



# Tribunals Reforms Bill, 2021

## 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 **42<sup>nd</sup> 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**

