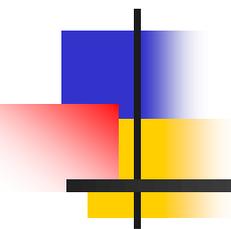


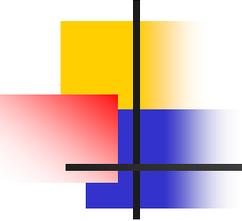
# PRESENTATION ON DISPUTE SETTLEMENT AND PROTECTION OF CONSUMER RIGHTS IN TELECOM AND BROADCASTING SECTORS



**UPAMANYU HAZARIKA**

Advocate

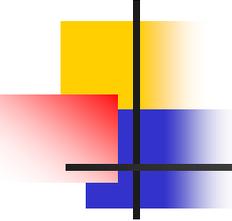
**HYDERABAD**



# AGENDA

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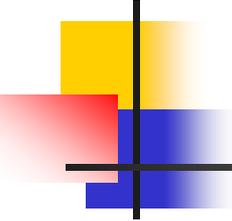
- Legal and Regulatory frame work
  - Creation of TDSAT
  - Jurisdiction of TDSAT
  - Functioning of TDSAST
  
- Significant decisions of TDSAT
- Disputes
- Working of TDSAT
- Disposal of cases
- Suggestions



# Legal And Regulatory Framework

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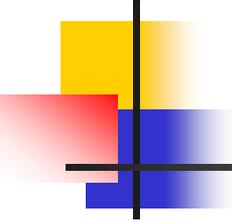
- Creation of TDSAT
- Jurisdiction of TDSAT
- Functioning of TDSAT



# Creation of TDSAT

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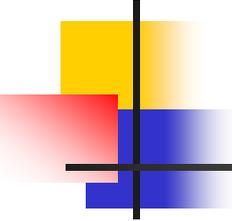
- January 2000, TDSAT was established for settling telecom disputes.
- Separation of regulatory functions (vested in the TRAI) and adjudicatory functions (vested in the TDSAT).
- January 2004, TDSAT empowered to settle disputes in cable and broadcasting sectors.



# Jurisdiction of TDSAT

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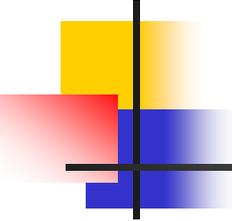
- It has exclusive jurisdiction over telecom matters.
- TDSAT has very wide powers to settle “any dispute”.



# TDSAT Jurisdiction

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- TDSAT has two kinds of jurisdiction, original and appellate jurisdiction.
- Original jurisdiction is of three kinds:
  - Licensor and Licensee dispute
  - Dispute between two or more service providers.
  - Disputes between a group of consumers and service providers.
- Appellate jurisdiction relate to appeals instituted against orders of the TDSAT.

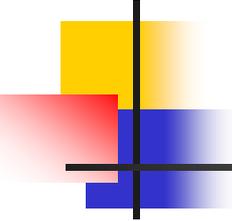


# TDSAT Jurisdiction

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The first two sets of disputes relating to original jurisdiction do not involve a consumer directly but have huge ramifications for consumer interest and are primarily in two areas:

- Telecommunication – between service providers relating to interconnection.
- Cable operators, MSOs and Broadcaster disputes relating to interconnection.

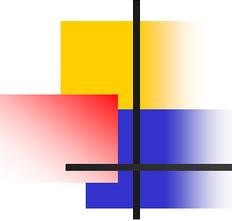


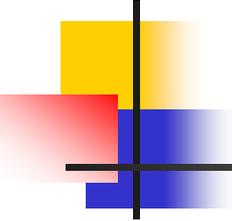
# TDSAT Jurisdiction

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- The first two sets of disputes have huge ramifications for consumers as the financial impact of any such disputes affect the end consumer. The Regulator TRAI follows a policy of putting public interest above any private interest and the touchstone for assessing any disputes by the TDSAT in various pronouncements has been the ultimate effect on public interest, the impact on the end consumer.

# Significant decisions of the TDSAT laying down parameters for cable and broadcasting disputes.

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- TDSAT is to be approached in case of disputes by signal seekers.
  - Signal seekers can negotiate with supplier of signals.
  - The benefit of Must Provide Clause not be given to a defaulter in payment.
  - TV channels must be provided by broadcaster to MSOs.
  - TV channels must be provided by MSOs to cable operators.
  - There should be reasonable terms of contract.
  - TDSAT and not any single party to the contract to decide reasonableness.
  - There cannot be exclusive contract
  - Hotels categorised as “consumers”, guests not categorised as “consumers”
  - “Service providers” includes cable operators, MSOs and broadcasters.

