



Tribunals Reforms Bill, 2021

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Why in News

Recently, the **Supreme Court of India** (SC) has challenged the government to produce material showing its reasons for introducing the **Tribunal Reforms Bill of 2021**.

The Bill replaces the **Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021** which was quashed by the Supreme Court.

Key Points

- **Issues Raised by SC:**

- **Unconstitutional Legislative Overriding:** There was **lack of discussion** over the bill, and the government has re-enacted the very same provisions struck down by the Court in the **Madras Bar Association case (2021)**.

It amounts to "**unconstitutional legislative overriding**" of the judgement passed by the SC.

- **Repeated Violation of SC Orders:** The Centre is not following the repeated directions issued by the Court to ensure the **proper functioning of the Tribunals**.

The provisions in the ordinance regarding **conditions of service** and **tenure of Tribunal Members** and **Chairpersons** were struck down by the Supreme Court.

- **Security of Tenure:** The Tribunals Reforms Act, 2021 bars appointments to tribunals of persons below 50 years of age. It **undermines the length/security of tenure**.
- **Undermines the Separation of Powers:** The bill allows the **Central Government to take a decision** on the recommendations made by the selection Committee, preferably within three months from the date of such recommendation.

Section 3(7) of the bill mandates the recommendation of a panel of two names by the search-cum selection committee to the Central Government, violating the **principles of separation of powers and judicial independence**.

- **Vacant Positions in Tribunals:** India now has 16 tribunals including the National Green Tribunal, the Armed Forces Appellate Tribunal, the Debt Recovery Tribunal among others which also suffer from **crippling vacancies**.

Existence of large number of vacancies of Members and Chairpersons and the inordinate delay caused in filling them up has resulted in weakening of the tribunals.

- **Detrimental to the Decision-making Process:** These cases will be transferred to High Courts or commercial civil courts immediately.
 - The lack of specialisation in regular courts could be detrimental to the decision-making process.
 - For example, the **Film Certification Appellate Tribunal (FCAT)** exclusively heard decisions appealing against decisions of the censor board, which requires expertise in art and cinema.
 - Further, the **dissolution of certain tribunals** and appellate bodies, and the transfer of their functions to High Courts can be criticized on the grounds that Indian courts are **already overburdened** with their existing caseload.

- **About the Tribunals Reforms Bill, 2021:**

- **Dissolution of Existing Bodies:** The Bill seeks to dissolve certain appellate bodies and transfer their functions to other existing judicial bodies. For example, the disputes heard by the **Film Certification Appellate Tribunal** will be addressed by the **High Court**.
- **Merging of Existing Bodies:** The Finance Act, 2017 merged tribunals based on domain. For example, the Competition Appellate Tribunal has been merged with the National Company Law Appellate Tribunal.
- **Search-cum-selection Committees:** The Chairperson and Members of the Tribunals will be appointed by the central government on the recommendation of a Search-cum-Selection Committee. The Committee will consist of:
 - The **Chief Justice of India, or a Supreme Court Judge** nominated by him, as the **Chairperson** (with casting vote).
 - **Two Secretaries** nominated by the central governments.
 - The **sitting or outgoing Chairperson**, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court, and
 - The **Secretary of the Ministry** under which the Tribunal is constituted (with no voting right).
- **State Administrative Tribunals:** It will have separate search-cum-selection committees with the **Chief Justice of the High Court** of the concerned state, as the Chairman (with a casting vote).
- **Eligibility and Term of Office:** The Bill provides for a four-year term of office (subject to the upper age limit of 70 years for the Chairperson, and 67 years for members).

Further, it specifies a minimum age requirement of 50 years for appointment of a chairperson or a member.
- **Removal of Tribunal Members:** It states that the central government shall, on the recommendation of the Search-cum-Selection Committee, remove from office any Chairperson or a Member.

Tribunals

- The term '**Tribunal**' is derived from the word '**Tribunes**', which means '**Magistrates of the Classical Roman Republic**'.
- Tribunal is a **quasi-judicial institution** that is set up to deal with problems such as resolving **administrative or tax-related disputes**.

It performs a number of functions like adjudicating disputes, determining rights between contesting parties, making an administrative decision, reviewing an existing administrative decision and so forth.
- The objective may be to reduce the caseload of the judiciary or to bring in subject expertise for technical matters.

- **Constitutional Provisions:**

Tribunals were not part of the original constitution, it was incorporated in the Indian Constitution by **42nd Amendment Act, 1976**.

- **Article 323-A:** It deals with Administrative Tribunals.
- **Article 323-B:** It deals with tribunals for other matters.
- **Article 262:** The Indian Constitution provides a role for the Central government in adjudicating conflicts surrounding inter-state rivers that arise among the state/regional governments.

Source: TH