introduced through the Finance Act, 2017

Appellate Tribunal for Electricity under the Electricity Act, 2003 (36 of 2003)

Qualifications: (1) A person shall not be qualified for appointment as Chairperson of the Appellate Tribunal, unless he, — (a) is, or has been, or is qualified to be, a Judge of Supreme Court; or (b) is, or has been, Chief Justice of a High Court; or (c) has, for a period of not less than three years, held office of Judicial Member, or Technical member; or (d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which in the opinion of the Central Government is useful to Appellate Tribunal.

(2) A person shall not be qualified for appointment as Judicial Member, unless, he— (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has, for at least ten years, held a judicial office in the territory of India.

(3) A person shall not be qualified for appointment as Technical Member unless he is a person of ability, integrity and standing having special knowledge of, and professional experience of, not less than twenty years in matters dealing with electricity generation, transmission, distribution, regulation, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter

¹⁵¹ Section 120 of the Electricity Act, 2003

¹⁵² S 111 (4) of the Electricity Act, 2001

which in the opinion of the Central Government is useful to the Appellate Tribunal.

Selection: (A) Search-cum-Selection Committee for the post of Chairperson and Judicial Member of the Appellate Tribunal, —(i) Chief Justice of India or his nominee-chairperson; (ii) Secretary to the Government of India, Ministry of Power- member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts, to be nominated by the Central Government-members.

(B) Search-cum-Selection Committee for the post of the Technical Member of the Appellate Tribunal, (i) a person to be nominated by the Central Government-chairperson; (ii) Secretary to the Government of India, Ministry of Power- member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts to be nominated by the Central Government-members.

Office Term: 3 Years

Age limit: Chairperson – 70 years, Members – 65 years

2.19 ARMED FORCES TRIBUNAL

Establishment: The Tribunal has been established under Section 4 of the Armed Forces Tribunal Act, 2007.¹⁵³ The Armed Forces Tribunal Act, 2007 has been amended through the Finance Act, 2017, Gazette of India, 31st March, 2017, Legislative Department, Ministry of Law of Justice. The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of Chairperson and other members of the Tribunal appointment by the central government shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of Section 184 the Act.¹⁵⁴

Objectives of Tribunal: The main objectives of the Tribunal are to provide for the adjudication or trial by Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act 1950 and also to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected therewith or incidental thereto.

¹⁵³ Establishment of Armed Forces Tribunal: The Central Government shall, by notification, establish a Tribunal to be known as the Armed Forces Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

¹⁵⁴ In the Armed Force Tribunal Act, 2007, after section 9, the following section shall be inserted, namely: —"9A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act: Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

Benches/Total No. of Tribunal: The Principal Bench is in New Delhi, and other Regional Benches at Chandigarh, Lucknow, Kolkata, Guwahati, Chennai, Kochi, Mumbai and Jaipur and the total numbers of Tribunals are ten.

Composition: The AFT is composed of a Chairperson and two types of members' viz. Judicial and Administrative. The number of both types of members is decided by Central Government. Normally, each bench has one judicial member and one administrative member.¹⁵⁵

Qualifications of Chairperson, Members etc.: Qualification of Chairperson:¹⁵⁶ He is a retired Judge of the Supreme Court or a retired Chief Justice of a High Court.

Qualification of a Judicial Member: He is or has been a Judge of a High Court.

Qualification of an Administrative Member: He has held or has been holding the rank of Major General or above for a total period of at least three years in the Army or equivalent rank in the Navy or the Air Force; and He has served for not less than one year as Judge Advocate General in the Army or the Navy or the Air Force, and is not below the rank of Major General, Commodore and Air Commodore respectively.¹⁵⁷

Tenure of Chairperson, Members etc.: The Chairperson or a Member shall hold office for a term of four years from the date on which he enters upon his office and shall be eligible for re-appointment.

Provided that no Chairperson shall hold office after he has attained— (a) in case he has been a Judge of the Supreme Court, the age of seventy years; and (b) in case he has been the Chief Justice of a High Court, the age of sixty-five years. Provided further that no other Member shall hold office after he has attained the age of sixty-five years.¹⁵⁸

Removal of Chairperson, Members etc.: The Chairperson or a Member may, by notice in writing under his hand addressed to the President, resign his office. Removal of the Chairperson or a Member from his office can be done only by an order made by the President on the ground of proved misbehavior or incapacity after an inquiry. The

¹⁵⁵ Section 5 of the Armed Forces Tribunal Act, 2007.

¹⁵⁶ On June 1, 2017, the Ministry of Finance notified The Tribunal, Appellate Tribunal, Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 in the Gazette of India. The Rules, effective from June 1, have amended 19 existing laws, including the Armed Forces Tribunal (AFT) Act. In contrast to earlier provisions in the AFT Act, where only a retired judge of the Supreme Court or a retired chief justice of a High Court could be appointed as Chairperson, now a serving judge or any person "who is qualified to be a judge of Supreme Court" could be appointed as the Chairperson of the Tribunal.

¹⁵⁷ Section 6 of the Armed Forces Tribunal Act, 2007

¹⁵⁸ Section 8 of the Armed Forces Tribunal Act, 2007

Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity.¹⁵⁹

Powers and functions of the Tribunal: The Tribunal shall exercise all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters. Tribunal has power to either reject or admit an application relating to service matters after due inquiry.

- For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit in respect of the following matters, namely—
 - (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, (1 of 1872) requisitioning any public record or document or 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 of any application for default or any order passed by it *ex parte*; and
 - (i) any other matter which may be prescribed by the Central Government.

The Tribunal shall decide both questions of law and facts that may be raised before it (S.14).

The Tribunal has power to hear the appeal against any order, decision, finding or sentence passed by a court martial. The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions (S.15).

The Tribunal, while hearing and deciding an appeal under Section 15 have the power— (S.17)

- a) to order production of documents or exhibits connected with the proceedings before the court martial;

¹⁵⁹ Section 9 of the Armed Forces Tribunal Act, 2007

- b) to order the attendance of the witnesses;
- c) to receive evidence;
- d) to obtain reports from Court martial;
- e) order reference of any question for enquiry;
- f) appoint a person with special expert knowledge to act as an assessor; and
- g) to determine any question which is necessary to be determined in order to do justice in the case.

Tribunal also has power to punish for contempt of Tribunal and its proceedings (S.19).

Procedure adopted by Tribunal: The Tribunal shall be guided by the principles of natural justice and subject to the other provisions of this Act and any rules made thereunder and it has the power to lay down and regulate its own procedure (S.23). The order of the Tribunal disposing of an application shall be final and shall not be called in question in any Court and such order shall be executed accordingly (S.29)

Appeal from the Judgments and Orders: An appeal shall lie to the Supreme Court against the final decision or order of the Tribunal other than an order passed on contempt of Tribunal. Such appeal is preferred within a period of ninety days from such order (S.30). An appeal to the Supreme Court shall lie with the leave of the Tribunal if it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court (S.31).

Maximum time limit for Disposal of Case: Tribunal has the power to lay down its own procedure including the fixing of place and time of its inquiry (S.23).

Case disposal rate

No. of matters filed during the year 2014-16: 13,728.

No. of matters disposed off during the year 2014-16: 12,446.

Average disposal rate during the year 2014-16: 4148.6.¹⁶⁰

Changes introduced through the Finance Act, 2017

Qualifications:

- (1) A person shall not be qualified for appointment as Chairperson, unless, he: (a) is, or has been, or is qualified to be a Judge of Supreme Court or, (b) is or has been a Chief Justice of a High Court.
- (2) A person shall not be qualified for appointment as Judicial Member unless he is, or has been, a Judge of a High Court.

¹⁶⁰ Available at <http://aftdelhi.nic.in/assets/rTI/Admin%20I%20Dox%2023-03-2017%204.pdf> accessed on 17-08-2017

(3) A person shall not be qualified for appointment as Administrative Member, unless he: (a) he has held or he has been holding the rank of Major General or above for a total period of at least three years in the Army or equivalent rank in the Navy or the Air Force; or (b) he has served for not less than one year as Judge Advocate General in the Army or the Navy or the Air Force, and is not below the rank of Major General, Commodore and Air Commodore respectively; or (c) he is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty years in, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, is useful to the Armed Forces Tribunal.

Selection: (A) The Chairperson of the Armed Forces Tribunal shall be appointed by the Central Government in consultation with Chief Justice of India. (B) Search-cum-Selection Committee for the post of Vice-Chairperson, Judicial Member, or Administrative Member of Armed Forces Tribunal, (i) a sitting Judge of Supreme Court to be nominated by Chief Justice of India or Chairman, Law Commission of India-chairperson; (ii) Chairperson, Armed Forces Tribunal member; (iii) two Secretaries to Government of India including Defence Secretary-members.

Term of Office: 3 Years

Maximum age limit: Chairperson – 70 Years, Members – 65 years

2.20 NATIONAL GREEN TRIBUNAL

Establishment: The National Green Tribunal has been established under Section 3 of the National Green Tribunal Act, 2010¹⁶¹ and started functioning from 18th October 2010. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Act has been amended through the Finance Act, 2017, through which, powers regarding appointment of chairperson, judicial member and expert member enshrined under this Act has been taken over and same has been provided under Section 184 of the Finance Act, 2017.¹⁶² In exercise of powers conferred under this Section, Ministry of Finance, issued the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other

¹⁶¹ Section 3-The Central Government shall, by notification, establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

¹⁶² Section 182 of the Finance Act, 2017, Legislative Department, Ministry of Law and Justice, Government of India, Gazette of India, dated 31st March, 2017 states as follows:

In the National Green Tribunal Act, 2010, after Section 10, the following Section shall be inserted, namely:—

"10A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson, Judicial Member and Expert Member of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of Section 184 of that Act:

Provided that the Chairperson, Judicial Member and Expert Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of Section 184 of the Finance Act, 2017 had not come into force."

Conditions of Service of Members) Rules, 2017. Through the above rules, changes has been introduced regarding the composition, appointment procedures, term of the offices of the National Green Tribunal.¹⁶³

Objectives of the Tribunal: The National Green Tribunal (NGT) was set up with an objective to effectively and expeditiously dispose cases relating to the protection of environment and conservation of forests and other natural resources. This also includes the enforcement of any legal right relating to environment, giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

Benches/Total Number of Tribunals: There is a principal bench of the Tribunal in New Delhi¹⁶⁴ and four Regional or Zonal benches in Bhopal (Central Zonal Bench), Kolkata (Eastern Zonal Bench), Pune (Western Zonal Bench) and Chennai (Southern Zonal Bench)¹⁶⁵. These are ‘co-equal benches’ i.e. the principal bench is not ‘higher’ in a judicial hierarchy than the other benches. Each bench has a specified geographical jurisdiction.¹⁶⁶ Occasionally, ‘circuit benches’ are also constituted and these are specially constituted benches that visit a particular city for a few days to hear cases relating to that State. The present circuit benches are in Shimla, Shillong, Jodhpur and Kochi.

Composition: As per Section 4(1) of the NGT Act, the Tribunal is to be composed of a (a) full time Chairperson, (b) not less than ten but subject to maximum of twenty judicial members as the central government may from time to time notify (c) not less than ten but subject to maximum of twenty expert members as the central government may from time to time, notify. Apart from these members, under Section 4(2), the Chairperson of the Tribunal, if necessary can invite any one or more persons having specialized knowledge and experience in a particular case before the Tribunal for the purpose of assisting the Tribunal in that case. The members of the Tribunal are a mixture of persons with a legal/judicial background and those with knowledge and expertise in environmental issues or with administrative experience. Every bench of Tribunal must consists of at least one expert member and one judicial member.

¹⁶³ In exercise of powers conferred under this Section 184 of the Finance Act, 2017, Ministry of Finance, issued the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017, Ministry of Finance, Department of Revenue, Gazette of India, Notification dated 1st June, 2017, through which, under Schedule of Entry 19 stipulates the for the same.

¹⁶⁴ Ministry of Environment and Forests Notification S.O. 1003(E) Dated 05/05/2011, Available at <http://www.moef.nic.in/downloads/public-information/SO1003E.pdf> accessed on 17-08-2017

¹⁶⁵ Section 4(3)-The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

¹⁶⁶ Ministry of Environment and Forests Notification S.O. 1908(E) Dated 17/08/2011 Available at <http://www.moef.nic.in/downloads/rules-and-regulations/1908.pdf> accessed on 17-08-2017

Qualifications of Chairperson and Members prescribed under the Act: The Act lays down the statutory qualifications for the appointment of the Chairperson, Judicial Member and Expert member (S.5). The appointment shall be made by the Central Government.(S.6(1)) The qualification requirements are as follows:-

1. **Chairperson-** former or sitting Judge of the Supreme Court of India or former or sitting Chief Justice of a High Court. Appointed in consultation with the Chief Justice of India (S.6(2)).
2. **Judicial Member-** is or has been a Judge of the High Court, of the Supreme Court of India or Chief Justice of a High Court. Appointed on the recommendations of Selection Committee in manner prescribed (S.6(3)).
3. **Expert Member-** Holder of degree in Master of Science (in physical sciences or life sciences), along with a Doctorate degree or Mater of Engineering or Master of Technology. Additionally, he/she must have 15 years of experience in the relevant field which includes 5 years of practical experience in the field of environment and forests(including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National Level Institution; or has 15 years of administrative experience which includes 5 years of experience in dealing with environmental matters in Central or State Government or in a reputed National or State level institution. Appointed on the recommendations of the Selection Committee in manner prescribed (S.6(3)).

In addition, there is a restriction stipulated under the Act, accordingly, Sections 5(3) and 5(4) states that the Chairperson and the members in holding any other office during their tenure and prohibits either of them for a period of 2 years from the date on which they cease to hold office to accept any employment in or connected with the management or administration of any person who has been a party to a proceeding before the Tribunal. But this restriction does not apply to any employment under the Central government or state government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company under the Companies Act. The Chairperson and members and other officers and staff are deemed to be Public Servants within the meaning of Section 21 of the Indian Penal Code, 1860 (S.31).

Tenure of Chairperson and Members: The Act lays down that the term of office and other conditions of service of the Chairperson and the members (S.7), which briefly states as follows:-

- **Term of office**-5 years and not eligible for re-appointment.
- **Maximum Age Limit**-70 Years-For Chairperson or Judicial member who is sitting or former Judge of the Supreme Court; 67 Years- For Chairperson or Judicial member who is sitting or former Chief Justice of a High Court; 67 years- For Judicial Member appointed who is sitting or former Judge of High Court; 65 Years for Expert member
- **Resignation**- Notice in writing addressed to the Central Government

Changes introduced through the Finance Act, 2017

<p>Qualifications</p> <p>(1) A person shall not be Qualified for appointment as Chairperson, unless he, – (a) is, or has been, or is qualified to be, a Judge of Supreme Court; or (b) is, or has been, Chief Justice of a High Court; or (c) has, for a period of not less than three years, held office as Judicial Member or Expert Member; or (d) is a person of ability, integrity and standing, and having special knowledge of, And professional experience of not less than twenty-five years in law including five years practical experience in the field of environment and forest.</p> <p>(2) A person shall not be qualified for appointment as Judicial Member, unless he, – (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has, for at least ten years, held a judicial office in the territory of India.</p> <p>(3) A person shall not be qualified for appointment as Expert Member, unless he, - (a) has a degree/ Post-graduation degree/ Doctorate Degree in Science and has an experience of twenty years in the relevant field including five years’ practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or (b) has administrative experience of twenty years including experience of five years in dealing with environmental matters in the Central Government or a State Government or in a reputed National or State level institution.</p> <p>Composition of Search-cum-Selection Committee</p> <p>(A) Search-cum Selection Committee for the post of the Chairperson or Judicial Member of the National Green Tribunal, — (i) Chief Justice of India or his nominee-chairperson; (ii) Secretary to the Government of India, Ministry of Environment, Forests and Climate Change- member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts, to be nominated by the Central Government-members.</p> <p>(B) Search-cum-Selection Committee for the post of the Expert Member of the National Green Tribunal, — (i) a person to be nominated by the Central Government chairperson; (ii) Secretary to the government of India, Ministry of Environment, Forests and Climate Change -member; (iii) Secretary to the Government of India to be</p>

nominated by the Central Government member; (iv) two experts, to be nominated by the Central Government members.

Term of Office: Three Years

Maximum age for holding Office (in Years): Chairperson-70 years and Members - 67 Years

Removal/Suspension of Chairperson and Members: Section 10(1) of the Act lays down that the provisions for the Removal and Suspension from office of the Chairperson and the members on one or more of the following grounds- (1) Adjudged insolvent, (2) Convicted of an offence, involving moral turpitude (in the opinion of the Central Government), (3) Become physically or mentally incapable, (4) Acquired financial or other interests that will prejudicially affect his functions, (5) Abused the position to render his continuance in office which is prejudicial to public interest.