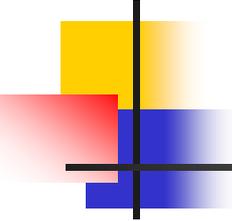


# Disputes between service providers and group of consumers.

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The TRAI Act makes a distinction between classes of consumers:-

- TDSAT can be approached only by a group i.e by two or more consumers
- For disputes and grievances of individual consumer, redress lies in forums like the Consumer Forum.

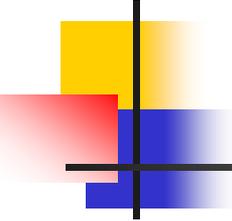


# Working of the TDSAT and upholding consumer interest

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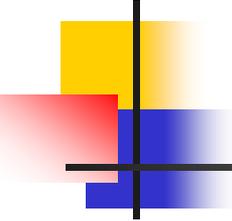
- Simple procedure for filing cases. Cases can be admitted even if it is sent as emails/letter petitions by persons competent to litigate at the TDSAT.
- After *ITPL, Whitefield, Bangalore –vs- In-Cable (Petition 107( c) 2006)*, where an email was treated as a letter petition disputes can be settled in TDSAT without any arguments either by the petitioner or the respondent.

# Working of the TDSAT and upholding consumer interest



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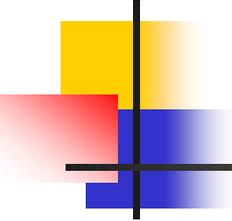
- In another case *Grahak Hritvardhani Sarvakanik Sanstha Vs. TRAI* [Appeal 12 (c) 2005] a consumer society in Pune petitioned against the TRAI Notification allowing of 4% increase in the annual subscription fees on the ground that this increase was done without any public consultation and in a non-transparent manner. The TDSAT stayed the operation of the Order across the entire nation during pendency of the hearing. Also an *Amicus Curie* was appointed to assist the Tribunal.



# Working of the TDSAT and upholding consumer interest

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- This demonstrates that the TDSAT is deeply conscious of consumer constraints in approaching the Tribunal at Delhi and has devised innovative mechanisms to bring justice, virtually to the door step of the consumer.



# Disposal of cases

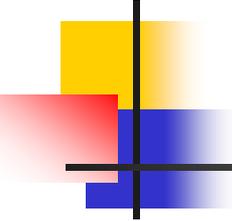
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- High disposal of cases.
- Disputes in the telecommunication sector on the decline as precedents established by TDSAT have lent stability.
- Cable and broadcasting disputes are also on the decline with introduction of DTH and CAS, introduction of Unified Licensing Regime, 2003 and initiatives of TRAI like Telecommunication (Broadcasting and Cable Services) Interconnection (Third amendment) Regulation, 2006.

# Table of Disposal of cases as on September 2007

(Source: Registry of TDSAT)

<b>YEAR</b>	<b>NO OF CASES FILED</b>	<b>NO OF CASES DISPOSED OF</b>	<b>NUMBER OF CASES PENDING</b>
<b>2001</b>	<b>103</b>	<b>103</b>	<b>0</b>
<b>2002</b>	<b>93</b>	<b>92</b>	<b>1</b>
<b>2003</b>	<b>102</b>	<b>100</b>	<b>2</b>
<b>2004</b>	<b>247</b>	<b>244</b>	<b>3</b>
<b>2005</b>	<b>427</b>	<b>411</b>	<b>16</b>
<b>2006</b>	<b>522</b>	<b>432</b>	<b>90</b>
<b>2007*</b>	<b>360</b>	<b>205</b>	<b>155</b>
<b>Total</b>	<b>1854</b>	<b>1587</b>	<b>267</b>



# Suggestion

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The logistics of traveling to Delhi and filing a case in TDSAT is a huge barrier for the consumer, though the individual consumer has the option of moving to the local Consumer Forum which lacks the specialty and expertise of the TDSAT. It is suggested that the TRAI which exercises regulatory powers over telecom service providers, cable operators, broadcasters, etc can reduce the load on TDSAT by developing a mechanism of accepting representation and their disposal within a time frame which will also enable TDSAT to have the benefit of the views of an expert body.