

PROMOTING FAIRNESS AND EFFICIENCY IN THE BROADCASTING SECTOR, RECOGNISING TDSAT'S CONTRIBUTION TO A DEVELOPING LEGAL LANDSCAPE



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Today's Discussion

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01

EVOLUTION OF TDSAT

Established in
2000

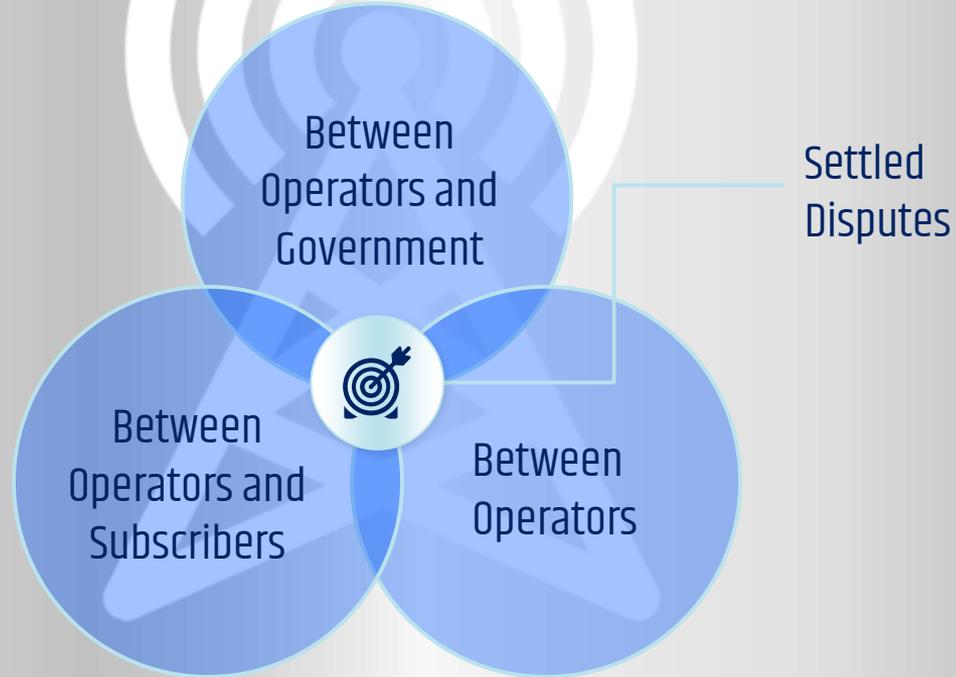


Chairperson:
Hon'ble Mr. Justice
D. N Patel

Hon'ble Mr. Justice
Ram Krishna
Gautam

Mr. Subodh
Kumar Gupta

Evolution of TDSAT



Evolution of TDSAT

- The evolution of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) is a fascinating journey that traces back to the revolutionary changes brought about by ***the 1997 Act in India***. This Act laid the foundation for a new era of communication, breaking down barriers and connecting people across the country like never before.
- With the rapid advancements in telecommunications, the need for a dedicated regulatory framework became imperative, leading to the establishment of the ***Telecom Regulatory Authority of India (TRAI) in 1997***.
- This regulatory body was entrusted with the responsibility of ensuring fair competition, consumer protection, and the smooth functioning of the telecom sector.
- However, as the telecom industry expanded and complex disputes emerged, it became clear that an impartial appellate body was necessary to resolve conflicts and provide effective remedies.

Evolution of TDSAT

- This realization led to an amendment under TRAI Act, 1997 in 2000, wherein, a separate statutory dispute settlement and adjudicatory body was constituted known as Telecom Disputes Settlement And Appellate Tribunal (***TDSAT***) ***for adjudicating disputes between a licensor and licensee, between two or more service providers, between a service provider and a group of consumers, and also to hear and to dispose any appeals from the direction, decision or order of the Telecom Regulatory Authority of India (TRAI).***
- Thus vide amendment now Telecom Regulatory Authority of India Act, 1997, ***provides a twin body system for redressal of disputes pertaining to service providers and other stakeholders which manifest in form of the Telecom Regulatory Authority Of India (TRAI) and the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).***

Evolution of TDSAT

- ***In 2001***, when TDSAT was established, Broadcasting was not the part of the Telecommunication Services. In 2004 Broadcasting services was made part of the Telecommunication services and consequently disputes arising in Broadcasting sectors also came within the purview of the Hon'ble TDSAT.