Removal of Chairperson/ Judicial member- Removal by the Central Government after consulting the Chief Justice of India, only after conducting an inquiry based on the above grounds, made by the Judge of the Supreme Court and not until Central Government passes an order on the receipt of the inquiry report (S.10(3)).

Removal of Expert member- Removal by order passed by Central Government on the above grounds after providing him an opportunity to be heard (S.10(5)).

Jurisdictions, Powers and Functions of the Tribunal: Jurisdiction-The Tribunal has a power to exercise both Original and Appellate jurisdiction and which is as follows:-

- **Original Jurisdiction-** The Tribunal hears all civil cases, where substantial questions relating to environment and the implementation of the enactments specified in Schedule-I (S.14(1)) of the Act are involved. This also includes the enforcement of any legal right relating to environment. Application for adjudication to be made within 6 Months from the date on which the cause of action arose unless the court is satisfied that sufficient cause for delay was presented and further period of up to 60 days may be allowed (S.14(3)).
- **Appellate Jurisdiction-**The Tribunal can decide appeals against certain orders and decisions of authorities set up under the different environment specific enactments specified under Section 16 of the Act (S.16). The appeal has to be preferred within 30 days and the delay can be condoned, if the Tribunal is satisfied to a further period of 60 days. There is a provision for an appeal to the

Supreme Court under Section 22 of the Act on any of the grounds specified under Section 100 of Code of Civil Procedure, 1906.

Powers and Functions: The Tribunal has broadly 5 fold powers and functions and they are as follows:-

- Settle the disputes arising from the civil cases relating to environment, enforcement of any legal right connected therewith and out of the implementation of the various environment specific enactments (S.14(2)).
- Pass orders providing for relief and compensation; for restitution of property damaged; for restitution of the environment for such area or areas. The application for grant of any compensation or relief or restitution of property must be made within 5 years from the date on which the cause for such compensation or relief first arose (if delay condoned, can be extended to 60 days) (S. 15(1) and 15(3)).
- All such powers that are vested in a Civil Court under the Civil Procedure Code with respect to the discharge of its functions (S.19(4)).
- Impose punishment and penalty upon concerned individuals if found guilty with respect to offences by Companies and offences by Government Departments (S. 27 and 38). Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention. In case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention (S.26).
- The most important power vested with the Tribunal is that, it has complete independence over the jurisdiction and it bars the Civil Court from adjudicating or entertaining any appeal with respect to any matter which the Tribunal is empowered to adjudicate upon under its appellate jurisdiction. The Tribunal

alone is empowered to settle disputes and grant injunctions for any matter that comes under the jurisdiction of the Tribunal (S.29(1) and (2)).

Procedures adopted by the Tribunal: According to Section 19 of the Act, the procedure adopted by the Tribunal is defined as follows:-

- Tribunal is not bound by procedure prescribed under the Code of Civil Procedure, 1908. It is guided by the Principles of Natural Justice.
- Tribunal is to regulate its own procedure.
- Not bound by rules of the Indian Evidence Act, 1872
- Proceedings of the Tribunal is deemed to be Judicial Proceedings; deemed to be Civil Court (under Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973).
- Application of principles of sustainable development, precautionary principle and polluter pays principle (S.20).
- Majority members decision is binding. If difference of opinion among members, Chairperson to decide. If Chairperson along with member's opinion is equally divided- Refer the matters to other members to decide (S.21).
- Appeal to Supreme Court- If aggrieved by the award or decision of Tribunal; within 90 days (S.22).

Maximum Time Limit for Disposal of Case: According to Section 18(3) of the Act, the application or appeal filed before the Tribunal shall be dealt with as expeditiously as possible and the application or appeal must be disposed within 6 months from the date of filing of the application or appeal after providing the parties to the case an opportunity to be heard.

Case Disposal Rate: The very purpose of establishing the National Green Tribunal was to attain the object as enumerated in its preamble, which is the expeditious disposal of cases and there is no doubt as to its effective working and speedy disposal. But despite this objective as mandated by Section 18(3) of the Act and Rule 18 of the National Green Tribunal (Practice and Procedure) Rules 2011, wherein, cases are to be as far as possible heard and decided within 6 months, the problem of backlog of cases, which other courts especially subordinate courts are facing today, this Tribunal also has no exception for the problem. Over 3,500 cases were pending for consideration by the

Tribunal as on 30th June 2017. The pendency share of the different benches are as follows¹⁶⁷:-

- Principal Bench(Delhi)- 1600
- Western Zonal Bench(Pune)- 543
- Central Zonal Bench(Bhopal)- 256
- Eastern Zonal Bench(Kolkata)- 407
- Southern Zonal Bench(Chennai)-79

¹⁶⁷ Written Reply in Rajya Sabha by Mr. Harsh Vardhan, Hon'ble Minister for Environment and Forest, Government of India, Available at <http://economictimes.indiatimes.com/news/politics-and-nation/over-3500-cases-with-national-green-Tribunal-government/articleshow/59740580.cms> accessed on 18-08-2017.

CHAPTER-3

DATA ANALYSIS AND INTERPRETATION

3. 1. Data collection, analysis and interpretation¹⁶⁸

Tribunals visited and data collected: 17 (only New Delhi based Tribunals)

Data collection method: Questionnaire and personal interviews, 19 questions of which 14 required reply in yes or no and 4 requiring descriptive answers, one containing basic details

Target Group: Practitioners before the Tribunals

Table-1: Total Number of Samples Collected from Each Tribunal

No.	Tribunal	No.
1	Industrial Tribunal	42
2	Income Tax Appellate Tribunal	19
3	Customs, Excise And Service Tax Appellate Tribunal	35
4	Appellate Tribunal For Forfeited Property & Money Laundering	33
5	Central Administrative Tribunal	43
6	Railway Claims Tribunal	18
7	Debt Recovery Tribunal	31
8	Debt Recovery Appellate Tribunal	21
9	Telecom Dispute Settlement And Appellate Tribunal	17
10	National Company Law Tribunal	30
11	National Company Law Appellate Tribunal	30
12	Authority For Advanced Ruling	23
13	Film Certification Appellate Tribunal	11
14	National Consumer Dispute Redressal Commission	41
15	Appellate Tribunal For Electricity	21
16	Armed Force Tribunal	30
17	National Green Tribunal	32
	TOTAL	477

Table-2: Opinions of Respondents from all the Tribunals

No.	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	411 (86%)	66 (14%)
2	Whether the procedures are adequate for effective administration of Justice?	410 (86%)	67 (14%)
3	Whether the workload of Tribunals are increased due to various reforms?	342 (72%)	135 (28%)
4	Whether the provisions are adequate?	325 (68%)	142 (32%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	404 (85%)	73 (15%)

¹⁶⁸ The data collection and analysis based on interviews conducted after the introduction of Finance Act, 2017, hence reflects the latest opinion on the pre-2017 and post-2017 situation.

6	Whether the information on the website is available?	359 (75%)	118 (25%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	178 (37%)	299 (63%)
8	Whether the appointment procedure should be made uniform and standardized?	401 (84%)	76 (16%)
9	Are you in favour of giving status equivalent to District Court?	223 (47%)	254 (53%)
10	Are you in favour of discontinuing the practice of appointing retired Supreme Court/High Court Judges?	329 (69%)	148 (31%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	323 (68%)	154 (32%)
12	Are you in favour of appointing jurists, academicians, eminent persons as Chairperson/Members?	223 (47%)	254 (53%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	236 (49%)	241 (51%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	136 (28%)	341 (72%)

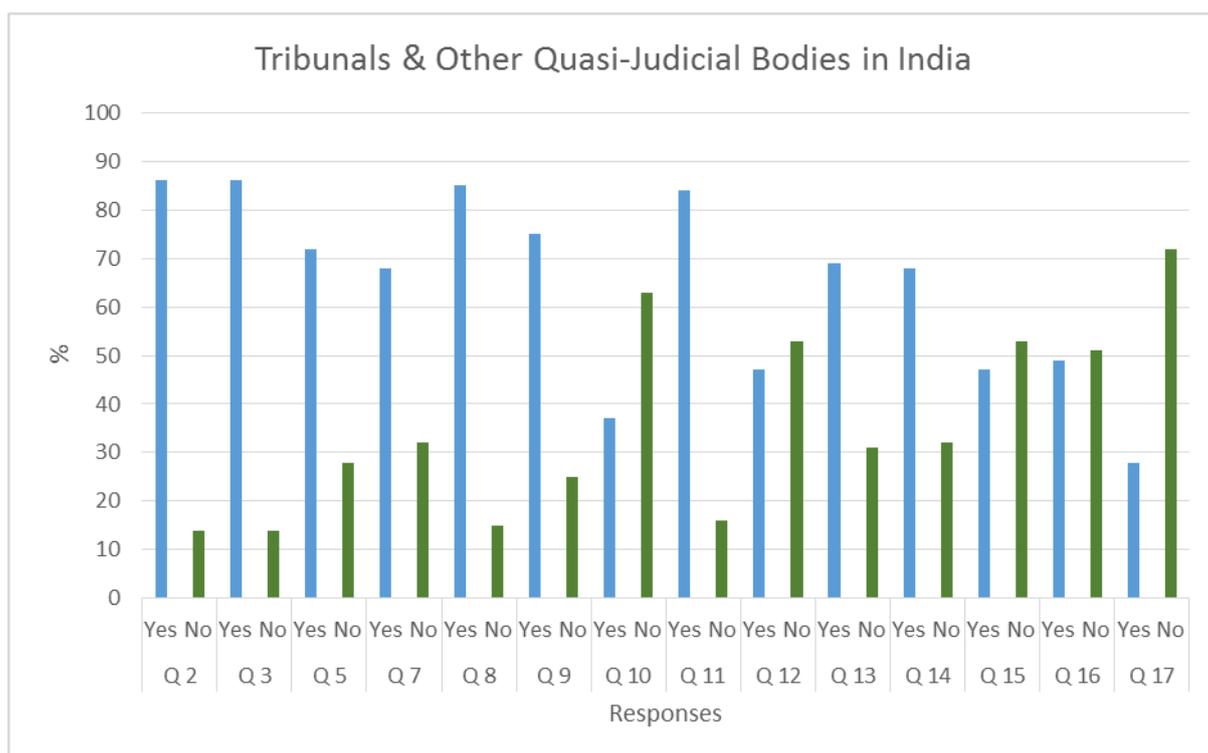
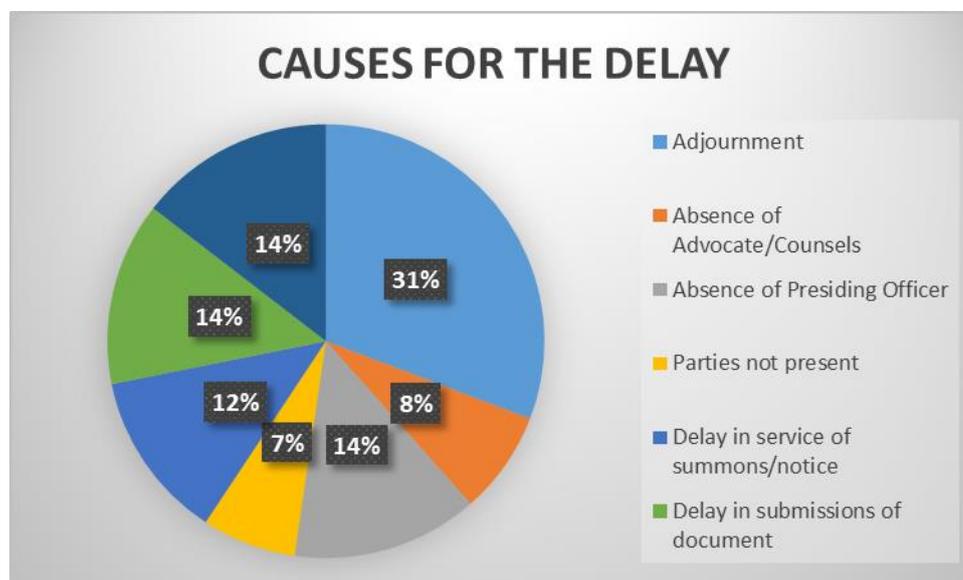


Table-3: Delay in Disposal of Cases (416,333 cases pending)

Reasons	Responses
Adjournment	221 (31%)
Absence of Advocate/Counsels	55 (8%)
Absence of Presiding Officer	99 (14%)
Parties not present	50 (7%)
Delay in service of summons/notice	90 (12%)

Delay in submissions of document	98 (14%)
Procedures	104 (14%)
Total	717 (31%)



3.2 INDUSTRIAL TRIBUNAL

Sample size: 42 Respondents

Table-4: Opinions of Respondents.

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	33 (79%)	9 (21%)
2	Whether the procedures are adequate for effective administration of Justice?	28 (67%)	14 (33%)
3	Whether the workload of Tribunals are increased due to various reforms?	33 (79%)	9 (21%)
4	Whether the provisions are adequate?	23 (55%)	19 (45%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	32 (76%)	10 (24%)
6	Whether the information on the website is available?	32 (76%)	10 (24%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	36 (86%)	6 (14%)
8	Whether the appointment procedure should be made uniform and standardized?	35 (83%)	7 (17%)
9	Are you in favour of giving status equivalent to District Court?	32 (76%)	10 (24%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	33 (79%)	9 (21%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	36 (86%)	6 (14%)
12	Are you in favour of appointing academicians as Chairperson / Members?	27 (64%)	15 (36%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	33 (79%)	9 (21%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	32 (76%)	10 (24%)

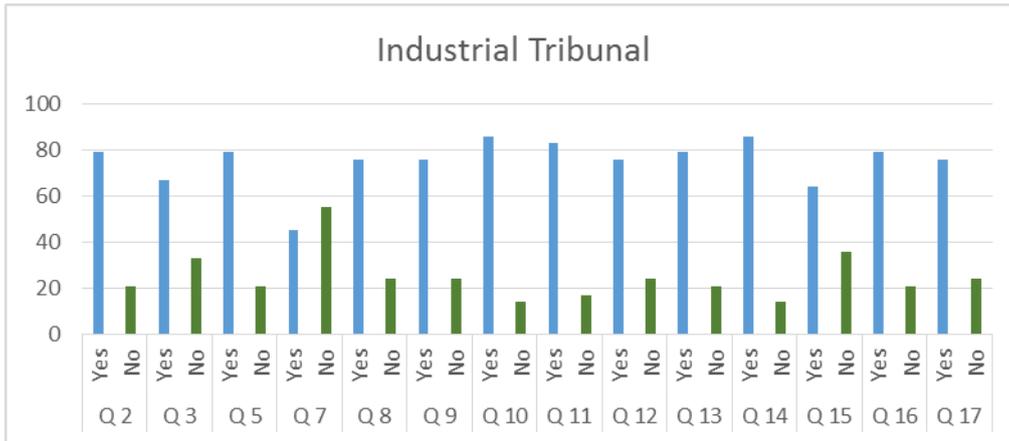
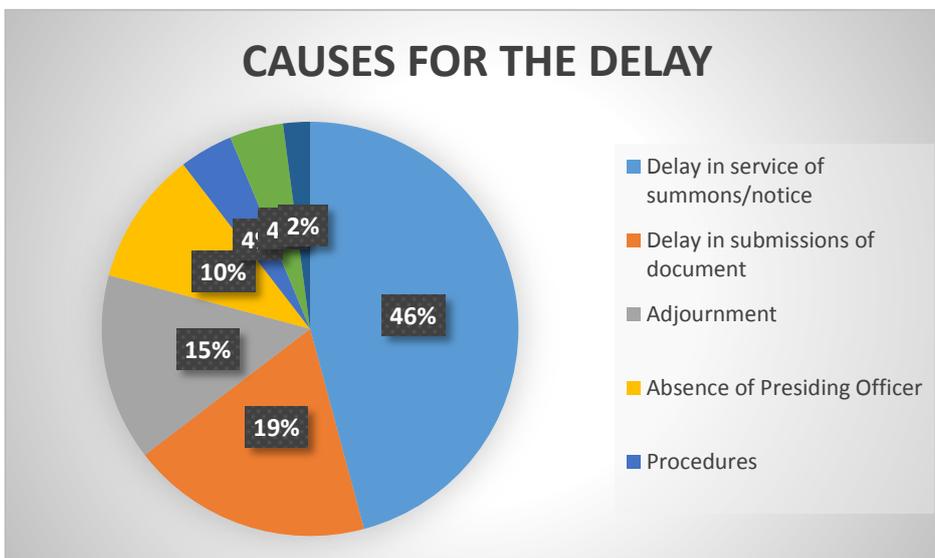


Table-5: Delay in Disposal of Cases (14,000 cases pending)

Reasons	Responses (%)
Adjournment	22 (46%)
Procedures	9 (19%)
Absence of Presiding Officer	7 (15%)
Delay in service of summons/notice	5 (10%)
Absence of Advocate/Counsels	2 (4%)
Parties not present	2 (4%)
Delay in submissions of document	1 (2%)



General Comments

- This Tribunal needs more efficient Presiding Officer to make the Tribunal more effective and efficient.
- Judges should be made accountable for their misconduct. It has been observed that the High Court simply accepts the resignation from the corrupt Presiding

officer /Chairperson, but does not initiate criminal proceedings and leave them just like other government servants and individuals.

