

Telecom Dispute Resolution Under Telecommunication Act, 2023

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.”

- ▶ 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.

The Old Route: TRAI Act, 1997

- ▶ Under the old system, disputes went almost immediately to an independent, judicial body.
- ▶ **Step 1: Dispute Arises:** A conflict happens between the DoT and a telecom service provider (e.g., over license fees or spectrum terms).
- ▶ **Step 2: Immediate Independent Trial:** The affected party files a petition directly before the **TDSAT**. This tribunal is headed by a retired Supreme Court Judge or Chief Justice of a High Court, ensuring judicial independence from the government.
- ▶ **Step 3: Final Appeal:** Any party unhappy with the TDSAT order can appeal directly to the **Supreme Court of India**.

The New Route: Telecommunications Act, 2023

- ▶ The new law inserts two mandatory layers of government-controlled bureaucracy before a company can reach an independent court.
- ▶ **Tier 1: Adjudicating Officer (AO):** The Central Government appoints an officer (at least Joint Secretary rank) to hold an inquiry, hear the case, and pass an enforcement order or civil penalty.
- ▶ **Tier 2: Designated Appeals Committee (DAC):** If a party is dissatisfied with the AO's order, they cannot go to court yet. They must first appeal to the DAC, which consists of senior government officers appointed by the Central Government.
- ▶ **Tier 3: TDSAT Appeal:** A party can only approach the **TDSAT** *after* exhausting both Tier 1 and Tier 2 executive levels. The TDSAT now acts strictly as a subsequent appellate body for these matters, rather than the court of first instance.
- ▶ **Final Appeal:** The option to appeal the TDSAT decision to the **Supreme Court of India** remains intact.

Key Changes to Dispute Resolution:

- ▶ The changes the role of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) by routing civil penalties through a new executive adjudication process first.
- ▶ This bypasses direct judicial recourse, shifting initial dispute resolution to government-appointed officers and a Designated Appeals Committee before reaching TDSAT.
- ▶ **Executive Adjudication:** The central government appoints joint secretary-rank officers to penalize breaches instead of immediate tribunal intervention.
- ▶ **Internal Committee:** Appeals against adjudicating officers go to a government-run Designated Appeals Committee rather than directly to TDSAT.
- ▶ **Restricted Access:** TDSAT only handles appeals at the final tier for specific authorization breaches, limiting its direct oversight scope

Appointment of adjudicating officers:

- ▶ The Telecom Act provides for the appointment of adjudicating officers by the central government who can pass directions to the authorised entity, in case of breach of terms and conditions of the authorisation/assignment granted under the Telecom Act.
- ▶ These directions, *inter alia*, pertain to preventing breach or for ensuring compliance with the Telecom Act, imposing civil penalties, or on violation of specified provisions provided in the Telecom Act, on the receipt of a complaint or *suo moto*.
- ▶ The adjudicating officers shall have the power of a civil court and any orders passed by them shall be executable in the same manner as if it were a decree of a civil court.
- ▶ Additionally, the adjudicating officers are empowered to make recommendations to the Central Government regarding suspension, revocation or curtailment of the authorisation/assignment.

Establishment of a Designated Appeals Committee:

- ▶ A person aggrieved by an order passed by the adjudicating officer can prefer an appeal before the designated appeals committee comprising of members who shall be officers of the Central Government not below the rank of Additional Secretary.
- ▶ Any order issued by the designated appeals committee has the enforceability equivalent to that of a civil court decree. Further, an appeal from the designated appeals committee's decision will lie before:
- ▶ **Telecom Disputes Settlement and Appellate Tribunal ("*TDSAT*"):** For matters regarding breach of terms or suspension/revocation of an authorisation/assignment; or
- ▶ **Civil courts:** In case of orders regarding contraventions of certain provisions which are outlined in the Third Schedule of the Telecom Act such as possessing radio equipment without authorisation, contravention of provisions pertaining to measures for protection of users, etc.

Impact on TDSAT and critic view

- ▶ **Delayed Petitions:** Parties must exhaust executive review channels before approaching the independent tribunal.
- ▶ **Reduced Direct Control:** Primary enforcement of penalties rests within the executive branch rather than an independent judicial body.
- ▶ The concern that the Department of Telecommunications (DoT) becomes a "**judge in its own cause**" stems from the introduction of executive-led dispute resolution in the Telecommunication Act 2023.
- ▶ This structure directly challenges the principal doctrine of natural justice, "**Nemo judex in causa sua**" (no one should be a judge in their own case), by putting conflict resolution in the hands of the executive branch.
- ▶ **DoT as Prosecutor and Judge:** In disputes where the DoT or the government is a party (such as a breach of licensing conditions, spectrum fees, or national security orders), government-appointed Joint Secretaries handle the initial trial and the first level of appeal.
- ▶ **Suo Motu Intervention:** Adjudicating Officers hold civil court powers and can launch inquiries *suo motu* (on their own initiative). This means the same government machinery can investigate, charge, and penalise a telecom provider.
- ▶ **Bypassing the Judiciary:** Legal critics highlight that shifting these powers from the independent judiciary (like TDSAT) to bureaucratic officers compromises institutional impartiality

The Government's Stated Counter-Perspective

- ▶ **Administrative Efficiency:** The government argues this system filters out routine technical compliance matters, reducing the burden on courts.
- ▶ **Focus on Compliance Over Litigation:** The rules prioritize civil penalties and options like **Voluntary Undertakings** to fix compliance issues without entering elongated legal battles.
- ▶ **Ultimate Judicial Safeguard:** The independent judiciary is not entirely eliminated. Telecom companies still hold the right to appeal to TDSAT after navigating the executive layers

Thank You

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