

Evolution of T.D.S.A.T.

By

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Background

- After 1991, the accelerated growth of telecommunications led to many changes in market structure in the sector.
- This period saw diverse categories of players enter the market.
- These market changes led to the need of a regulatory authority in Telecom Sector.
- TRAI was created as a Regulatory Authority for the Telecom Sector.
- The TRAI was vested with broad and varied powers, including but not limited to regulation.
- Crucially, TRAI was also entrusted with the responsibility of adjudicating disputes in the telecom sector (with the exception of certain categories of disputes which were explicitly excluded by the Act).

The conflict

- 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.

The Birth

- In this background, the need for a separate body to adjudicate disputes in the telecommunications sector was felt.
- Instead of strengthening the independence of TRAI, 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.

The growth

- In January 2004, the Government of India included the broadcasting and cable services in the purview of TRAI Act.
- This led to a whole new range of disputes being adjudicated by TDSAT.
- The broadcasting sector was unorganized and had no regulatory authority.
- As a result, when the regulations came, there were many disputes that erupted.
- TDSAT decided these disputes keeping the overall growth of broadcasting sector and was successful by way of its judgments to organize this unorganized sector.
- Similarly, the TDSAT has also been assigned appellate jurisdiction over Aadhaar matters under S-33C of the “Aadhaar (Targeted delivery of financial and other subsidies, benefits and services) Act, 2016.
- The Finance Act 2017 extended the jurisdiction of TDSAT to matters that lay before the Cyber Appellate Tribunal and the Airport Economic Regulatory Appellate Authority.
- Thus, when jurisdiction of other Tribunals have been curtailed due to the work done by TDSAT, the jurisdiction of TDSAT has been expanded.

The curtailment

- The Supreme Court has, in various judgments, examined and ruled on the jurisdiction of the TDSAT. As will be seen from the discussion below, the Supreme Court has, over time to time basis, gradually curtailed the jurisdiction of the TDSAT by placing restrictions on its functioning.
- In 2011, the Supreme Court, in the judgment of UOI vs. Association of Unified Telecom Service Providers of India – (2011) 10 SCC 543 imposed a limitation on the jurisdiction of the TDSAT in holding that the TDSAT did not have the jurisdiction to decide on the validity of the definition of “adjusted gross revenue” in the terms provided for in the license agreement between the parties.
- The Supreme Court, in doing so, also reiterated its consistent view that once a licensee has accepted the terms and conditions of a license, he cannot question the validity of the terms and conditions of the license before the Court.
- In BSNL Vs. Telecom Regulatory Authority of India – (2014) 3 SCC 222, The Supreme Court limited the jurisdiction of the TDSAT, holding that it had no authority to rule on the validity of the regulations made by the TRAI.

Conclusion

- From the above analysis of evolution and working of TDSAT, it can be inferred that the mandate of the TDSAT has undergone changes since its inception. In recent context it has been seen an acute rise in the number of cases coming before the TDSAT.
- Two issues seem to arise from this change in the TDSAT's mandate- first, with regard to the infrastructure of the Tribunal.
- While various other Tribunals have their own premises, TDSAT is working from the Samrat Hotel from various years and has faced various issues like lack of space for storage and sitting.
- With addition of different fields of law, it seems that there is requirement of additional specialized Members to share the burden of increase in number of filing.

- The TDSAT has commonly been regarded as one of the most efficient Tribunals in the country.
- To maintain this distinction, the TDSAT, along with the government, must ensure that it continues to function in an efficient and healthy fashion offering adequate remedies to disputing parties, in a speedy and effective manner.
- 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.
- Today, TDSAT, as a Tribunal, takes care of Telecom, Broadcasting, Information Technology (IT) and Data. This controls entire flow of data which they say is the new oil. Thus, TDSAT needs to play a stronger and effective role in coming future.

Thank You

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