- Retired persons do not perform like young officers and they become lethargic and ineffective.
- All the Tribunals/Commissions/Authorities should function from the Court premises only.
- The Government should provide infrastructure facility to establish all the Tribunals in the same Court complex.
- Not more than two adjournments should be granted for the entire case.
- All orders should be uploaded on the website on the same day.
- The Tribunals do not follow the procedure and orders are passed on the face value of the Advocates.
- Tribunals are full of corruption and they adopt corrupt practices to avoid law procedure.
- High Tech advance techniques needs to bring efficiency.
- Procedure should be faster and better and simplified.
- Delay in process continuing in all the Tribunals.
- Retired Judges should not be appointed to the Industrial Tribunal under any circumstances.
- The functioning of Tribunals shall be more effective if young minds have been appointed. More Tribunals needs to be established.

3.3 INCOME TAX APPELLATE TRIBUNAL

Sample size: 19 Respondents

Table-6: Opinions of the Respondents.

No	Question	Yes (%)	No (%)
1	Are your in favour of continuing the existing composition?	17 (89%)	2 (11%)
2	Whether the procedures are adequate in administration of Justice?	17 (89%)	2 (11%)
3	Whether the workload of Tribunals are increased due to various reforms?	13 (68%)	6 (32%)
4	Whether the provisions are adequate?	14 (74%)	5 (26%)
5	Whether the tribunals are adopting similar approach in consistent way for the similar issues?	19 (100%)	0 (0%)
6	Whether the information on the website is available?	12 (63%)	7 (37%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	2 (11%)	17 (89%)
8	Whether the appointment procedure should be uniform and standardized?	17 (89%)	2 (11%)

9	Are you in favour of giving status equivalent to District Court?	3 (16%)	16 (84%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	6 (32%)	13 (68%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	16 (84%)	3 (16%)
12	Are you in favour of appointing academicians as Chairperson/Members?	14 (74%)	5 (26%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	9 (47%)	10 (53%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	6 (32%)	13 (68%)

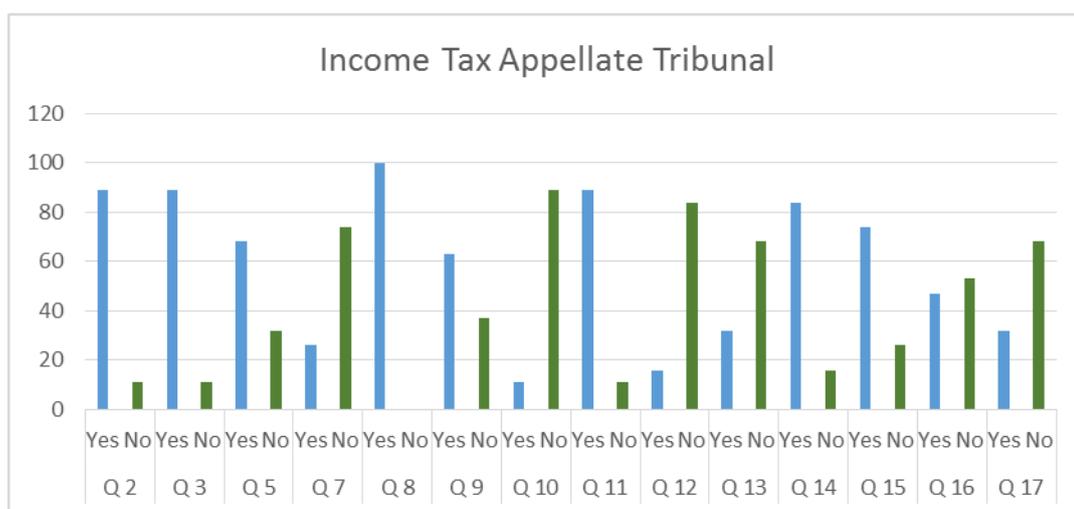
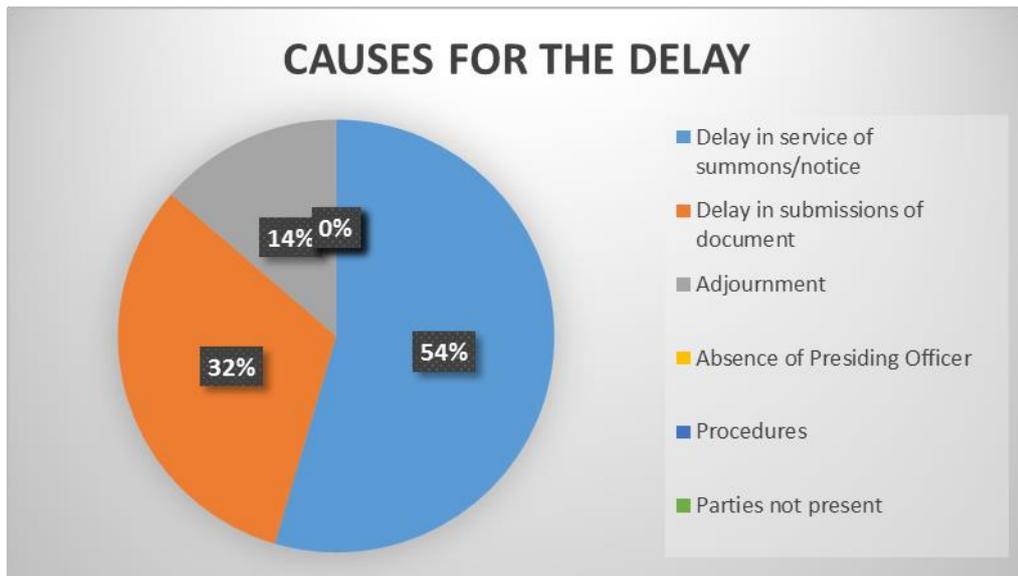


Table-7: Delay in Disposal of Cases (91,538 cases pending)

Top Reasons	Responses (%)
Adjournment	12 (55%)
Procedures	7 (32%)
Delay in submissions of document	3 (14%)
Absence of Advocate/Counsels	0
Absence of Presiding Officer	0
Parties on present	0
Delay in service of summons/notice	0



General Comments

- Amendments are required to strengthen the Act.
- The Tribunal do not follow procedures properly at times. The procedures need to make litigant friendly.
- The provision for appointing or discretionary power in appointing the members should not be there.
- Number of adjournments should be restricted.
- Better infrastructure facilities necessary.
- Only Advocates should be allowed to practice.
- The daily orders needs to be uploaded on the Website.

3. 4. CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

Sample size: 35 Respondents

Table-8: Opinions of the Respondents.

No	Question	Yes (%)	No (%)
1	Are your in favour of continuing the existing composition?	26 (74%)	9 (26%)
2	Whether the procedures are adequate for effective administration of Justice?	29 (83%)	6 (17%)
3	Whether the workload of tribunals are increased due to various reforms?	20 (57%)	15(43%)
4	Whether the provisions are adequate?	32 (91%)	3 (9%)
5	Whether the tribunals are adopting similar approach in consistent way for the similar issues?	26 (74%)	9 (26%)
6	Whether the information on the website is available?	21 (60%)	14(40%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	11 (31%)	24(69%)

8	Whether the appointment procedure should be uniform and standardized?	30 (86%)	5 (14%)
9	Are you in favour of giving status equivalent to District Court?	12 (34%)	23(66%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	13 (37%)	22(63%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	22 (63%)	13(37%)
12	Are you in favour of appointing academicians as Chairperson/Members?	17 (49%)	18(51%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	16 (46%)	19(54%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	9 (26%)	26(74%)

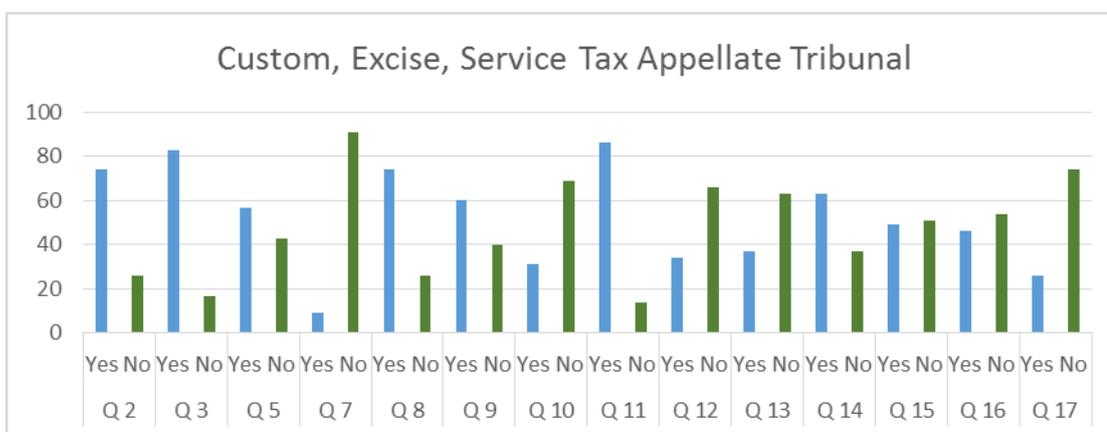
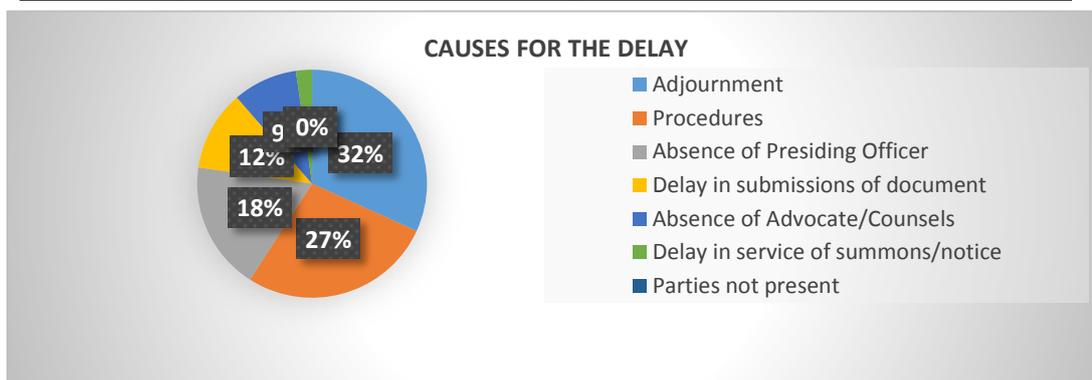


Table-9: Delay in Disposal of Cases (90,592 cases pending)

Top Reasons	Responses (%)
Adjournment	14 (32%)
Procedures	12 (27%)
Absence of Presiding Officer	8 (18%)
Delay in submissions of document	5 (11%)
Absence of Advocate/Counsels	4 (9%)
Delay in service of summons/notice	1 (2%)
Parties not present	0



General Comments

- Infrastructure inadequate
- Daily orders are not updated
- Working hours should be increased
- All the Tribunals do not have appropriate place to work
- No facilities for lawyers washrooms, toilets etc.
- Judicial discipline is not followed in many cases
- Procedure should be standardized
- Number of Benches may be increased
- Extremely slow in processing application
- Educating the judges properly for speedy disposal or for ensuring sound analysis in the orders
- Members are not actively involved
- Time bound disposal of cases are necessary
- Very slow and at times the authority is not able to appreciate the issues at length
- More judicial members should be appointed
- Will power of members in disposing cases.
- There should be Ministry of Tribunal to ensure independence and fairness
- In pursuant to Section 184 of the Finance Act, 2017, the Ministry of Finance has notified “Tribunals, Appellate Tribunal and Other Authorities (Qualification, Experience and Other Conditions of Service of Members) Rules, 2017” which are not applicable to the existing Members/President/Chairman of the Tribunal/Appellate Tribunal. As per new rules, a member of the tribunal will get the salary of Rs. 2,25,000 (fixed) whereas the existing member is getting the salary in the scale of Rs. 2,05,600 – 224400. Thus, the newly recruited member (junior) will get more salary than the existing member (senior). In other words, the junior will get more salary than his senior. Due to this anomaly, there will be frustration among the existing members. Similarly, the benefit of the enhanced pay (Rs. 2,50,000, fixed) as well as age not been extended to the existing President/Chairman of the Tribunal. It is, therefore requested that (under Rule 20) necessary clarification may kindly be issued that the beneficiary provisions of the new rules (pertaining to salary and age) will also apply to the existing Members/President/Chairman of the Tribunal.

3. 5 APPELLATE TRIBUNAL FOR FORFEITED PROPERTY & MONEY LAUNDERING

Sample size: 33 Respondents

Table-10: Opinions of the Respondents.

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	30 (91%)	3 (9%)
2	Whether the procedures are adequate for the effective administration of Justice?	31 (94%)	2 (6%)
3	Whether the workload of Tribunals are increased due to various reforms?	30 (91%)	3 (9%)
4	Whether the provisions are adequate?	29 (88%)	4 (12%)
5	Whether the tribunals are adopting similar approach in consistent way for the similar issues?	32 (97%)	1 (3%)
6	Whether the information on the website is available?	31 (94%)	2 (6%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	4 (12%)	29 (88%)
8	Whether the appointment procedure should be uniform and standardized?	28 (85%)	5 (15%)
9	Are you in favour of giving status equivalent to District Court	6 (18%)	27 (82%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	20 (61%)	13 (39%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	14 (42%)	19 (58%)
12	Are you in favour of appointing academicians as Chairperson/Members?	3 (9%)	30 (91%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	16 (48%)	17 (52%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	1 (3%)	32 (97%)

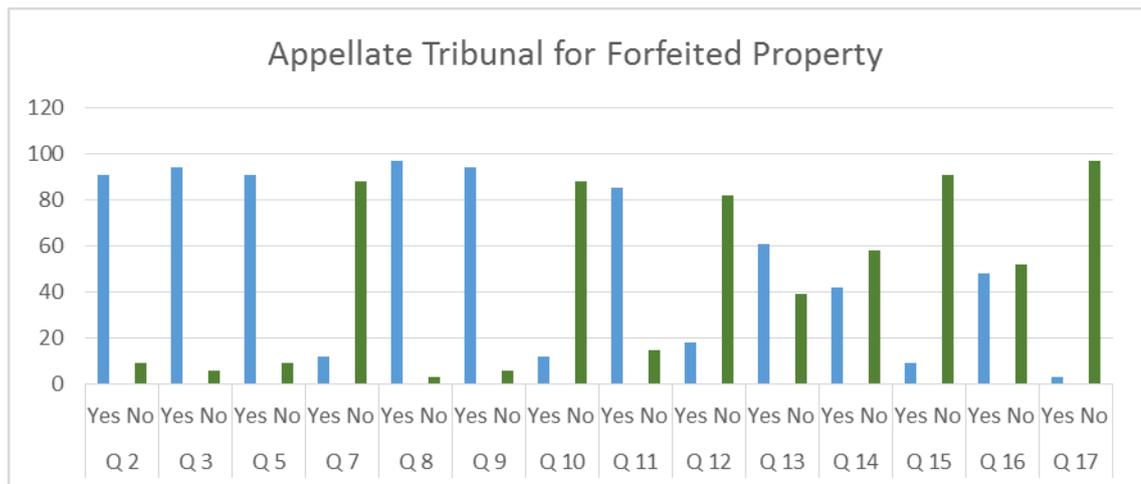
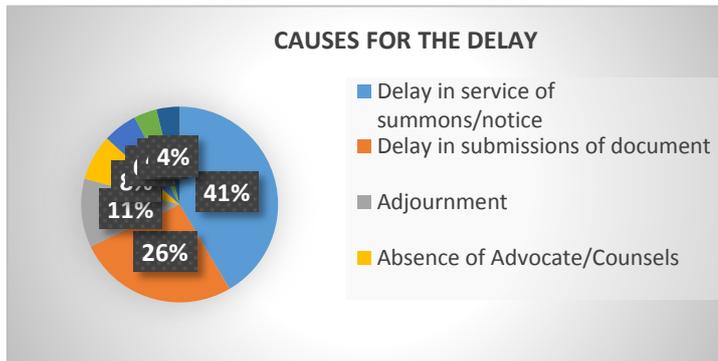


Table-11: Delay in Disposal of Cases (2,000 cases pending)

Top Reasons	Responses %
Delay in service of summons/notice	22 (41%)

Delay in submissions of document	14 (26%)
Adjournment	6 (11%)
Absence of Advocate/Counsels	4 (7%)
Procedures	3 (6%)
Absence of Presiding Officer	2 (4%)
Parties not present	2 (4%)