Evolution of TDSAT

- The amendment to the TRAI Act was not without its critics. Some argued that it would give TDSAT too much power, and that it would be difficult for the tribunal to effectively adjudicate disputes involving broadcasters.
- Before TDSAT a very large number of Broadcasting cases relate to recovery of dues or demand of supply of TV signals from Broadcaster or large distributors of TV channels and challenge to orders and directions passed by TRAI from time to time.
- Furthermore, TDSAT's evolution went beyond resolving disputes redressal with a proactive approach towards fostering growth and innovation in the broadcasting sector. The Tribunal's judgments and rulings have set important precedents, encouraging technological advancements, promoting consumer-friendly practices, and balancing the interests of various stakeholders. This progression reflected the dynamic nature of the telecom industry, keeping pace with the amalgamation of broadcasting services.

- The ***evolution and self learning journey of TDSAT can be identified from the leading example from its own judgment in the case of Hathway Cable & Datacom Ltd.*** where, Hathway Cable and Datacom decided to stop providing the broadcasters of channels on **a bouquet basis and instead offer them on an a la carte basis.**

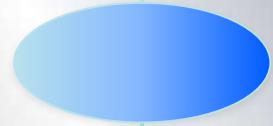


- It set a precedent that cable operators can now choose to offer channels on an ***a la carte basis***, rather than being ***forced to bundle them together in bouquets***. This gives consumers more choice and control over the channels they watch, and it could lead to lower prices for cable TV services.



02

Evolving Jurisdiction



Adjudicating Disputes



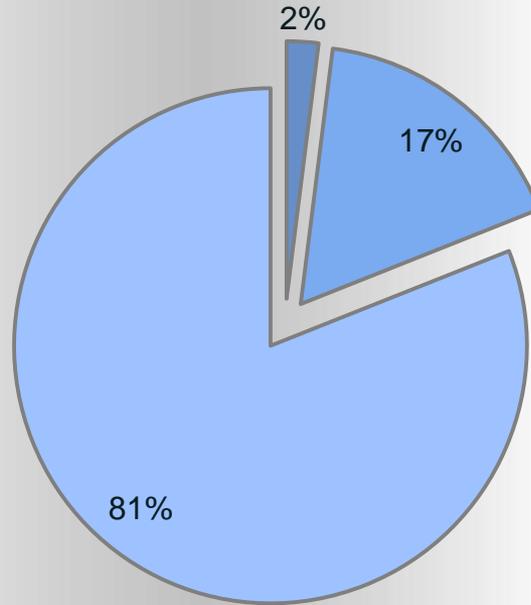
Original Jurisdiction

- TDSAT is empowered to entertain all telecom disputes. Its jurisdiction was extended to Cable and Broadcasting industry also in January, 2004. It has exclusive jurisdiction to entertain all disputes whether it is telephony, cable or broadcasting.
- TRAI was divested of its adjudicatory powers in the year 2000 and it does not have adjudicatory powers. High Courts have the power to deal with even telecom matters under their writ jurisdiction, but generally, the High Courts have preferred to send telecom cases to TDSAT, even if these are agitated in writ jurisdictions.



Appellant Jurisdiction

Evolving Jurisdiction



- Broadcasting appeal
- Telecom Petition
- Broadcasting Petition



Evolving Jurisdiction

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

Powers and Regulations

- Hon'ble TDSAT and TRAI work closely together to ensure that the telecom sector in India is well-regulated and that the interests of all stakeholders are protected. TDSAT and TRAI play an important role in the regulation of the telecom sector in India.

Current Scenario

- The Hon'ble TDSAT's jurisdiction was recently expanded to include disputes arising from the use of Aadhaar. In **a notification issued in March 2023**, the Government of India stated that the TDSAT would have jurisdiction to hear and decide appeals against orders issued by the Unique Identification Authority of India (UIDAI) under the Aadhaar Act, 2016.
- The expansion of the Hon'ble TDSAT's jurisdiction to include Aadhaar disputes is a significant development, as it will provide a forum for resolving disputes between individuals and the UIDAI. The TDSAT is an independent body with a history of fair and impartial decision-making, and its involvement in Aadhaar disputes is likely to provide much-needed clarity and certainty in this area.

