

Rise of T.D.S.A.T. & Way Forward

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INTRODUCTION

- While TRAI as an institution retained a regulatory and dispute resolution function, policy making and operations continued to remain with DoT.
- This situation inevitably led to a conflict of interest between the authority and the ministry, as well as concerns about TRAI's ability to be an independent and impartial adjudicating body.
- In this context, there was battle between the government and the TRAI before the Hon'ble Delhi High Court – *Union of India vs. TRAI* – (1998) 46 DRJ 557.
- This case highlighted the fact that dispute resolution power of TRAI as originally in the 1997 Act lacked the commitment given by the Union of India internationally in GATT.

- In this background, the need for a separate body to adjudicate disputes in the telecommunications sector was felt.
- The Government amended the TRAI Act in 2000 to establish the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).
- TDSAT was vested with the powers to adjudicate disputes between licensors, licensees, service providers and consumers and to promote and ensure orderly growth of the telecom sector.
- This was the innovative step that was taken up by the Indian government in the telecom sector, reasons including the technical nature of these disputes (and therefore, a specialized body was setup to adjudicate disputes relating to them), the changes in the telecommunications market in India, as well as an unsatisfactory private investment environment in the sector.

- The existence of such an institution not only affords an opportunity to service providers to seek a final settlement of issues involved, but also sanctifies various decisions taken by the regulator which sets the pace and tone for stability in the market.
- One of the first case decided by TDSAT travelled to Supreme Court - COAI vs. Union of India – (2003) 3 SCC 186. The Supreme Court while deciding the said case, held that TDSAT has much wider jurisdiction than Supreme Court. The scrutiny by TDSAT is not limited to reasonableness and competence to pass the decision/policy but can go into the correctness of the decisions/policy made by DoT.

“As has been stated earlier, the jurisdiction of the Tribunal under Section 14 cannot be held to be a supervisory jurisdiction, in view of the language of the statute as well as the fact that it is the only forum for redressing the grievance of an aggrieved party inasmuch as the appellate jurisdiction to this Court is only on a substantial question of law and the jurisdiction of a civil court for filing a suit is also ousted.”

- However, the TDSAT was only deciding issues pertaining to telecom.

TDSAT – FALLBACK TRIBUNAL

- Around 2003-2004, the Central Government was facing lot of issues relating to digitalization/regulation of the mushrooming broadcasting and cable business in India.
- While the Parliament had enacted Cable TV Network Regulation Act, 1995, however, the Act contained broad guidelines and did not have any defined Regulator.
- On 09.01.2024, the Government of India taking recourse to the proviso in Section 2(1)(k) of the TRAI Act, by a notification included broadcasting services to be within the meaning of Telecommunication Services.
- As such, the entirety of the TRAI Act 1997 became applicable to the broadcasting industry.

- Now TRAI became the Regulator for cable and broadcasting industry and TDSAT became the Adjudicating Authority for the sector.
- This led to a whole new range of disputes landing up before TDSAT.
- The broadcasting sector was completely un-organized and the disputes ranged from various issues such as complicated issues of level playing field to simple recovery.
- Various tariff related issues also came before TDSAT which were decided by TDSAT keeping in view overall growth of the sector.
- Seeing the manner in which TDSAT handled the disputes in telecom and broadcasting sector and brought entirety in the sector, the Parliament assigned Appellate Jurisdiction over Aadhar matters under Section 33(C) of the Aadhar Act, 2016.

- Similarly, under the Finance Act, 2017, the jurisdiction of TDSAT was extended to all the matters before the Cyber Appellate Tribunal and Airport Economic Regulatory Appellate Authority.
- It is worth noting here that the Finance act, 2017, on one hand abolished/finished various Tribunals, however, at the same point of time, the jurisdiction of TDSAT was expanded to include Cyber Appeals and matters to be adjudicated under Airport Economic Regulatory Authority (AERA) Act.
- Upon the jurisdiction being given to TDSAT, TDSAT has adjudicated many disputes pertaining to cyber law/IT Act and various issues pertaining to AERA Act.
- Very recently, TDSAT has been given a responsibility of the Appellate Tribunal under the Digital Personal Data Protection Act. By this added role, TDSAT has singlehandedly become the most important Tribunal in the entire country.
- Some of the issues relating to IT Act and AERA requires expert members to adjudicate these disputes.

CONCLUSION

- TDSAT was initially made for adjudication of certain telecom disputes. However, the jurisdiction of TDSAT has been increased from time to time and currently, TDSAT is to decide from niche issues in law.
- To decide these niche issues in the field of law, additional specialized members are required from various backgrounds including economic, IT, Competition etc. are required to share the burden with the current members.
- Lack of storage and sitting space has been the issue that has troubled TDSAT since its inception. The Government should make available the infrastructure to TDSAT as expeditiously as possible.

- TDSAT is one of the most efficient Tribunal in the country and has ensured that the Regulations are implemented in sufficient manner and the disputes are adjudicated in speedy and effective manner.
- This adds to the responsibility on the shoulders of TDSAT.
- As they say, the data is new oil and in India, this oil is in abundance.
- TDSAT has now much more important role to play in future. However, lack of infrastructure and trained professionals can be a huge speed breaker in the growth of TDSAT.
- Today, TDSAT, as a Tribunal, takes care of Telecom, Broadcasting, Information Technology (IT) and Data. This controls entire flow of data which will play important role in the future growth in the country. Thus, TDSAT needs to play a stronger and effective role in coming future.

Thank You

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