General Comments

- It should have separate building
- Effective measures should be taken for speedy disposal of the cases
- Professionals and young persons may be appointed
- Tribunals should be categorized and merged accordingly
- Nepotism should not be there in appointments
- Foreign Exchange matter should be dealt separately, should not be merged
- More benches should be constituted in order to expedite disposal of cases
- Due to Tribunalization, independence of judicial system has compromised. Judges will be waiting for these opportunities after retirement

3.6 CENTRAL ADMINISTRATIVE TRIBUNAL

Sample size: 43 Respondents

Table-12: Opinions of Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	41 (95%)	2 (5%)
2	Whether the procedures are adequate for effective administration of Justice?	36 (84%)	7 (16%)
3	Whether the workload of Tribunals are increased due to various	27 (63%)	16 (37%)

	reforms?		
4	Whether the provisions are adequate?	21 (51%)	22 (49%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	34 (79%)	9 (21%)
6	Whether the information on the website is available?	37 (86%)	6 (14%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	32 (26%)	11 (74%)
8	Whether the appointment procedure should be uniform and standardized?	40 (93%)	3 (7%)
9	Are you in favour of giving status equivalent to District Court?	27 (63%)	16 (37%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	25 (58%)	18 (42%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	35 (81%)	8 (19%)
12	Are you in favour of appointing academicians as Chairperson/ Members?	27(63%)	16 (37%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017	29 (67%)	14 (33%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	18(42%)	25 (58%)

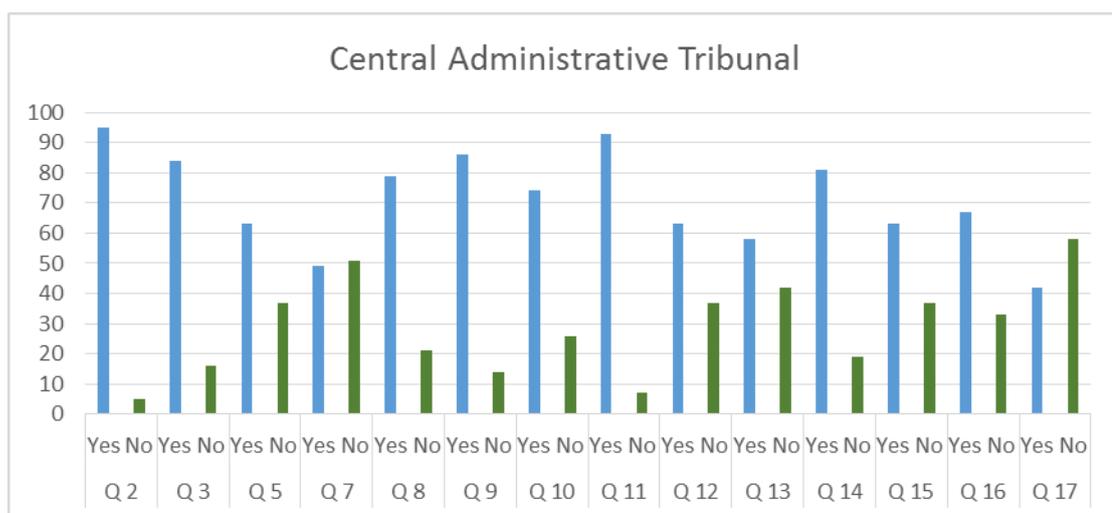
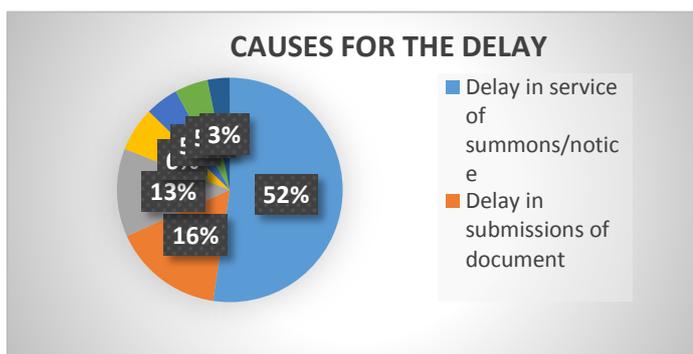


Table-13: Causes for the Delay (44,333 cases pending)

Causes	Respondents (%)
Delay in service of summons/notice	33 (52%)
Delay in submissions of document	10 (16%)
Adjournment	8 (13%)
Absence of Presiding Officer	4 (6%)
Procedures	3 (5%)
Parties not present	3 (5%)
Absence of Advocate/Counsels	2 (3%)



General Comments

- Appointment of members should not be delayed
- Provisions are adequate but implementation is not effective
- Induction of retired officers should be restricted. Most of them are working as government servants and there is no accountability and transparency
- Adjournments are liberally given and need to be restricted
- Members do not take notice of legal issues, questions of law raised.
- Do away with administrative members and Increase number of judges
- Increase number of judges through judicial services and fix a proper accountability
- Tribunals should merged together so that the functioning of the Tribunals can be more effective.
- No administrative member should hear and decide the case
- Posting of members to be handled by Ministry of Law rather than DoPT

3. 7. RAILWAY CLAIMS TRIBUNAL

Sample size: 18 Respondents

Table-14: Opinions of Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	17(94 %)	1 (6%)
2	Whether the procedures are adequate for effective administration of Justice?	15(83 %)	3 (17%)
3	Whether the workload of tribunals are increased due to various reforms?	14(78%)	4 (22%)

4	Whether the provisions are adequate for effective administration of Justice?	11(61%)	7 (39%)
5	Whether the tribunals are adopting similar approach in consistent way for the similar issues?	17(94%)	1 (6%)
6	Whether the information on the website is available?	14(78%)	4 (22%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	10(56%)	8 (44%)
8	Whether the appointment procedure should be uniform and standardized?	13(72%)	5 (28%)
9	Are you in favour of giving status equivalent to District Court?	15(83%)	3 (17%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	11(61%)	7 (39%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	13(72%)	5 (28%)
12	Are you in favour of appointing academicians as Chairperson/Members?	18(100%)	0 (0%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	14(78%)	4(22%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	8(44%)	10(56%)

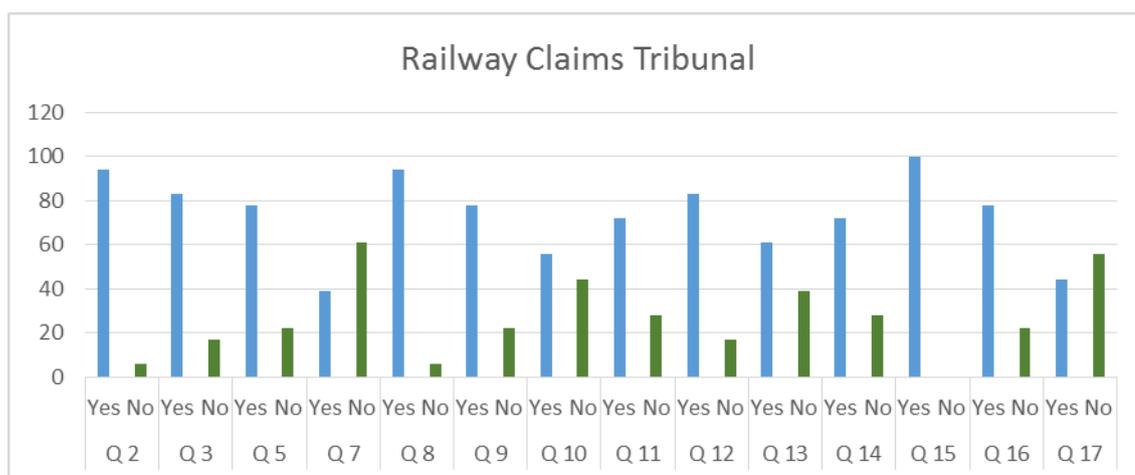
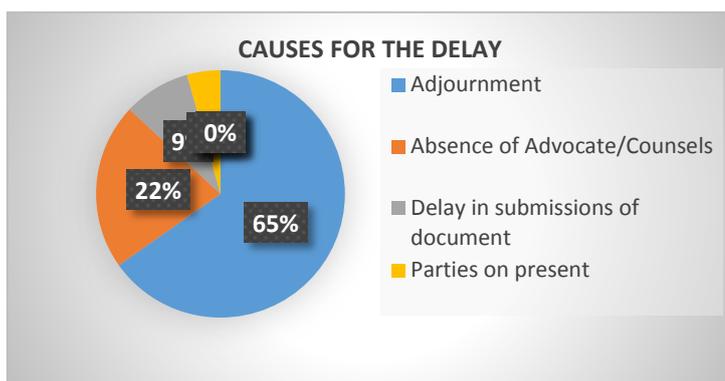


Table-15: Delay in Disposal of Cases (45,604 cases pending)

Top Reasons	Responses (%)
Adjournment	15 (65%)
Absence of Advocate/Counselors	5 (22%)
Delay in submissions of document	2 (9%)
Parties on present	1 (4%)
Absence of Presiding Officer	0
Delay in service of summons/notice	0
Procedures	0



General Comments

- Expedious disposal of the cases need to be addressed. Even the simple cases take up to one or one and half year.
- Purpose of Tribunal is to decrease burden of courts, then they should function expeditiously and dispose cases without much delay.
- Presiding Officers are often on leave, proceedings are delayed for longer than expected
- More efficient functioning body required

3. 8. DEBT RECOVERY TRIBUNAL

Sample size: 31 Respondents

Table-16: Opinions of the Respondents.

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	22 (71%)	9 (29%)
2	Whether the procedures are adequate for effective administration of Justice?	23 (74%)	8 (26%)
3	Whether the workload of Tribunals are increased due to various reforms?	17 (55%)	14(45%)
4	Whether the provisions are adequate?	22 (71%)	9(29%)
5	Whether the tribunals are adopting similar approach in consistent way for the similar issues?	20(65%)	11(35%)
6	Whether the information on the website is available?	5 (16%)	26(84%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	13 (42%)	18(58%)
8	Whether the appointment procedure should be uniform and standardized?	26(84%)	5(16%)

9	Are you in favour of giving status equivalent to District Court?	24(24%)	7(23%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	18(58%)	13(42%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	27(87%)	4(13%)
12	Are you in favour of appointing academicians as Chairperson/Members?	10(3 %)	21(68%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	11(35%)	20(68%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	11(35%)	20(65 %)

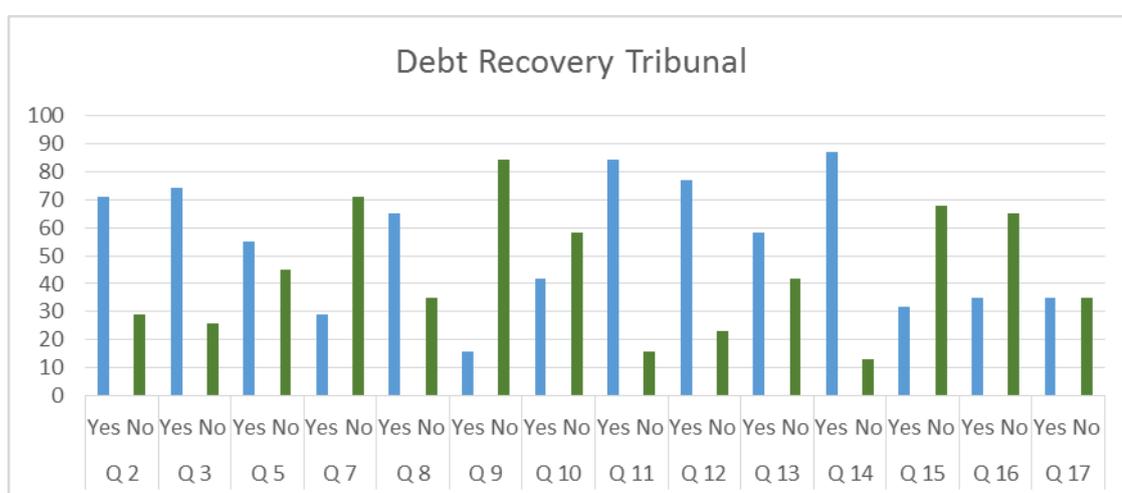
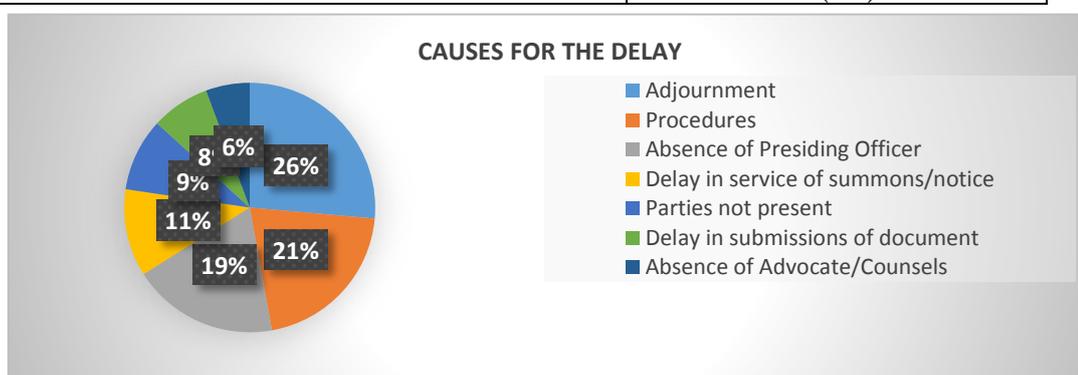


Table-17: Delay in Disposal of Cases (78,118 cases pending)

Reasons	Responses (%)
Adjournment	14 (26%)
Procedures	11 (21%)
Absence of Presiding Officer	10 (19%)
Delay in service of summons/notice	6 (11%)
Parties not present	5 (9%)
Delay in submissions of document	4 (7%)
Absence of Advocate/Counselors	3 (6%)



General Comments

- The procedures are not followed as per provisions of the Act.
- Presiding officers should be selected through competitive exam at a relatively younger age between 35-45 years, as noticed retired judicial officers/judges do not take as much interest. Post of Presiding Officers to be cadre based, transferable like judicial officer.
- Speedy disposal needed.
- Vacancies need to be filled immediately.
- Good infrastructure needed
- Fix the accountability on the officers of the Tribunal
- More stringent provisions are required to be incorporated for effective recovery of public money from willful defaulters
- There are many loopholes for delay.
- All the Tribunals and quasi-judicial bodies should be brought under the control of respective High Courts.
- All the Tribunals should be equivalent to District court or and the proper infrastructure should be provided for administration of justice.
- Time limit prescribed in the Act for disposing of cases should strictly be followed
- Parliament many times leaves loopholes and gives scopes for interpretation which are misused many times
- More transparency required
- Increase in number of Tribunals
- Website does not work at all & need good technology to display all the orders
- Working according their whims and fancies

3. 9 DEBT RECOVERY APPELLATE TRIBUNAL

Sample size: 21 Respondents

Table-18: Opinions of Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	17(81%)	4(19%)
2	Whether the procedures are adequate for effective administration of Justice?	16(76%)	5(24%)
3	Whether the workload of Tribunals are increased due to various reforms?	10(48%)	11(52%)
4	Whether the provisions are adequate?	17(81%)	4(19%)

5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	15(71%)	6(29%)
6	Whether the information on the website is available?	3(14%)	18(86%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	8(38%)	13(62%)
8	Whether the appointment procedure should be uniform and standardized?	19(90%)	2(10%)
9	Are you in favour of giving status equivalent to District Court?	17(81%)	4(19%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	11(52%)	10(48%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	18(86%)	3(14%)
12	Are you in favour of appointing academicians as Chairperson/Members?	7(33%)	14(67%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	6(29%)	15(71%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	7(33%)	14(67%)