Current Scenario

- The Hon'ble TDSAT's decisions on Aadhaar disputes will be **binding on all parties involved, including the UIDAI**. This means that the UIDAI will be required to comply with the Hon'ble TDSAT's decisions, even if it disagrees with them. The expansion of the Hon'ble TDSAT's jurisdiction to include Aadhaar disputes is a significant development, and it is likely to have a major impact on the Aadhaar ecosystem.

03



Dinstinction



Consumer

Fairness



Fairness and competence

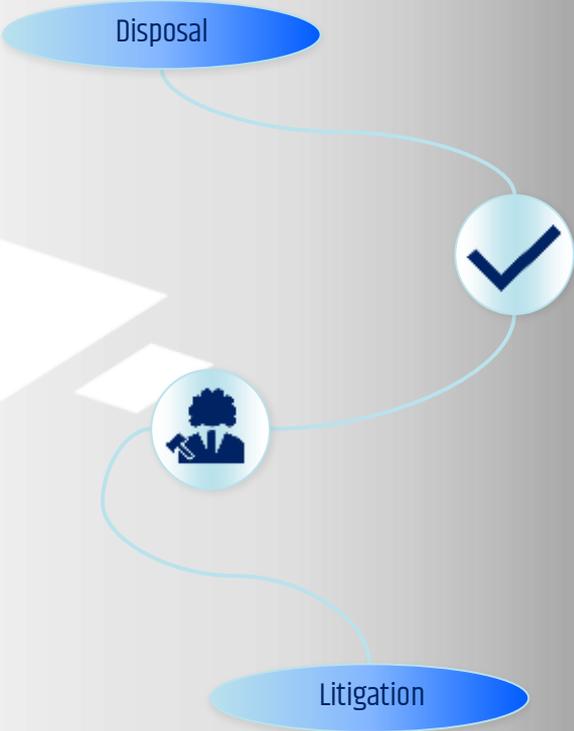
- Earlier an elongated Trial procedure were conducted for adjudication of disputes pending before TDSAT in similar lines of Civil Court despite the Acts provide that :-
 - a) The Tribunal is not bound by the procedure laid down by the code of Civil Procedure, 1908 and Indian Evidence Act 1872,
 - b) Tribunal has power to regulate its own procedure;
 - c) It is to be guided by the Principles of natural justice.
- When former Hon'ble Mr. Justice Shiva Kirti Singh assumed the office of Chairperson of TDSAT in 2017, TDSAT got recognized for doing-away with the mandatory procedure adopted by the Tribunal for lengthy evidence submission with sole objective to expedite the redressal /adjudicatory process because the unnecessary and hyper technical procedure for recording evidence only leads to delays in the resolution of cases.

Fairness and competence

- When our present Chairperson Hon'ble Mr. Justice D.N Patel assumed his office in 2022, he observed that the Respondent in many cases have been absconding from participation in day to day proceedings/hearing in order to frustrate the orders passed by the Tribunal from time to time which were resulting into miscarriage and subversion of justice and the mandate of the Act. Thus, the Hon'ble Chairperson has adopted certain out of box procedures which was generally not exercised earlier like **Issuance ofailable and non-ailable warrants to the non-appearing parties, which also includes passing of orders for the appearance of the opposite side through summoning the DSP, SP, or other officers of the State.** This power has been used by Hon'ble TDSAT to fairly and effectively adjudicate telecom pending disputes in just and expeditious manner.

04

Observation



Observation

- *Hon'ble TDSAT's execution of Decree or Orders have a number of implications for consumers and service providers who are judgment holders of the orders/decree passed by the Hon'ble TDSAT from time to time.*
- ***Any delay in execution*** mean that the Decree/Judgment holders have to wait longer for their disputes to be resolved which does not have only adverse economic effect but subvert the whole purpose of the legislation. We are grateful to Hon'ble Mr. Justice D.N Patel for having exercised the powers to execute its orders/decree and not refer the order/decree to be executed in district cum-civil court under the stringent provision of the CPC, 1908. By exercising the power for deposit of the money in the interim the same has ensured that there is no delay or frustration of the execution process.

Observation

- The telecom sector is a vital part of the Indian economy, and it is important for the sector to have a **strong, speedy and effective dispute resolution mechanism especially in terms of execution of its own decree or orders.**



Thankyou