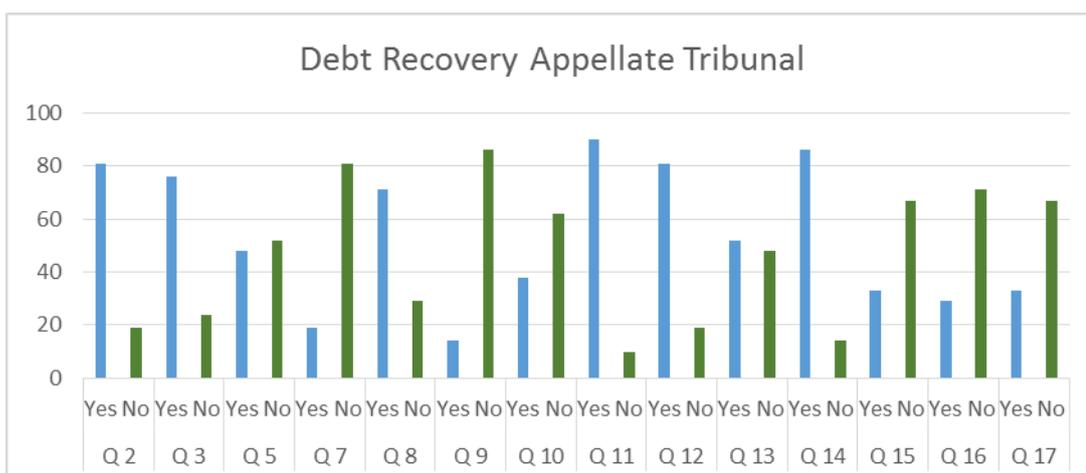
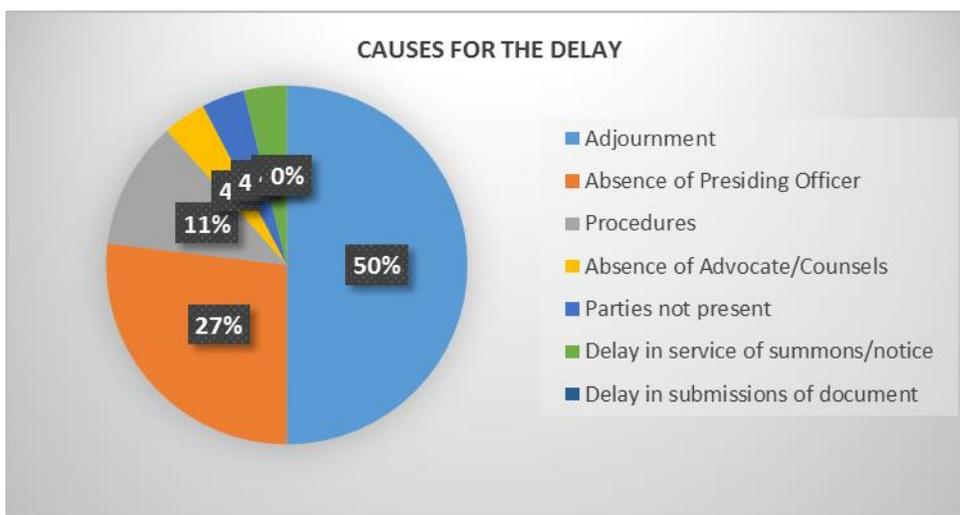


Table-19: Delay in Disposal of Cases (550 cases pending)

Reasons	Responses (%)
Adjournment	13 (50%)
Absence of Presiding Officer	7 (27%)
Procedures	3 (11%)
Absence of Advocate/Counsels	1 (4%)
Parties not present	1 (4%)
Delay in service of summons/notice	1 (4%)
Delay in submissions of document	0



General Comments

- Website is not working at all
- Measures should be taken for speedy disposal of the cases
- More stringent provisions are required to be incorporated for effective recovery of public money from willful defaulter
- Vacancies to be filled at the earliest and More Tribunals/Commissions should be established
- Very slow procedure
- Tribunal does not follow full procedures.
- Procedure should be changed
- Need to fix the accountability on the members of the Tribunals

3. 10. TELECOM DISPUTE SETTLEMENT APPELLATE TRIBUNAL

Sample size: 17 Respondents

Table-20: Opinion of the Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	14(82%)	3(18%)
2	Whether the procedures are adequate for effective administration of Justice?	16(94%)	1(6%)
3	Whether the workload of Tribunals are increased due to various reforms?	16(94%)	1(6%)
4	Whether the provisions are adequate?	14(82%)	3(18%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	15(88%)	2(12%)
6	Whether the information on the website is available?	14(82%)	3(18%)

7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	4(24%)	13(76%)
8	Whether the appointment procedure should be uniform and standardized?	11(65%)	6(%)
9	Are you in favour of giving status equivalent to District Court?	7(41%)	10(%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court/High Court Judges?	7(41%)	10(%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	13(76%)	4(%)
12	Are you in favour of appointing academicians as Chairperson/Members?	4(24%)	13(%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	16(94%)	1(%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	3(18%)	14(%)

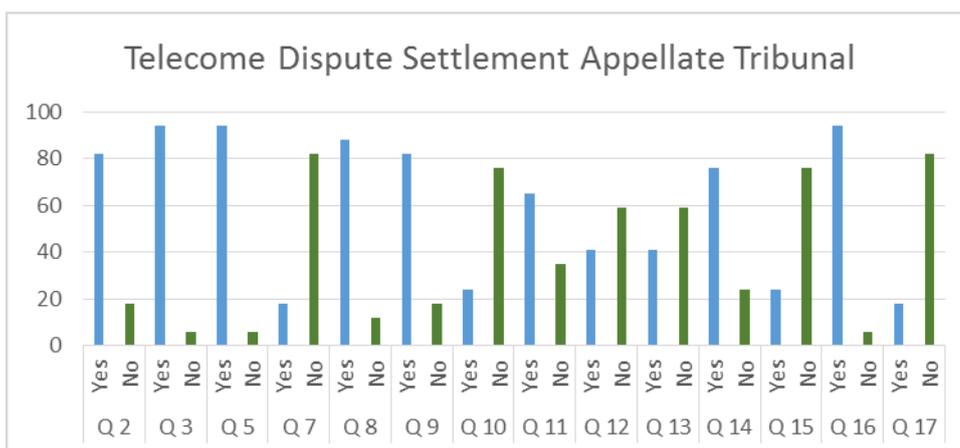
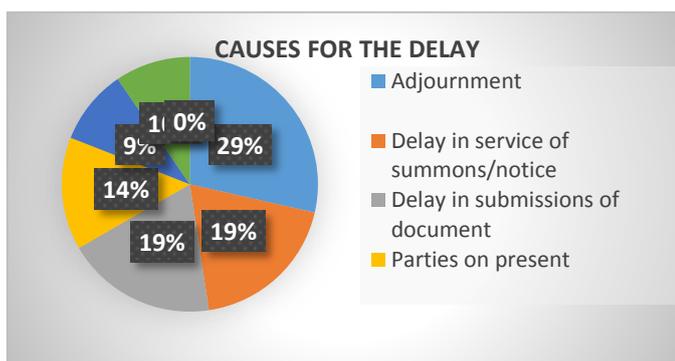


Table-17: Delay in Disposal of Cases (2,173 cases pending)

Reasons	Responses (%)
Adjournment	6 (29%)
Delay in service of summons/notice	4 (19%)
Delay in submissions of document	4 (19%)
Parties not present	3 (14%)
Absence of Presiding Officer	2 (9%)
Procedures	2 (9%)
Absence of Advocate/Counsels	0



General Comments

- Time line needs to be strictly adhered to.
- Better infrastructure required
- Vacancies of Chairperson and Members should be filled
- Stop appointing retired Judges
- Extremely slow and they do not dispose the matter expeditiously
- The problem of adjournment should be addressed

3.11. NATIONAL COMPANY LAW TRIBUNAL

Sample size: 30 Respondents

Table-22: Opinions of the Advocates on NCLT

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	29(97%)	1(2%)
2	Whether the procedures adequate for effective administration of Justice?	28(93%)	2(7%)
3	Whether the workload of Tribunals are increased due to various reforms?	27(90%)	3(10%)
4	Whether the provisions are adequate?	2(93%)	28(7%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	27(90%)	3(10%)
6	Whether the information on the website is available?	25(83%)	5(17%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	7(23%)	23(77%)
8	Whether the appointment procedure should be uniform and standardized?	28(93%)	2(7%)
9	Are you in favour of giving status equivalent to District Court?	24(80%)	6(20%)

10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	15(50%)	15(50%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	9(30%)	21(70%)
12	Are you in favour of appointing academicians as a Chairperson or members of Tribunal?	7(23%)	23(77%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	11(37%)	19(63%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	2(7%)	28(93%)

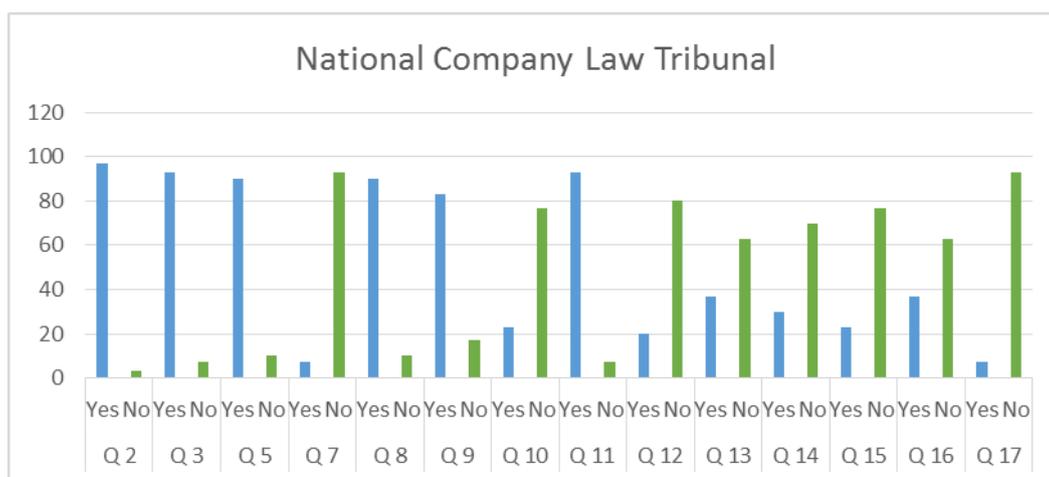
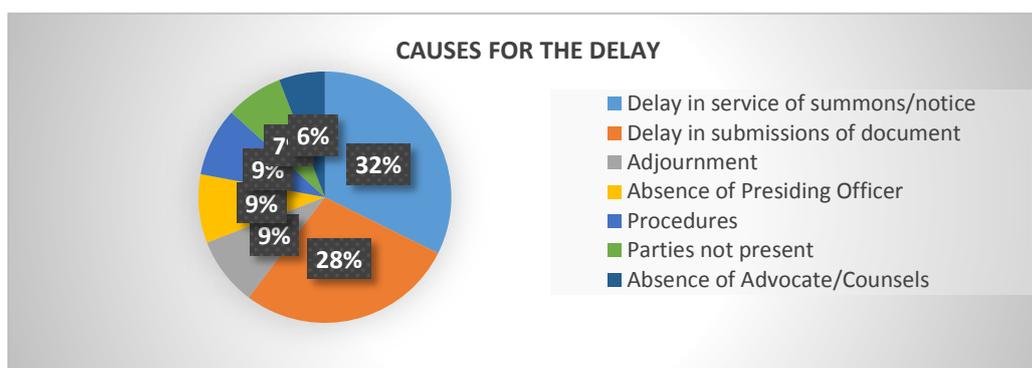


Table-23: Causes for the Delay (25,000 cases pending)

Reasons	Responses (%)
Delay in service of summons/notice	22 (32%)
Delay in submissions of document	19 (28%)
Adjournment	6 (9%)
Absence of Presiding Officer	6 (9%)
Procedures	6 (9%)
Parties not present	5 (7%)
Absence of Advocate/Counsels	4 (6%)



General Comments

- Timeline need to be strictly adhered
- Relevant Tribunals should be merged
- Procedure to be specified, less paper work
- Judicial member should be there in each Tribunal bench.
- It is newly established Tribunal requires which requires lot of improvement in functioning
- Generally procedure is not defined under relevant Act. There should be specific procedure like CPC for all the Tribunals
- Court rooms should be increased

3.12. NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Sample size: 30 Respondents

Table-24: Opinions of Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	30(100%)	0(0%)
2	Whether the procedures are adequate for effective administration of Justice?	30(100%)	0(0%)
3	Whether the workload of tribunals are increased due to various reforms?	30(100%)	0(0%)
4	Whether the provisions are adequate for ensuring effective administration of Justice?	30(100%)	0(0%)
5	Whether the tribunals are adopting similar approach in consistent way for the similar issues?	28(93%)	2(7%)
6	Whether the information on the website is available?	30(100%)	0(0%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	7(23%)	23(77%)
8	Whether the appointment procedure should be uniform and standardized?	29(97%)	1(3%)
9	Are you in favour of giving status equivalent to District Court?	4(13%)	26(87%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	18(60%)	12(40%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	7(23%)	23(77%)
12	Are you in favour of appointing academicians as Chairperson/Members?	4(13%)	26(87%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	15(50%)	15(50%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	1(3%)	29(97%)

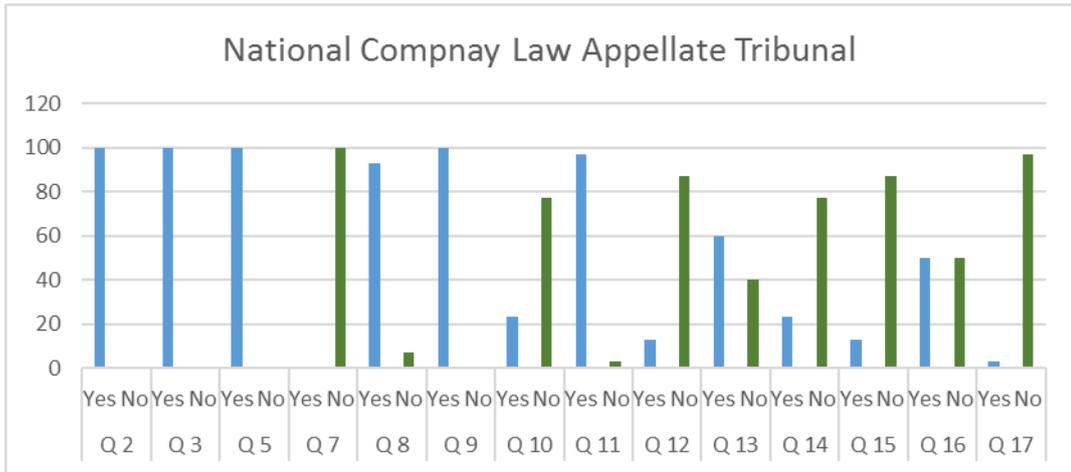
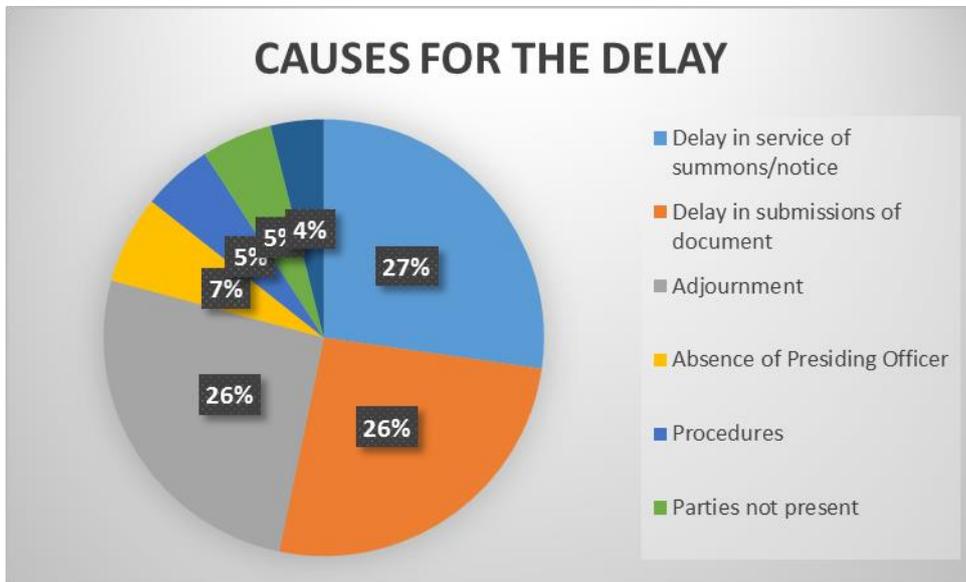


Table-25: Causes for the Delay (251 cases pending)

Reasons	Responses (%)
Delay in service of summons/notice	21 (27%)
Delay in submissions of document	20 (26%)
Adjournment	20 (26%)
Absence of Presiding Officer	5 (6%)
Procedures	4 (5%)
Parties not present	4 (5%)
Absence of Advocate/Counselors	3 (4%)



General Comments

- Location of Tribunals must be accessible to everyone.
- Should function independently
- Relevant Tribunals should be merged

3. 13 AUTHORITY FOR ADVANCED RULING

Sample size: 23 Respondents

Table-26: Opinion of Respondents

No	Question	Yes (%)	No (%)
1	Are your in favour of continuing the existing composition?	22(96%)	1(%)
2	Whether the procedures are adequate for effective administration of Justice?	21(%)	2(%)
3	Whether the workload of Tribunals are increased due to various reforms?	8(%)	15(%)
4	Whether the provisions are adequate for ensuring effective administration of Justice?	20(%)	3(%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	21(%)	2(%)
6	Whether the information on the website is available?	18(%)	5(%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	6(%)	17(%)
8	Whether the appointment procedure should be uniform and standardized?	15(%)	8(%)
9	Are you in favour of giving status equivalent to District Court?	8(%)	15(%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court/High Court Judges?	9(%)	14(%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	19(%)	4(%)
12	Are you in favour of appointing academicians as Chairperson/Members?	11(%)	12(%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	8(%)	15(%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	8(%)	15(%)

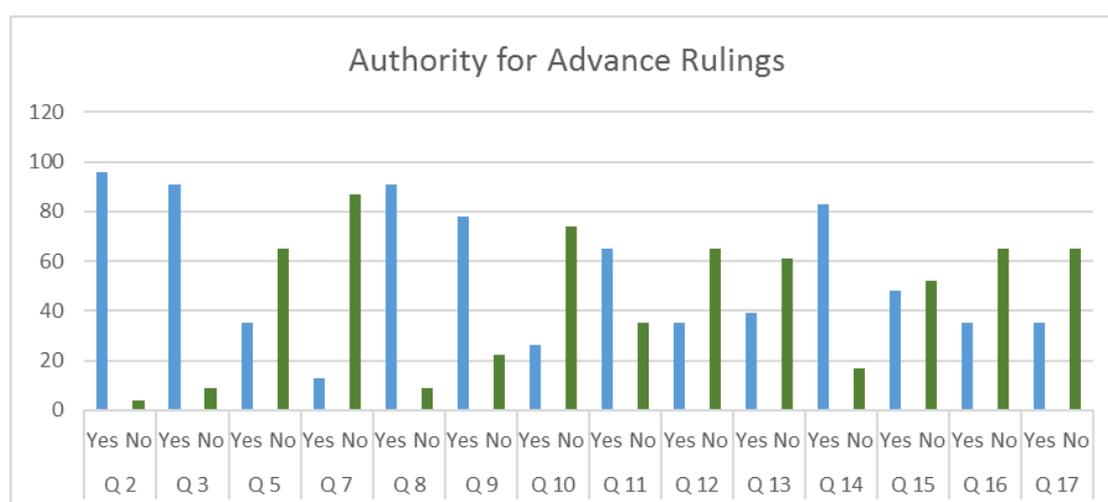
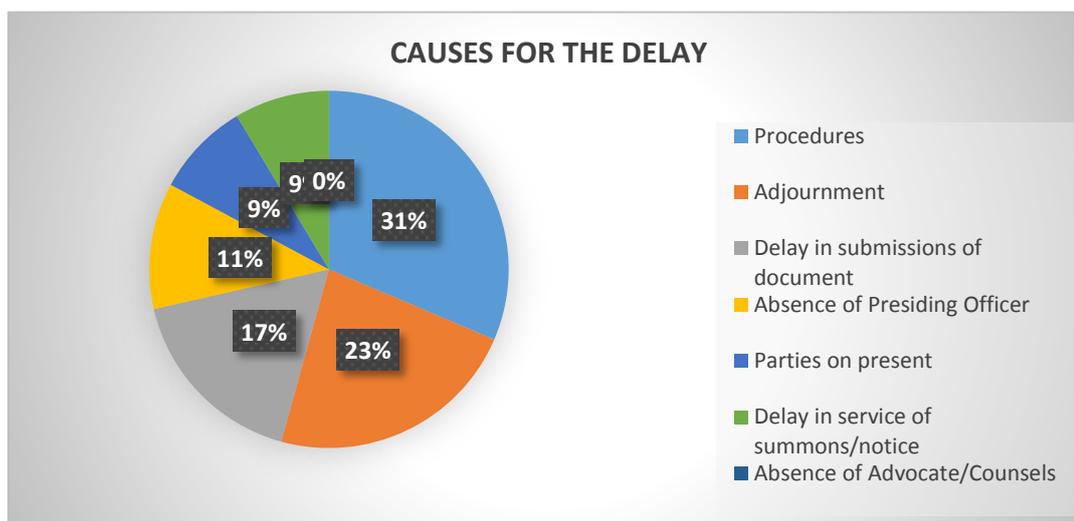


Table-27: Delay in Disposal of Cases (500 cases pending)

Reasons	Responses (%)
Procedures	11 (31%)

Adjournment	8 (23%)
Delay in submissions of document	6 (17%)
Absence of Presiding Officer	4 (11%)
Parties on present	3 (9%)
Delay in service of summons/notice	3 (9%)
Absence of Advocate/Counsels	0



General Comments

- Total number is adjournments should be restricted
- Procedures adopted by the Tribunal is consuming more time
- Specific timeline should be fixed for disposal of cases
- Very slow in each stage

3.14. FILM CERTIFICATION APPELLATE TRIBUNAL

Sample size: 11 Respondents

Table-22: Opinions of Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	11(100%)	0(0%)
2	Whether the procedures are adequate for effective administration of Justice?	10(91%)	1(9%)
3	Whether the workload of Tribunals are increased due to various reforms?	1(9%)	10(91%)
4	Whether the provisions are adequate for ensuring effective administration of Justice?	10(91%)	1(9%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	11(100%)	0(0%)
6	Whether the information on the website is available?	11(100%)	0(0%)

7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	0(0%)	11(100%)
8	Whether the appointment procedure should be uniform and standardized?	1(%)	10(91%)
9	Are you in favour of giving status equivalent to District Court?	0(%)	11(100%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court/High Court Judges?	4(%)	7(64%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	9(%)	2(18%)
12	Are you in favour of appointing academicians as Chairperson/Members?	2(%)	9(82%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	0(%)	11(100%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	0(%)	11(100%)

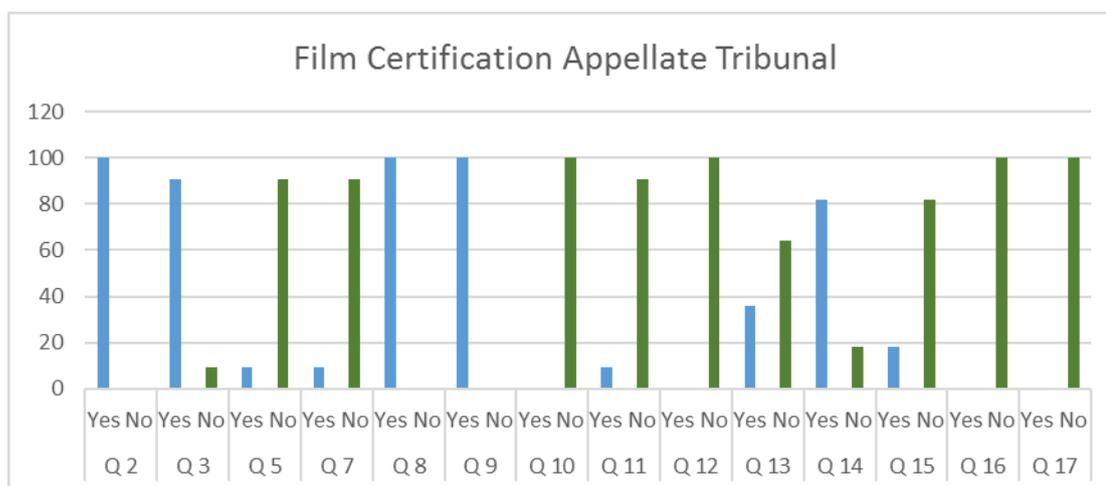
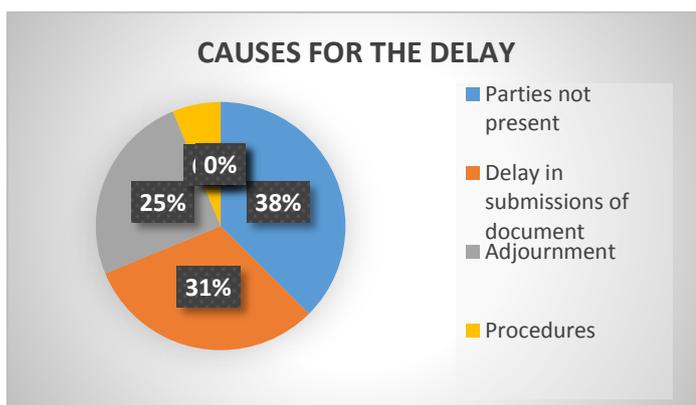


Table-29: Delay in Disposal of Cases

Top Reasons	Responses (%)
Parties not present	6 (55%)
Delay in submissions of document	5 (45%)
Adjournment	4 (36%)
Procedures	1 (9%)
Absence of Advocate/Counsels	0
Absence of Presiding Officer	0
Delay in service of summons/notice	0



General Comments

- Procedure followed by the Tribunals should be speedy.
- Appointment of the President/Chairperson/Member should be made through competitive examination or advocates shall be given preference.
- It can work more effectively as the pendency of cases are very less.

3.15 NATIONAL CONSUMER DISPUTE REDRESSAL COMMISSION

Sample size: 41 Respondents

Table-30: Opinions of Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	33(80%)	8(20%)
2	Whether the procedures are adequate for effective administration of Justice?	35(85%)	6(15%)
3	Whether the workload of Tribunals are increased due to various reforms?	37(90%)	4(10%)
4	Whether the provisions are adequate?	16(39%)	25(61%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	31(76%)	10(24%)
6	Whether the information on the website is available?	34(83%)	7(17%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	9(22%)	32(78%)
8	Whether the appointment procedure should be uniform and standardized?	36(88%)	5(12%)
9	Are you in favour of giving status equivalent to District Court?	22(54%)	19(46%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court/High Court Judges?	25(61%)	16(39%)
11	Are you in favour of making appointments through all India	3(83%)	7(17%)

Judicial Service Examination?			
12	Are you in favour of appointing academicians as Chairperson/Members?	28(68%)	13(32%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	18(44%)	23(56%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	6(15%)	35 (85%)

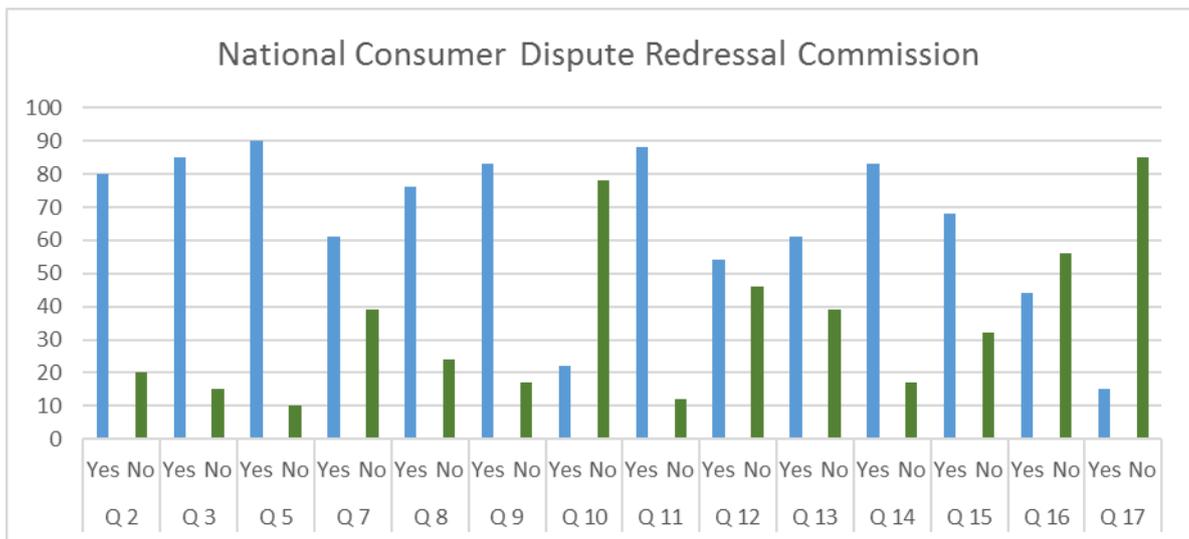
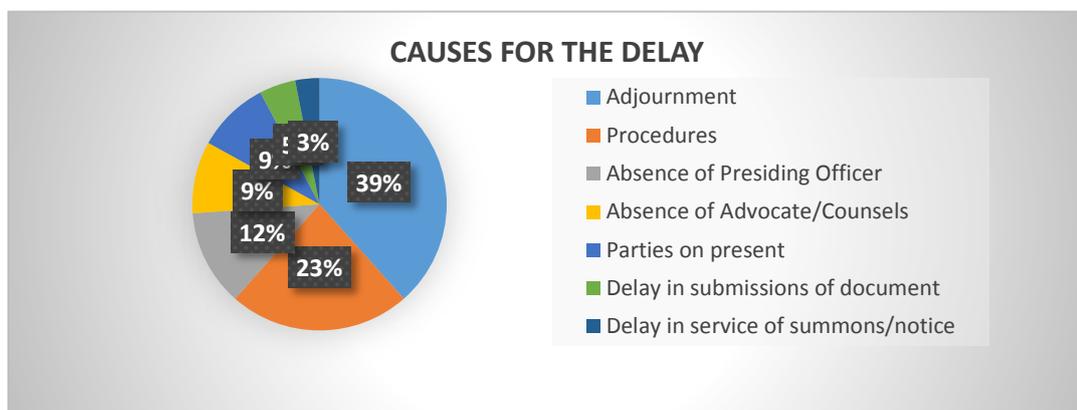


Table-31: Delay in Disposal of Cases (15,546 cases pending)

Reasons	Responses (%)
Adjournment	25 (61%)
Procedures	15 (37%)
Absence of Presiding Officer	8 (20%)
Absence of Advocate/Counselors	6 (15%)
Parties not present	6 (15%)
Delay in submissions of document	3 (7%)
Delay in service of summons/notice	2 (5%)



General Comments

- Composition needs to be changed
- Difference in approach between two benches
- Appeal to the Supreme Court should be restricted
- Parallel court in place of Tribunal
- Orders are not uploaded in a timely manner
- Transparent appointment procedure are needed
- In favour of mergers, if the subject matter is similar
- Heavy cost to be imposed for delay and adjournments
- Increase in number of Tribunals
- Every State should have NCDRC
- Delay in passing the judgment
- Fill the vacancies within reasonable time limit
- Burden on Commission
- Members are not legal experts except Chairperson, need to appoint advocates as members
- Arbitrarily deciding the matter
- No objective procedure
- Delay in uploading orders
- Only judicial members along with expert should sit, non-judicial members do not have knowledge. Stop appointing non-judicial members for NCDRC
- Extremely slow and they do not dispose the matter speedily.

3. 16 APPELLATE TRIBUNAL FOR ELECTRICITY

Sample size: 21 Respondents

Table-32: Opinions of Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	16(76%)	5(24%)
2	Whether the procedures are adequate?	18(86%)	3(14%)
3	Whether the workload of Tribunals are increased due to various reforms?	18(86%)	3(14%)
4	Whether the provisions are adequate?	14(67%)	7(33%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	20(95%)	1(5%)
6	Whether the information on the website is available?	20(95%)	1(5%)
7	Whether the Tribunals compromised in delivering quality	11(52%)	10(48%)

	of justice due to departing from normal courts procedures?		
8	Whether the appointment procedure should be uniform and standardized?	20(95%)	1(5%)
9	Are you in favour of giving status equivalent to District Court?	5(24%)	16(76%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court/High Court Judges?	12(57%)	9(43%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	17(81%)	4(19%)
12	Are you in favour of appointing academicians as Chairperson/Members?	9(43%)	12(57%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	3(14%)	18(86%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	6(29%)	15(71%)

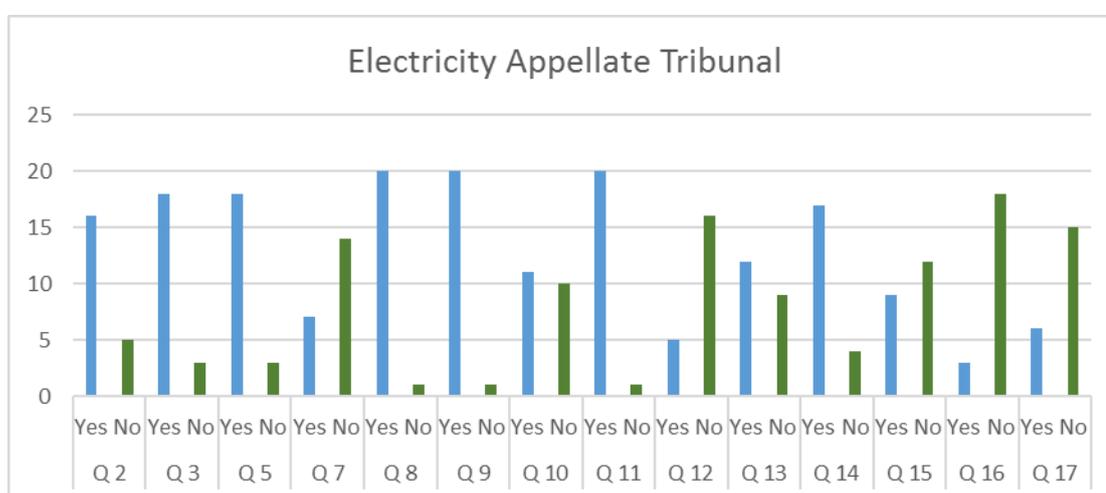
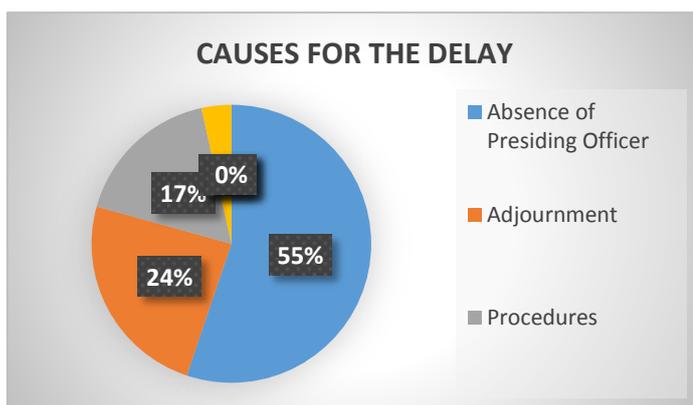


Table-33: Delay in Disposal of Cases

Reasons	Responses (%)
Absence of Presiding Officer	16 (76%)
Adjournment	7 (33%)
Procedures	5 (24%)
Absence of Advocate/Counsels	1 (5%)
Parties not present	0
Delay in service of summons/notice	0
Delay in submissions of document	0



General Comments

- All tribunals should be at one place.
- No procedures are actually followed
- Vacancies should be filled
- Benches do not sit regularly
- Judges need to be strict
- Many formalities need not necessary
- Daily orders are not updated
- Benches sit at their discretion in discretionary manner
- Judges should be given the role of advisors only.

3.17 ARMED FORCES TRIBUNAL

Sample size: 30 Respondents

Table-34: Opinions of Respondents

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	22(73%)	8(27%)
2	Whether the procedures are adequate for effective administration of Justice?	28(93%)	2(7%)
3	Whether the workload of Tribunals are increased due to various reforms?	23(77%)	7(23%)
4	Whether the provisions are adequate?	12(40%)	18(60%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	26(87%)	4(13%)
6	Whether the information on the website is available?	22(73%)	8(27%)

7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	3(10%)	27(90%)
8	Whether the appointment procedure should be uniform and standardized?	24(80%)	6(20%)
9	Are you in favour of giving status equivalent to District Court?	8(27%)	22(73%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court/High Court Judges?	10(33%)	20(67%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	13(43%)	17(57%)
12	Are you in favour of appointing academicians as Chairperson/Members?	8(27%)	22(73%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	9(30%)	21(70%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	8(27%)	22(73%)

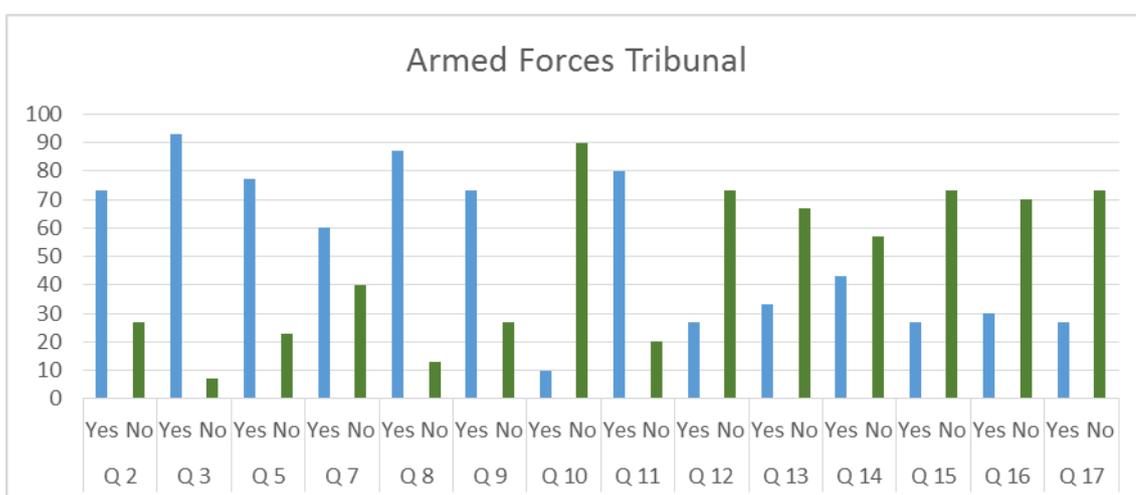
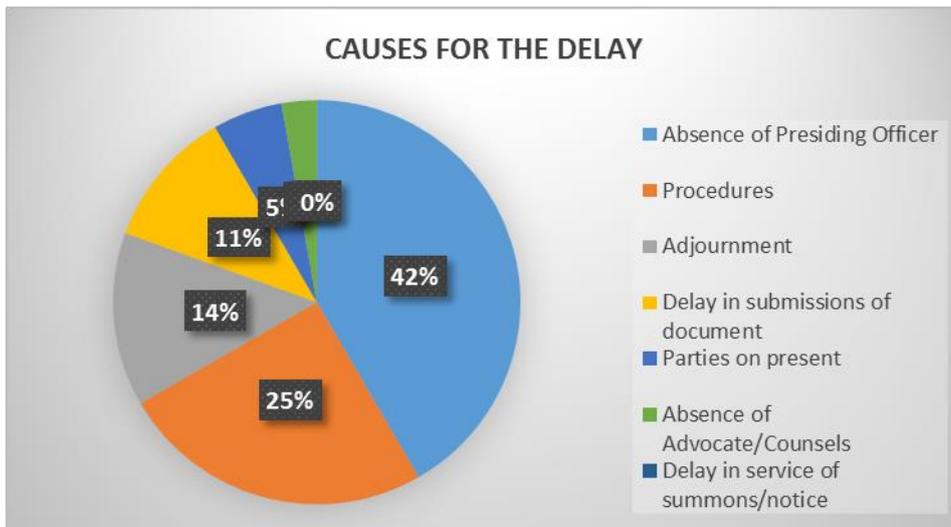


Table-35: Delay in Disposal of Cases (2,000 cases pending)

Reasons	Responses (%)
Absence of Presiding Officer	15 (42%)
Procedures	9 (25%)
Adjournment	5 (14%)
Delay in submissions of document	4 (11%)
Parties on present	2 (6%)
Absence of Advocate/Counsels	1 (3%)
Delay in service of summons/notice	0



General Comments

- Lack of administrative staff and presiding officers/members
- Timely appointment of presiding officer. Benches are not working sincerely
- People are not serious about AFT
- Advocates practicing for long duration in the respective Tribunals should be appointed as members
- Regional Benches are not functional and Website has not been updated
- Setup more benches instead of giving more luxury to judges
- All Tribunals should come under one umbrella of the Ministry of Law & Justice
- All Tribunals should be located to premises of the High Courts.
- No requirement of IAS officers to be appointed as members of AFT. Armed Forces Officers are more suitable than IAS officers. Advocates may be appointed as members.
- Sufficient space should be provided
- Basic amenities such as library, drinking water and wash rooms should be provided.
- AFT should be transferred to District or High Court complex.
- Stamp Vendor/Notary is not available
- Quality of justice can be maintained if Tribunals are scrapped and handed over to existing High Courts.
- No politics in selection procedure
- Inefficient judicial members

3.18. NATIONAL GREEN TRIBUNAL

Sample size: 31 Respondents

Table-36: Opinions of the Advocates on National Green Tribunal

No	Question	Yes (%)	No (%)
1	Are you in favour of continuing the existing composition?	31(97%)	1(3%)
2	Whether the procedures are adequate for effective administration of Justice?	29(91%)	3(9%)
3	Whether the workload of Tribunals are increased due to various reforms?	18(56%)	14(44%)
4	Whether the provisions are adequate for ensuring effective Justice?	11(34%)	21(66%)
5	Whether the Tribunals are adopting similar approach in consistent way for the similar issues?	30(94%)	2(6%)
6	Whether the information on the website is available?	30(94%)	2(6%)
7	Whether the Tribunals compromised in delivering quality of justice due to departing from normal courts procedures?	15(47%)	17(53%)
8	Whether the appointment procedure should be uniform and standardized?	29(91%)	3(9%)
9	Are you in favour of giving status equivalent to District Court?	27(84%)	5(16%)
10	Are you in favour of discontinue the practice of appointing retired Supreme Court Judges?	15(47%)	17(53%)
11	Are you in favour of making appointments through all India Judicial Service Examination?	21(66%)	11(34%)
12	Are you in favour of appointing academicians as Chairperson/Members?	27(84%)	5(16%)
13	Are you in favour of merger of Tribunals effected through the Finance Act, 2017?	22(69%)	10(31%)
14	Are you in favour of discontinuing the Tribunals and replacing it with regular Court system?	10(31%)	22(69%)

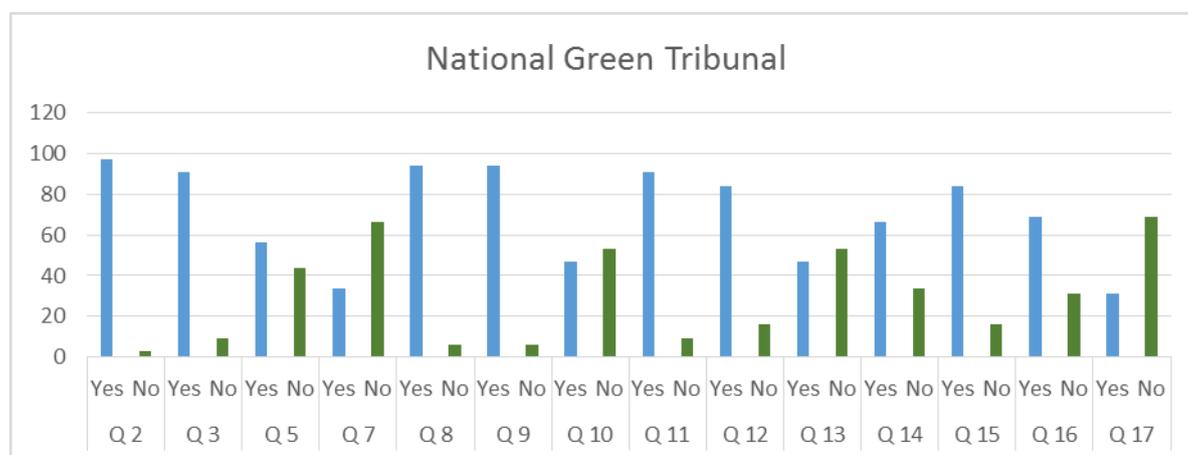
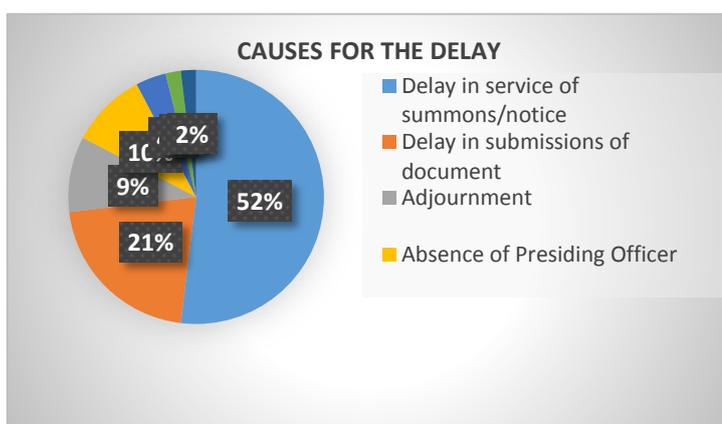


Table-37: Causes for the Delay (3,000 cases pending)

No	Causes	Responses (%)
1	Delay in service of summons/notice	27 (52%)
2	Delay in submissions of document	11 (21%)
3	Adjournment	5 (10%)
4	Absence of Presiding Officer	5 (10%)
5	Procedures	2 (4%)
6	Parties not present	1 (2%)
7	Absence of Advocate/Counsels	1 (2%)
	Total	52



General Comments

- As such functioning is ok, but the judges should be honest while delivering justice
- Improvement needed in functioning
- The system should focus on implementation of existing laws than changing it.
- Sometimes disposal of cases takes longer than expected due to increased absenteeism among counsels.
- Paper less, E-court needed
- Other professionals from legal background be given the chance
- More awareness among citizens regarding existence & functioning of tribunals.
- Members from academia should be given preference too
- Provisions are adequate but the procedure are required
- Organize annual checks regarding the functioning of the Tribunals
- Mergers is a fruitful and positive step.
- Set criteria for appointing experienced people of academia, it will be great reform in the system

CHAPTER-4

FINAL OBSERVATIONS AND RECOMMENDATIONS

1. Out of 477 Respondents, namely, counsel and advocates practicing before the Tribunals under survey,
 - a. 411 (86%) are in favour of continuing the existing composition of the Tribunals.
 - b. 410 (86%) consider that the procedures are adequate for effective administration of justice.
 - c. 342 (72%) agree that the workloads of Tribunals have increased due to various reforms.
 - d. 325 (68%) consider that substantive and procedural provisions stipulated in respective Acts are adequate.
 - e. 404 (85%) consider that the Tribunals are adopting similar approach in consistent way for similar purposes.
 - f. 359 (75%) consider that the information on the website is available.
 - g. 178 (37%) believe that the Tribunals compromise in delivering quality of justice due to departing from normal courts procedures.
 - h. 401 (84%) agree that the appointment procedures should be made uniform and standards.
 - i. 223 (47%) suggest in favour of granting the Tribunals status equivalent to District Courts.
 - j. 329 (69%) are in favour of discontinuing the practice of appointing retired Supreme Court and High Court judges as chair and members of the Tribunals.
 - k. 323 (68%) are in favour of making appointments through all India Judicial Services examination.
 - l. 223 (47%) suggest in favour of appointing jurists, academicians and eminent persons as Chairpersons and members.
 - m. 236 (49%) have favoured merger of Tribunals effected through the Finance Act, 2017.
 - n. 136 (28%) agree to discontinue the Tribunals and replace them with the regular Court system.

2. It emerges that the majority of respondents are in favour of the existing composition of Tribunals, Quasi-Judicial bodies and other Authorities, and the certain variations and measures introduced in the Finance Act, 2017 are favoured by the respondents. Although the opinion among the practitioners on this remains critically divided 49% in favour and 51% against. Nevertheless, uniformity in the composition of all the Tribunals needs to be ensured, either along the lines of the Finance Act, 2017 or the existing structures. It is recommended that the bench should consist of a President and two members. While the person having judicial and legal background should be preferred as Tribunal President, the two members should be drawn from the pool of domain experts and / or legal background. In any case, the bench should certainly have at least one non-judicial member.
3. In addition to the above, the President can be empowered to appoint part-time members as and when required. The President can seek opinion of non-part-time member technical experts, if the need arises.
4. The Report also expresses concern about discretionary power inherent in each of the Tribunals. Although the Law Commissions in the past and the Judiciary – Supreme Court and the High Courts, have undertaken studies and made pronouncements, respectively, it is essential that the Tribunals themselves address most fundamental defects and challenges. The Tribunals, in order to remain vital and relevant to the growing demands of the system, must undertake review exercises regularly and publish the findings.
5. Lack of up-date and complete data remains a very serious cause of concern. It will be important to study how long the cases remain in the docket of the Tribunals. The number of appeals lying and opinions expressed by counsel and advocates lead to undertake a study whether these Tribunals have indeed limited powers, if so, no real and substantive justice can be expected. One of the fundamental reasons for creation of Tribunals was to expedite dispute settlement, but if these Tribunals too are working at slow pace, then their very existence and burden on the exchequer must be analysed in terms of real cost-benefits. An economic analysis of Tribunalisation of justice is required.
6. Instead of vague reference to settling the disputes expeditiously or as soon as possible, the Acts and rules, as appropriate, shall be amended to specify outermost limits, depending upon the quantum of amount involved, gravity of subject, etc. In no case, any dispute shall remain in the docket for more than 365 days from the

date of filing. The penalty clauses for delays are missing in all Tribunals. Necessary amendments shall be introduced to impose penalty on liable parties – litigants and counsel and advocates alike, including the accountability measures for the Chairpersons, members and staff serving the Tribunals, as the case may be.

7. Instead of following different rules of procedures, the uniformity in the rules of proceedings, with essential modifications to suit the requirement of the individual Tribunal, shall be maintained to the greatest extent possible. This Report recommends that a small task-force carries out a review of the rules of procedure and recommends the model rules of procedure for adoption by all Tribunals. With the merger of 8 tribunals, this exercise may be carried out at the earliest so the merged Tribunals can follow uniform rules of procedure. The task-force will remain cognizant of the fact that the Tribunals are not required to follow Civil Procedure code for conducting proceedings and provisions of the Indian Evidence Act, 1872 for recording evidence.
8. With the enactment of new legislation, especially bringing economic and social reforms, the legislator may consider establishing Tribunals to adjudicate, clarify and interpret matters arising out of the implementation of the legislation. However, it is essential that a Judicial Impact Assessment (JIA) is carried out, as an integral part of the discussions leading to the introduction of new law or amendment of the existing ones.
9. The Parliament may consider introducing a small amendment in respective substantive laws enabling the President of the Tribunal to conduct a review exercise on a regular interval with the critical stakeholders to assess the impact of the functioning of the laws with regard mainly to case-load. The Report suggests that the President of the Tribunal may recommend the measures to the Ministry of Law and Justice or to recommend the same to the proposed National Commission of Tribunal, Department of Justice directly for its consideration for further democratization of law making or amendment process thereof as appropriate. The Supreme Court in plethora of cases has recommended to make changes in the existing laws or highlighted as dictas. The Tribunals should also be the part of democratization of law making or amendment processes in India.
10. The Report concludes that the Tribunals have been unable to make maximum use of information technology, which has been one of the serious concerns of the stakeholders. The proposed National Commission for Tribunals or the Ministry of

Law and Justice in collaboration with the Ministry of Information Technology, with the help of these Tribunals, shall ensure that all substantive and practical details are available on the websites of the respective Tribunals. A time-bound implementation of this recommendation is essential.

11. Since all the Tribunals are specialized in terms of exercising jurisdiction on different laws, the Tribunals workload can be equalized in terms of conferring jurisdiction. It is recommended to confer jurisdiction on minimum of three different laws to each Tribunal. Similarity in the subject may not be a sole criteria while conferring the jurisdiction but can be considered.
12. There is disparity in terms of salary, perks and allowances, retirement age for Chairperson and members of the Tribunals. This Report is unable to make any concrete recommendation but the Ministry of Law and Justice in consultation with the Department of Personnel and Training may be most suitable to suggest the methodology and final recommendations.
13. Majority of the respondents have expressed suggestion to discontinue the practice of appointing retired judges for the Tribunals, Quasi-Judicial bodies and other Authorities. This Report concurs with the overwhelming view of the respondents and recommends to implement the change, as practicable and possible, from the next appointments onwards. Furthermore, the members and staff can be drawn from the realization of the All India Judicial Services cadre. Well-qualified and experienced graduates from the National Law Universities can render competent, efficient and effective services to these Tribunals in various capacities.
14. The current philosophy and institutional structures perpetuate monopoly of judges and bureaucrats coming from various branches of administrative services. While there can be good substantive arguments and legal theories in favour of perpetuating the monopoly of these persons, the questions arise – as these structures have been unable to reduce the backlog of cases and partly responsible for the same, should not be lateral entry of other professionals with qualifications and experiences sought; secondly, the current structures also perpetuate the feudal mind-set of typical government / bureaucratic / judocratic in the functioning, thus, even engineers / scientists / academicians from various streams (not necessarily law) who have achieved eminence in their fields and institutional experience should be made chairperson and members. Professionals and eminent people with long experience can certainly be appointed and they can expeditiously deal with the

matters and settle the same based on the principles of natural justice, equity and similar principles. An inherent bias against encouraging and allowing non-judicial and non-bureaucratic persons in the Tribunals should be systematically addressed. The Finance Act, 2017, does address this concern to certain extent. Some of these concerns, expressed or remain non-expressed, are also responsible for the lack of thriving institutional arbitration culture. In this regard, Finance Act, 2017 which has provided for the composition in the NCLAT can be uniformly applied to all Tribunals. NCLAT also recognizes the potential of drawing talent from various walks of life (is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies;). The same can be applied in other Tribunals too. Consumer Commission envisages that if president or member has so abused his position as to render his continuance in office prejudicial to the public interest; or remain absent in three consecutive sittings except for reasons beyond his control. Cooling off period provision found in the NGT can be suitably used in other Tribunals. Sections 5(3) and 5(4) states that the Chairperson and the members in holding any other office during their tenure and prohibits either of them for a period of 2 years from the date on which they cease to hold office to accept any employment in or connected with the management or administration of any person who has been a party to a proceeding before the Tribunal. This type of provision need to insert in other tribunals and applied for its utility as a tool to increase confidence in the justice system of the Tribunals.

15. Although the Report has not dwelled into, however, it would be useful to know whether the Tribunals prepare annual reports and whether these reports are available for the perusal of stakeholders. Preparation and availability of annual reports to the wider public will contribute to the overall accountability culture in the justice system through Tribunals. Most of the Tribunals stipulate rules for removal of Chairpersons and members, however, information is not available to find out whether and how many Chairpersons and members in the history of Indian Tribunals have ever been impeached or removed (Film Certificate Board,

may perhaps be an exception). While the Indian democracy has addressed challenges of accountability, corruption and abuse of powers and has removed representatives of law-making and executives from time to time, neither information nor studies are undertaken to find out whether Chairpersons and members of Tribunals are ever subjected to impeachment, removal, etc. The trust deficit alleged to be prevailing in the judiciary and raising its ugly head at times and again can hardly not be existing in the justice system of the Tribunals.

16. Recognising the competence, specialized knowledge and years of experience and underlying the well-established practice world-wide, including international Courts and Tribunals, as aptly reflected by the Respondents, this Report recommends that eminent jurists, retired and serving law professors and subject-specialist academicians and scholars with requisite institutional administrative trainings can certainly provide competent services in various capacities to these Tribunals. Justice is not a monopoly of judges clearly emerges out of the Respondents' opinion. Academicians should be allowed to do internship in these Tribunals before considering their candidature for the appointment.
17. This Report suggests that more streamlining and merger of appropriate Tribunals along the lines of the Finance Act, 2017 shall be pursued most systematically and at regular intervals. As the pendency of cases, before the Airport Appellate Tribunal, Film Certification Tribunal and Appellate Tribunal for Electricity, is very less, these Tribunals may be merged into appropriate Tribunals.
18. Based on the doctrinal and empirical analysis, this Report recommends that the appeal from these Tribunals shall lie directly to the Supreme Court. A suitable amendment in the existing legislation conferring appellate jurisdiction on the Supreme Court is recommended.
19. Infrastructure facilities or the conducive environment is demand of the day and therefore the Report recommends that all Tribunals shall be provided with sound infrastructure. The Report suggests that the Government may consider shifting Tribunals to function from a same place, preferably from the High Court or very nearby area.
20. The Tribunals shall on a priority basis review the rules of procedure, especially with regard to the upper-limit of the disposal of the case, number of adjournments, adjournment, procedure to deal with the absence of advocate and counsels absence of presiding officer, absence of parties, delay in service of summons/notice,

submissions of document. The Tribunals should issue schedule for each of the stages until disposal for each case. The number of adjournments should be restricted to maximum three. Beyond the number of adjournments, parties should approach to the High Court. The grounds for granting adjournments shall be specified and Tribunals should not entertain any other grounds except on the direction of the High Courts. It is recommended to issue common Speedy Justice Rules, which are applicable to all the Tribunals to regulate the service of summons, grounds for granting adjournments, outer limit for disposal of each case etc.

21. In order to streamline the overall functioning and governance of the Tribunals, the Report recommends an establishment of a National Commission for Tribunals to provide and monitor overall administrative, financial and such other institutional matters. The Commission can address any issue pertaining to the Tribunals and other quasi-judicial bodies, can also provide secretarial or administrative assistance in dealing with the grievances submitted by and against the President and members, parties, counsel and advocates and most importantly litigants. The Commission shall lay its report on the functioning of the Tribunals including the pendency of the cases, as part of the report of the Government before the Parliament.
22. This Report suggests that the Supreme Court of India may consider designating a particular bench to deal with all matters, including appeals, arising from the functioning of the Tribunals.

Annexure 1

**GUJARAT NATIONAL LAW UNIVERSITY
A STUDY ON THE STATUTORY FRAMEWORK AND FUNCTIONING OF TRIBUNALS, COMMISSIONS AND QUASI-JUDICIAL AUTHORITIES IN INDIA
QUESTIONNAIRE**

S. No.	CATEGORY-I: PERSONAL DETAILS
1	<p>NAME & PLACE OF PRACTICE, CONTACT NUMBER :</p> <p>NAME OF THE TRIBUNAL/COMMISSION/AUTHORITY/QUASI-JUDICIAL BODIES*:</p> <p>YEARS OF PRACTICE : (a) 5-10 (b) 10-15 (c) 15-20 (d) 20-25 (e) >25 <small>(*NOTE: RESPONDENTS ARE REQUESTED TO MENTION ONLY ONE TRIBUNAL FOR EACH QUESTIONNAIRE AND ANSWER ALL THE QUESTIONS. IF , ONE RESPONDENT IS PRACTICING IN MORE THAN ONE TRIBUNAL, HE (OR) SHE IS REQUIRED TO FILL MULTIPLE QUESTIONNAIRES FOR EACH TRIBUNAL)</small></p> <p>CATEGORY-II: COMPOSITION, PROCEDURES, EFFECTIVENESS & IMPACT ON HIGHER JUDICIARY</p>
2	<p>ARE YOU IN FAVOUR OF CONTINUING THE EXISTING COMPOSITION OF TRIBUNALS/COMMISSIONS/AUTHORITIES & OTHER QUASI-JUDICIAL BODIES*?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/> IF, 'NO' PLEASE STATE THE REASONS AND SUGGEST SUITABLE CHANGES :</p> <p><small>(*REQUESTED TO ANSWER, CONSIDERING WITH THE CHANGES INTRODUCED IN COMPOSITION OF CHAIRMEN & OTHER MEMBERS THROUGH THE FINANCE ACT, 2017)</small></p>
3	<p>ARE YOU SATISFIED WITH THE PROCEDURES FOLLOWED BY THE TRIBUNALS/COMMISSIONS/AUTHORITIES & OTHER QUASI-JUDICIAL BODIES?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>IF, 'NO', PLEASE STATE THE REASONS AND SUGGEST SUITABLE CHANGES :</p>
4	<p>WHAT IS THE AVERAGE NUMBER OF YEARS TAKEN FOR DISPOSAL FOR A CASE?</p> <p style="text-align: center;">0-1 <input type="checkbox"/> 1-3 <input type="checkbox"/> 3-5 <input type="checkbox"/> >5 <input type="checkbox"/></p>
5	<p>WHETHER THE WORKLOAD OF TRIBUNALS/COMMISSIONS/AUTHORITIES, QUASI-JUDICIAL BODIES HAS BEEN INCREASED DUE TO VARIOUS REFORMS IN THE COUNTRY AND DUE TO MERGER OF CERTAIN TRIBUNALS, EFFECTED THROUGH THE FINANCE ACT, 2017?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>
6	<p>WHAT ARE THE CAUSES FOR THE DELAY FOR SPEEDY DISPOSAL OF THE CASES?</p> <p>(A) ADJOURNMENT (B) ABSENCE OF ADVOCATES/COUNSELS (C) ABSENCE OF PRESIDING OFFICER/MEMBER (D) PARTIES NOT PRESENT (E) DELAY IN SERVICE OF NOTICE/SUMMONS (F) DELAY IN SUBMISSION OF DOCUMENTS (G) PROCEDURES</p>
7	<p>DO YOU THINK THAT THE PROVISIONS UNDER THE PARTICULAR ACT IS NOT ADEQUATE FOR EFFECTIVE ADMINISTRATION OF JUSTICE?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>IF, 'YES', PLEASE SPECIFY THE REASONS AND SUGGEST SUITABLE AMENDMENTS FOR THE PARTICULAR ACT</p>
8	<p>WHETHER THE TRIBUNALS/COMMISSIONS/AUTHORITIES, QUASI-JUDICIAL BODIES ENSURES THAT THEY APPROACH SIMILAR ISSUES IN A CONSISTENT WAY? YES <input type="checkbox"/> NO <input type="checkbox"/></p>

GUJARAT NATIONAL LAW UNIVERSITY
A STUDY ON THE STATUTORY FRAMEWORK AND FUNCTIONING OF TRIBUNALS, COMMISSIONS AND QUASI-JUDICIAL AUTHORITIES IN INDIA
QUESTIONNAIRE

	IF 'NO', PLEASE GIVE SUGGESTIONS FOR SUITABLE CHANGES AS APPROPRIATE :
9	WHETHER THE COMPLETE INFORMATION SUCH AS RULES, REGULATIONS, CAUSE LIST, DAY TO DAY ORDERS, JUDGMENTS ARE MADE AVAILABLE ON THE RESPECTIVE WEBSITES OF TRIBUNALS/COMMISSIONS/AUTHORITIES AND QUASI-JUDICIAL BODIES? YES <input type="checkbox"/> NO <input type="checkbox"/>
	CATEGORY-III: OPINION ON REFORMATIVE MEASURES
10	WHETHER THE TRIBUNALS/COMMISSIONS/AUTHORITIES & OTHER QUASI-JUDICIAL BODIES ARE COMPROMISED IN DELIVERING QUALITY OF JUSTICE DUE TO DEPARTING FROM NORMAL COURTS PROCEDURES? YES <input type="checkbox"/> NO <input type="checkbox"/>
11	SHOULD THE PROCEDURE FOR APPOINTMENT TO ALL TRIBUNALS/COMMISSIONS/AUTHORITIES AND OTHER QUASI-JUDICIAL BODIES BE MADE UNIFORM AND STANDARDIZED? YES <input type="checkbox"/> NO <input type="checkbox"/>
12	WHETHER THE TRIBUNALS/COMMISSIONS/AUTHORITIES AND OTHER QUASI-JUDICIAL BODIES SHOULD BE GIVEN THE STATUS EQUIVALENT TO DISTRICT COURT? YES <input type="checkbox"/> NO <input type="checkbox"/>
13	ARE YOU IN FAVOUR DISCONTINUE THE PRACTICE OF APPOINTING RETIRED JUDGES OF THE SUPREME COURT OR HIGH COURT AS PRESIDENT/CHAIRPERSON/JUDICIAL MEMBERS OF THE TRIBUNALS/COMMISSIONS/AUTHORITIES /OTHER QUASI-JUDICIAL BODIES ? YES <input type="checkbox"/> NO <input type="checkbox"/>
14	ARE YOU IN FAVOUR OF APPOINTING OF PRESIDENT/CHAIRPERSON AND OTHER JUDICIAL MEMBERS OF THE TRIBUNALS/COMMISSIONS/AUTHORITIES /OTHER QUASI-JUDICIAL BODIES THROUGH THE ALL INDIA JUDICIAL SERVICES EXAMINATION? YES <input type="checkbox"/> NO <input type="checkbox"/>
15	ARE YOU IN FAVOUR OF APPOINTING ACADEMICIANS WORKING IN LAW SCHOOLS/UNIVERSITIES/COLLEGES AS A PRESIDENT/CHAIRPERSON/JUDICIAL MEMBER OF THE TRIBUNALS/COMMISSIONS/AUTHORITIES /OTHER QUASI-JUDICIAL BODIES? YES <input type="checkbox"/> NO <input type="checkbox"/>
16	ARE YOU IN FAVOUR OF MERGER OF TRIBUNALS/COMMISSIONS/AUTHORITIES & QUASI-JUDICIAL BODIES EFFECTED THROUGH THE FINANCE ACT, 2017? YES <input type="checkbox"/> NO <input type="checkbox"/>
17	ARE YOU IN FAVOUR OF DISCONTINUE WITH THE EXISTING TRIBUNALS/COMMISSIONS/AUTHORITIES & QUASI-JUDICIAL BODIES AND REPLACE WITH THE REGULAR COURT SYSTEM? YES <input type="checkbox"/> NO <input type="checkbox"/>
18	WHAT IS YOUR OPINION ON THE IMPACT OF THE FUNCTIONING OF THE TRIBUNALS/COMMISSIONS/AUTHORITIES & QUASI-JUDICIAL BODIES ON THE SUPREME COURT? (A) INCREASED BACKLOG OF CASES (B) JUDGES OF THE SUPREME COURT MAY REFUSE TO HEAR THE MATTER AS IT WAS DELIVERED BY RETIRED SUPREME COURT JUDGE (C) ANY OTHER (SPECIFY)
19	ANY OTHER SUGGESTIONS/REMARKS FOR BETTER FUNCTIONING OF TRIBUNALS/COMMISSIONS/AUTHORITIES & QUASI-JUDICIAL BODIES

Annexure 2

Pendency of cases in Tribunals

No	Tribunal	Approx. Cases
1	Industrial Tribunal	14,000
2	Income Tax Appellate Tribunal	91,538
3	Customs, Excise And Service Tax Appellate Tribunal	90,592
4	Appellate Tribunal For Forfeited Property & Money Laundering	2,000
5	Central Administrative Tribunal	44,333
6	Railway Claims Tribunal	45,604
7	Debt Recovery Tribunal	78,118
8	Debt Recovery Appellate Tribunal	550
9	Telecom Dispute Settlement And Appellate Tribunal	2,173
10	National Company Law Tribunal	25,000
11	National Company Law Appellate Tribunal	251
12	Authority For Advanced Ruling	500
13	Film Certification Appellate Tribunal	
14	National Consumer Dispute Redressal Commission	15,546
15	Appellate Tribunal For Electricity	
16	Armed Force Tribunal	2,000
17	National Green Tribunal	3,000
18	Security Appellate Tribunal	423
19	Intellectual Property Appellate Tribunal	1,200
20	Airport Appellate Tribunal	
	TOTAL	416,333